CHAPTER 1

ADOPTION OF OFFICIAL CODE

SECTION:

1-1-1: TITLE
1-1-2: ACCEPTANCE
1-1-3: AMENDMENTS
1-1-4: CONSTRUCTION OF WORDS
1-1-5: DEFINITIONS
1-1-6: INTERPRETATIONS

1-1-1: TITLE:
This compilation and codification of the general ordinances of the City of Mesa is hereby declared to be and shall hereafter constitute the "Mesa City Code." Any reference made to the number of any section contained herein shall be understood to refer to the position of the same under its appropriate title heading, its chapter heading, and its section heading and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this Code by title in any legal document. (See Charter; Article II, Section 214(B))

1-1-2: ACCEPTANCE:
This City Code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in all administrative tribunals of this State as the ordinances of a general and permanent effect of the City. (1958 Code)

1-1-3: AMENDMENTS:
Any ordinance amending this Code shall set forth the title, chapter, and section number of the section or sections to be amended, and this shall constitute a sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this Code. All such amendments or revisions by ordinance shall be immediately forwarded to the City Clerk, and the said ordinance material shall be prepared for insertion in its proper place in each copy of the City Code. Each such replacement page shall be properly identified and shall be inserted in each copy of the City Code within thirty (30) days from the date of its final passage. (1958 Code)

1-1-4: CONSTRUCTION OF WORDS:
Whenever any word in any section of this City Code importing the plural number is used in describing or referring to any matters, parties, or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party, or person is referred to in this City Code by words importing the singular number only or the masculine gender, several matters, parties, or persons and females as well as males and bodies corporate shall be deemed to be included. Provided, that these rules of construction shall not be applied to any section of this City Code which contains any express provision excluding such construction or where the subject matter or content may be repugnant thereto. (1958 Code)

1-1-5: DEFINITIONS:
In this Code, unless the context otherwise requires:

CHILD, CHILDREN, MINOR, MINOR CHILD, AND MINOR CHILDREN: Means a person or persons under the age of eighteen (18) years. (1664)
PERSON: Shall be deemed to include any "person, firm, association, or corporation" or any organization of any kind.

WRITTEN AND IN WRITING: May include printing.

PERSONAL PROPERTY: Includes every description of money, goods, chattels, effects, evidence of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished and every right or interest therein.

STREETS: Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, and sidewalks.

OWNER: Applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, or lessee of the whole or of a part of such building or land.

TENANT OR OCCUPANT: Applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

Words prohibiting anything being done, except in accordance with a license or permit or authority from a board or officer, shall be construed as giving such board or officer power to license or permit or authorize such thing to be done.

OFFICER: Shall include officers and boards in charge of departments and members of such boards. The word "City," "Clerk," "Treasurer," or other such title shall mean City, City Clerk, City Treasurer, or other City officer as the use may be applicable.

WILLFULLY: When applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another or to acquire an advantage.

NEGLECT, NEGLIGENCE, NEGLIGENT, AND NEGLIGENTLY: Imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.

KNOWINGLY: Imports only a knowledge that the facts exist which brings the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

1-1-6: INTERPRETATIONS:
In the determination of the provisions of each section of this Code, the following rules shall be observed: (1958 Code)

(A) Intent to Defraud. Whenever an intent to defraud is required in order to constitute an offense, it shall be sufficient if an intent appears to defraud any person. (1958 Code)

(B) Liability of Employers and Agents. When the provisions of any section of this Official Code prohibit the commission of an act, not only the person actually doing the prohibited act or omitting the directed act, but also the employer and all other persons concerned with or in aiding or abetting the said person shall be guilty of the offense described and liable to the penalty set forth. (1958 Code)
CHAPTER 2

SAVING CLAUSE

SECTION:

1-2-1: REPEAL OF GENERAL ORDINANCES
1-2-2: PUBLIC UTILITY ORDINANCES
1-2-3: PENDING SUITS

1-2-1: REPEAL OF GENERAL ORDINANCES:
All general ordinances of the City passed prior to the adoption of this Code are hereby repealed, except such as are referred to herein as being still in force or are by necessary implication herein reserved from repeal (subject to the saving clause contained in the following section), from which are excluded the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming, or vacating streets, alleys, or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

1-2-2: PUBLIC UTILITY ORDINANCES:
No ordinance relating to railroads or railroad crossings with streets and other public ways or relating to the conduct, duties, service, or rates of public utilities shall be repealed by virtue of the adoption of this Code or by virtue of the preceding Section, excepting as this Code may contain provisions for such matters, in which case this Code shall be considered as amending such ordinance or ordinances in respect of such provisions only.

1-2-3: PENDING SUITS:
No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising under the former ordinance or in any way whatever to affect any such offense or act so committed or so done or any penalty, forfeiture, or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture, or punishment be mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

Nothing contained in this or the preceding Section shall be construed as abating any action now pending under or by virtue of any general ordinance of the City herein repealed or as discontinuing, abating, modifying, or altering any penalty accrued or to accrue or as affecting the liability of any person, firm, or corporation or as waiving any right of the City under any ordinance or provision thereof in force at the time of adoption of this Code. (1961 Code)
CHAPTER 3

CITY LIMITS

SECTION:

1-3-1: CITY LIMITS

1-3-1: CITY LIMITS:
All annexation ordinances heretofore adopted are hereby declared to be and remain in full force and effect, and the City limits of the City of Mesa are hereby declared to be as they were constituted as of the date of the adoption of this Municipal Code.

CHAPTER 4

CORPORATE SEAL

SECTION:

1-4-1: CORPORATE SEAL

1-4-1: CORPORATE SEAL:
The corporate seal of the City of Mesa shall be circular in form, not less than one inch (1") or more than two (2") in diameter, with the words "City of Mesa, Maricopa County, Arizona, Seal," engraved thereon. (1015)
CHAPTER 5

THE COUNCIL

SECTION:

1-5-1: GENERAL POWERS
1-5-2: MEETINGS
1-5-3: VOTES OF MEMBERS
1-5-4: COMPULSORY ATTENDANCE
1-5-5: MISCONDUCT OF MEMBERS
1-5-6: VICE MAYOR AND MAYOR PRO TEM
1-5-7: AGENDA
1-5-8: COUNCIL PROCEDURE
1-5-9: REMOVAL OF BOARD AND COMMISSION MEMBERS; RESIGN TO RUN

1-5-1: GENERAL POWERS:
All powers and authority conferred upon the City of Mesa by the laws of the State of Arizona and not delegated to other officers or expressly reserved to the people of the City shall be vested in the Council. All powers vested in the Council shall be exercised in such manner as may be directed or authorized by law; provided, however, that only such action of the Council shall be by ordinance as may be required by the statutes of the State. All other powers of the Council shall be exercised by resolution, order, or motion. (1957 Code)

1-5-2: MEETINGS:
The regular meetings of the Mesa City Council will be held on the first and third Monday evenings of each month at five thirty (5:30) P.M. unless a notice providing otherwise is posted in accordance with the Arizona Open Meetings Act. Special meetings of the Council may be convened at any time by the Mayor or by the Clerk upon the written request of four (4) members. All meetings of the Council shall be held within the corporate limits of the City of Mesa (except that meetings with other governmental bodies may be held outside the City limits) and may be held at any place therein designated in the call of the meeting. Unless designated to be held at a place other than the Council Chambers, all meetings shall be held in the Council Chambers. (244,314,399,429,770,1458,2583)

1-5-3: VOTES OF MEMBERS:
The meetings of the Council shall be public, and a journal of its proceedings shall be kept by the Clerk under its direction. The ayes and nays shall be taken and entered on the journal in the final action upon the granting of franchises; making of contracts; purchasing, disposing of, or leasing City property; or the passage of any ordinance; and in all other cases, upon the call of any Councilman. Provided, however, that the Council may recess from time to time and meet in informal or executive sessions for the consideration of such matters as it may deem to be advisable or expedient.

1-5-4: COMPULSORY ATTENDANCE:
Any member of the Council at any regular or specially called meeting may, in writing, demand the attendance of the absent members, which said demand shall be entered on record forthwith by the Clerk; and it shall thereupon be the duty of the Chief of Police, upon the entry of said demand, to bring the said member forthwith to attend the Council meeting, and upon failure or refusal of said member to forthwith attend the Council meeting, it shall be the duty of the Chief of Police to arrest said member and bring him to the City Hall for attendance on such meeting, there to remain until the meeting has performed the business thereof and has regularly adjourned.
1-5-5: MISCONDUCT OF MEMBERS:
The Mayor shall be authorized to assess a fine of not more than twenty-five dollars ($25.00) upon any member for disorderly conduct at any meeting of the Council upon a concurring vote of three (3) members thereof and to hold and direct such to be imprisoned until the payment of such fine.

Any member of the Council may be expelled for any cause determined sufficient by the Council upon a vote of five (5) of the members.

The judgment of the Council as to the causes for fine or expulsion shall be conclusive. (131)

1-5-6: VICE MAYOR AND MAYOR PRO TEM:
Upon the failure or refusal of the Mayor for five (5) days to sign any ordinance, resolution, contract, warrant, or other document or instrument requiring his signature, the Vice Mayor is authorized to sign such document or instrument, and his signature to such ordinance, resolution, contract, warrant, or other document or instrument shall have the same force and effect as that of the Mayor. In the absence of the Mayor and Vice Mayor at any meeting, the Clerk or any member may call the Council to order, and thereupon a Mayor Pro Tem shall be chosen who shall have, for the time necessary, the same powers and duties as the Mayor. (802)

1-5-7: AGENDA: (3213)
(A) The City Manager will prepare and distribute all City Council meeting agendas. The City Manager will place such items on the agenda, and in such order, as necessary to accomplish the business of the City. (3213)

(B) The City Manager will also place an item on the agenda at the request of the Mayor or three (3) Councilmembers. (3213)

(C) At the request of any Councilmember, an item on a Council consent agenda will be removed from the consent portion of the agenda and will be separately considered. (3213)

1-5-8: COUNCIL PROCEDURE: (131,3213)
(A) The Mayor or other presiding officer in the Mayor’s absence will determine all questions of parliamentary or Council procedure not provided for by law. The Mayor will endeavor to conduct Council meetings so as to accomplish the public’s business fairly, yet efficiently. (3213)

(B) Neither staff nor a member of the audience shall speak at a Council meeting until recognized for that purpose by the Mayor. The Mayor shall not unreasonably refuse to recognize a Councilmember to speak; the Mayor may choose whether to recognize all other speakers. In addition, the Mayor may:

1. Determine the order in which persons speak; (3213)

2. Require a group to designate a spokesperson; (3213)

3. Establish time limits for agenda items and speakers; and (3213)

4. Take such other action as the Mayor deems necessary and appropriate in presiding over the meeting. (3213)

   All speakers at Council meetings shall address their remarks to the Mayor. (3213)
(C) The Mayor shall preserve order at all Council meetings. The Mayor may direct the sergeant-at-arms to remove persons from the meeting who, after warning:

1. Fail to address their remarks to the Mayor; (3213)

2. Fail to address the agenda item under consideration; (3213)

3. Make personal remarks about City Councilmembers or other persons; or (3213)

4. Disrupt the meeting in any way. (3213)

(D) A motion to reconsider a Council decision may be made only by a Councilmember who voted with the majority on that decision. (3213)

1. When the decision being reconsidered has an effective date, the motion to reconsider must be made before that effective date; otherwise, the motion is out of order. (3213)

2. When the decision being reconsidered has no effective date (such as a decision not to take action), a motion to reconsider must be made within two (2) weeks of the original Council decision. (3213)

(E) The Mayor’s decision regarding parliamentary or Council procedure is final and nonappealable unless five (5) Councilmembers approve a motion to overrule the Mayor. A motion to overrule the Mayor is in order only if made at the same meeting as the Mayor’s decision. If the Mayor’s decision is overruled, that decision is final, nonappealable, and not subject to a motion for reconsideration. (3213)

1-5-9: REMOVAL OF BOARD AND COMMISSION MEMBERS; RESIGN TO RUN

(A) By a vote of five (5) members of the City Council, Board and Commission members appointed by the Mayor and approved by the City Council under Section 501 of the City Charter may be removed for any cause deemed sufficient by the City Council, such as:

1. Lacking at any time during the Board member's term any qualification, including but not limited to Mesa residency or professional licensure, prescribed by the City Charter or law for that office; (3353)

2. Violating any prohibition of the City Charter or Code pertaining to their office; (3353)

3. Being convicted while in office of a felony or crime involving moral turpitude; or (3353)
4. Being absent from three (3) consecutive meetings of the Board without being excused by the chairperson. (3353)

(B) A Council decision to remove a Board or Commission member shall be effective in accordance with its terms, and shall be final and nonappealable. (3353)

(C) Board and Commission members appointed by the Mayor and approved by the City Council under Section 501 of the City Charter shall resign before running for any elective public office. This paragraph is self-executing and requires no vote by the City Council. (3353)
CHAPTER 6
COUNCIL COMMITTEES

SECTION:

1-6-1: COUNCIL COMMITTEES
The following Standing Council Committees are hereby established: (1459, 4675, 5022)

- Audit, Finance and Enterprise Committee (4607, 5022)
- Public Safety Committee (4675)
- Economic Development Committee (2990, 3216, 4675, 5022)
- Sustainability and Transportation Committee (4675, 5022)
- Government Affairs Committee (4675, 5022)
- Community and Cultural Development Committee (4675, 5022)

1-6-2: COMMITTEE MEMBERS:
Each committee shall consist of three (3) members of the Council. The Committee members shall be appointed by the Mayor, with the concurrence of the City Council, at the first regular meeting of the Council following any regular City election or as soon thereafter as is practicable. (5022)

The City Manager shall be a nonvoting; ex-officio member of the Audit, Finance and Enterprise Committee. (5022)

The chair of each committee shall be responsible to the Council for the function of the committee. (1459, 3114, 3216, 4607, 4675, 5022)

1-6-3: AGENDA:
Items may be placed on the Council Committee agenda by the Chairperson; the Mayor; 2 Councilmembers; or the City Manager. (4675, 5022)

1-6-4 through 1-6-8: (Repealed by 803)
CHAPTER 7

CITY MAGISTRATES

SECTION:

1-7-1: CITY MAGISTRATES
1-7-2: TERM OF OFFICE

1-7-1: CITY MAGISTRATES:
The Council shall appoint one (1) or more City Magistrates, each of whom shall be a member of the Arizona Bar. Compensation of City Magistrates shall be fixed by the Council. (1959)

1-7-2: TERM OF OFFICE:
City Magistrates shall serve for terms of two (2) years each for the first two terms. The term of office for those Magistrates serving prior to the first day of July 1985 shall commence on July 1, 1985, and terminate on June 30, 1987. The first term of office for City Magistrates appointed subsequent to July 1, 1985, other than Magistrates appointed on the first day of July of any year, shall be from the date of appointment until the third thirtieth day of June subsequent to the date of the appointment. Any Magistrate appointed on the first day of July of any year shall serve for a two- (2-) year term, terminating on the second thirtieth day of June subsequent to appointment. If reappointed for a second term, a Magistrate shall serve for a term of two (2) years, commencing on July 1 of the year of appointment and terminating on the thirtieth day of June in the second calendar year following. If reappointed for a third or subsequent term, a Magistrate shall serve for terms of four (4) years, commencing on July 1 of the year of appointment and terminating on the thirtieth day of June in the fourth calendar year following. (1959, 3714)
CHAPTER 8
QUALIFIED ELECTORS
(3326)

SECTION:

1-8-1:  QUALIFIED ELECTOR; DEFINITION

1-8-2:  PETITION CIRCULATORS

1-8-1:  QUALIFIED ELECTOR; DEFINITION:

(A) Every resident of the City is qualified to register and vote in City of Mesa elections if he or she:
1. Is a citizen of the United States;
2. Will be eighteen (18) years of age or more on or before the date of the next City election following registration;
3. Will have been a resident of the City and registered to vote prior to midnight of the twenty-ninth (29th) day preceding the date of the next City election;
4. Is able to write his or her name, or make a mark, unless prevented from so doing by physical disability;
5. Has not been convicted of treason or a felony, unless restored to civil rights; and
6. Has not been adjudicated an incapacitated person as defined in A.R.S. §14-5101, or its successor statute.

(B) For purposes of this Title, "resident" means an individual who has actual physical presence in this City, combined with an intent to remain. A temporary absence does not result in a loss of residence if the individual has an intent to return following his or her absence. An individual has only one residence for purposes of this Title.

1-8-2:  PETITION CIRCULATORS:

(A) All circulators of nomination petitions for Mayor or City Councilmember shall be qualified Mesa electors, as defined in Section 1-8-1 above.

(B) All circulators of initiative or referenda petitions proposing to change the Mesa City Charter or Mesa City Code shall be qualified Mesa electors, as defined in Section 1-8-1 above.

(C) In evaluating petitions presented for signature verification, the City Clerk shall not count or consider signatures on an initiative, referendum, or nomination petition under this Section that are circulated by persons other than a Mesa qualified elector, as defined in Section 1-8-1 above.

* Effective August 6, 1999, pursuant to A.R.S. Titles 16 and 19, circulators of initiative, referendum, nomination, and recall petitions must be qualified to register to vote in this State (HB2656, Buckley v. American Constitutional Law Foundation).
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CHAPTER 9

RECORDS

SECTION:

1-9-1: FORMS
The Council is authorized to designate, prescribe, and approve the form of all records of the City.

1-9-2: RECORDS
The public records of the City shall consist of minute records, resolutions and ordinance records, tax records, account records, form records, and such other records, books, and documents as the Council may prescribe.

The original ordinances, resolutions, and minutes of the City shall be recorded, at length, in books to be known, respectively, as the Mesa City Code Book, Resolution Record, and Minute Book and shall be deposited and kept by the Clerk.

1-9-3: FILES
Authenticated copies of all ordinances, resolutions, and orders, with affidavit of posting or publishing, if any there be, attached and all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders, and other documents of whatsoever nature shall be numbered and filed separately by the Clerk.

1-9-4: MINUTES
It shall be unnecessary to enter or record at length in the minutes of proceedings written ordinances, resolutions, or orders, unless expressly required to be so entered by the State statutes or the ordinances, resolutions, or orders of the City, but it shall be sufficient to refer to such by the number and name, the date of their passage, and such other facts as may be necessary to identify the same.

1-9-5: SPECIAL ORDINANCES
Ordinances passed regarding special matters, such as franchises, bonds, or other special matter, shall not be incorporated in the compiled ordinances of the City. Only general ordinances then in effect shall be therein compiled, but all such special or extraordinary ordinances shall be filed, entered, and authenticated as provided herein.

1-9-6: APPROVED FORMS
No blank or form shall be used in the transaction of business of the City until the same shall have been submitted for approval as to form to the City Attorney. It shall be the duty of the Clerk to keep all forms consecutively numbered and filed in his office.

1-9-7: REGULATORY AND DIRECTORY RESOLUTIONS
All resolutions or orders regulating or relating to the government use, control, or service of public utilities, streets, health, office routine, and other similar matters shall be typewritten, authenticated by the Mayor and Clerk, and filed together in a suitable binder for convenient use and reference. The Clerk shall keep all such resolutions and orders up to date.
CHAPTER 10

PUBLICATION OF PROCEEDINGS

SECTION:

1-10-1: PUBLICATIONS
1-10-2: POSTING
1-10-3: BIENNIAL STATEMENT (REP. BY 1057)

1-10-1: PUBLICATIONS:
Only such ordinances, resolutions, orders, motions, regulations, or proceedings of the City Council shall be published as may be required by the Mesa City Charter, Section 211; by the applicable statutes of the State of Arizona (A.R.S. §9-811, §9-812); or as expressly ordered by the Council. (1057)

1-10-2: POSTING:
Every ordinance imposing any penalty, fine, forfeiture, or other punishment shall, after passage thereof, be posted by the Clerk in three (3) or more public places within the City, and a copy of said ordinance, with affidavit of posting attached, shall be filed in the office of the Clerk and shall be proof of said posting as provided by law.

1-10-3: BIENNIAL STATEMENT: (Rep. by 1057)

CHAPTER 11

RECALL

SECTION:

1-11-1: RECALL
1-11-1: RECALL:
Elective officers of the City shall be subject to recall from offices by the qualified electors of the City under the proceedings and in the manner prescribed for the recall of such officers by the State statutes.
CHAPTER 12

COURTS AND PROCEDURES

SECTION:

1-12-1: CITY MAY MAINTAIN ACTION
The City may also, in addition to any and all prosecutions for violation of any and all laws, rules, and regulations of the City government, maintain an action in the Police Court of the City in any proper state, county, or precinct court for the recovery of any penalty, forfeiture, debt, tax, account, demand, right, or benefit due to said City. When such action is brought into the Police Court, said action shall be brought and conducted as nearly as possible in the same manner as civil actions in justice courts. Said Police Court shall have power to issue any and all writs and to make any and all orders and judgments which may be necessary and proper in the premises. (119)

1-12-2: PROCEDURE OF POLICE COURT:
The service of processes and writs in civil actions in the Police Court shall be as nearly as practicable in the same manner as provided for the service of processes and writs in justice courts; in all other cases, proceedings, and matters (unless notices, processes, demands, and similar documents or writs are expressly required to be personally served upon the defendant, property owner, or party concerned), such notices, demands, and similar documents or writs may be served by posting a copy of the same at the door of the City Hall and by mailing a copy thereof to the person or party concerned at his last known post office address, and proof of service may be made by any person serving the same or causing the same to be served. (119)

1-12-3: COURT SUSTAINABILITY FEE:
A court sustainability fee in the amount of fifteen dollars ($15.00) is hereby established. The Mesa Municipal Court shall direct a defendant to pay the court sustainability fee on all charges where the court imposes a fine, sanction, penalty, or assessment except for parking violations. The court sustainability fee shall be in addition to all other fines, sanctions, penalties, or assessments of whatever type. (3477,3768,4203,5172,5327)

1-12-4: DEFAULT FEE:
A default fee in the amount of seventy dollars ($70.00) is hereby established. The Mesa Municipal Court shall direct a defendant to pay the default fee as part of each default judgment entered for failure to appear in a civil traffic violation case, for failure to satisfy in full a civil sanction imposed in a civil traffic violation case, and for failure to pay a court-ordered fine, restitution, or incarceration fees. The default fee shall not apply to parking violations. Default fees shall be deposited into the City’s General Fund. (3477,4204)

1-12-5: WAIVER OF FEES:
Municipal Court Magistrates and Civil Traffic Hearing Officers are authorized to waive the court sustainability fee, the court capital construction fee, and the default fee when such waiver would be in the interest of justice. Civil Traffic Hearing Officer waivers are limited to fees imposed in civil traffic cases. (3477,4027,4416,5172)
1-12-6: COLLECTION AGENCY FEES AND CHARGES:
A defendant who defaults in his or her obligation for the payment of monies owed or due to the
Mesa Municipal Court, including but not limited to, restitution, fines, sanctions, surcharges, assessments, penalties,
bonds, costs, and fees, is liable for all fees and charges assessed by a collection agency that is licensed pursuant to
the Arizona Revised Statutes, and that is engaged by the City to collect and enforce payment by the defendant.
Collection agency fees and charges shall be added to the sum or sums due from and chargeable against the
defendant. (3477)

1-12-7: PAYMENT OF COSTS OF CONFINEMENT: (3768)

(A) Any person who is convicted of a misdemeanor criminal offense or misdemeanor criminal traffic offense in
the Municipal Court, as part of any jail sentence imposed by the Municipal Court, shall be required to
reimburse the City of Mesa for all expenses incurred by reason of such confinement. (3768)

(B) Municipal Court Magistrates are authorized to waive the costs of the confinement fee under this Section when
the Magistrate finds such a waiver would be in the interests of justice. (3768)

1-12-8: APPOINTMENT OF CIVIL TRAFFIC HEARING OFFICERS AND COURT
COMMISSIONERS: (4027,4947)

(A) The presiding City Magistrate may appoint one (1) or more Civil Traffic Hearing Officers and/or one (1) or
more Court Commissioners when in the presiding City Magistrate's opinion, the appointment of such Civil
Traffic Hearing Officers and/or Court Commissioners is necessary to assure prompt disposition of cases.
Civil Traffic Hearing Officers and Court Commissioners shall serve for terms of two (2) years from the date
of appointment and can be reappointed by the presiding City Magistrate. Civil Traffic Hearing Officers and
Court Commissioners may be removed for good cause during their term by the presiding City Magistrate.
(4027,4947)

(B) Civil Traffic Hearing Officers may hear and dispose of Civil Traffic violation cases, vicious dog cases, and
Mesa Civil Code violation cases filed in the Mesa Municipal Court. Court Commissioners may hear and
dispose of civil offenses as well as criminal offenses. The judgment of the Civil Traffic Hearing Officers and
Court Commissioners constitutes the judgment of the Court, which is appealable to the Superior Court as
prescribed by State statute and rules promulgated by the Arizona Supreme Court. (4027,4947)

1-12-9: COURT CAPITAL CONSTRUCTION FEE (4416,4621)

(A) A court capital construction fee in the amount of sixteen dollars and fifty cents ($16.50) is hereby established.
(4416,4621)

(B) The Mesa Municipal Court shall direct a defendant to pay the court capital construction fee in all cases,
except for parking violations. (4416)

(C) The court capital construction fee is for the purpose of offsetting costs associated with the construction, debt
service, furniture, fixtures and equipment of a new Mesa Municipal Court facility and is not subject to state
surcharges. (4416)

(D) The court capital construction fee shall be increased July 1, 2008 and every third year thereafter in the amount
of three dollars ($3.00), and shall be discontinued upon retirement of debt associated with construction of the
new court facility. (4416)

(E) The court capital construction fee and the applicable interest earned shall be deposited into the court
construction fee fund (#465) and accounted for separately. (4416)
CHAPTER 13

PROPERTY IMPROVEMENT
ASSESSMENT SALES

SECTION:

1-13-1: PROCEDURE FOR SALE
1-13-2: LAND MAY AGAIN BE SOLD
1-13-3: NOTICE OF SALE BY REFERENCE TO PARCEL OF LAND
1-13-4: SALE OF PROPERTY TO THE CITY

1-13-1: PROCEDURE FOR SALE:
In any sale of property for nonpayment of public improvement assessments where there is no purchaser other than the City who will pay the entire amount of the assessment, penalty, and costs, including fifty cents ($0.50) to the Superintendent of Streets for a certificate of sale, the Superintendent shall sell the lot or portion thereof to the person who will take the least quantity of land and then and there pay the amount at the assessment then delinquent, including interest, penalty, and costs due, and fifty cents ($0.50) to the Superintendent of Streets for a certificate of sale, and deed shall issue to the purchaser, subject to redemption as provided by the statutes of the State. (162)

1-13-2: LAND MAY AGAIN BE SOLD:
The lien of public improvement on the entire lot, piece, or parcel of land assessed shall continue to be in effect for the amount of the assessment or portion thereof, including said interest, penalty, and costs thereafter to become due, and the land may again be sold should the assessment again become delinquent. (162)

1-13-3: NOTICE OF SALE BY REFERENCE TO PARCEL OF LAND:
When the right to sell a portion of any lot or any part thereof less than the whole is intended to be reserved, such fact shall be stated in the notice of sale by reference to this Chapter. (162)

1-13-4: SALE OF PROPERTY TO THE CITY:
In any sale of property for nonpayment of public improvement assessments where there is no purchaser other than the City, the property shall be struck off to the Municipality as the purchaser, and the Treasurer shall pay into the Special Improvement Fund out of the General Fund only the sum required to pay the installment then due or to become due upon the bonds issued for the assessment; and thereupon the City shall become obligated to pay from the General Fund succeeding installments and interest on the bonds as are payable by the assessments on the lot. At any time before the execution and delivery of a deed therefor, the property owner shall have the right to redeem the lot by paying to the City the amount of any installments and interest paid by the City on the assessments on the lot, together with the penalties assessed and the costs incurred by the City. If the property owner redeems the lot by paying the amounts above specified, the lien of the assessments shall not be extinguished. (162,1803)
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CHAPTER 14

EMERGENCY POWERS OF MAYOR

SECTION:

1-14-1: EMERGENCY POWERS OF MAYOR

1-14-1: EMERGENCY POWERS OF MAYOR:
Whenever the Mayor of the City shall deem that an emergency exists due to fire, conflagration, flood, earthquake, explosion, war, bombing, acts of the enemy, or any other natural or manmade calamity or disaster or by reason of threats or occurrences of riots, routs, affrays, or other acts of civil disobedience which endanger life or property within the City, the Mayor is hereby authorized by proclamation to declare an emergency or a local emergency to exist, as defined in Title 26, Chapter 2, Article 1, Arizona Revised Statutes; and the Mayor is further authorized to exercise all of the rights, powers, and authorities granted to mayors pursuant to the provisions of said Article. (707,1610)

CHAPTER 15

SALARIES

SECTION:

1-15-1: SALARIES OF ELECTIVE OFFICERS
1-15-2: SALARIES OF APPOINTIVE OFFICERS

1-15-1: SALARIES OF ELECTIVE OFFICERS:
The salaries of elective officers of the City shall be as fixed by the appropriate statutes of the State of Arizona.

1-15-2: SALARIES OF APPOINTIVE OFFICERS:
The salaries for all appointive officers of the City shall be as fixed from time to time by the Council by motion noted in its minutes.

CHAPTER 16

BONDS OF OFFICERS

(Repealed by 1070)
CHAPTER 17

CLERK

SECTION:

1-17-1: APPOINTMENT
1-17-2: DUTIES

1-17-1: APPOINTMENT:
Upon the recommendation of the Manager, the Council shall appoint a City Clerk and fix his compensation. (Article IV, Section 401(A), Mesa City Charter)

1-17-2: DUTIES:
The Clerk shall give notice of Council meetings to its members and to the public, keep the journal of its proceedings, and perform any other lawful duties assigned by this Charter, the Council, or the Manager. The Clerk shall serve at the pleasure of the Council and report to the City Manager or the Manager's designee. (Article IV, Section 401(A), Mesa City Charter, 3455)

CHAPTER 18

CITY TREASURER

SECTION:

1-18-1: OFFICE CREATED
1-18-2: EX OFFICIO TREASURER
1-18-3: DUTIES OF CITY TREASURER

1-18-1: OFFICE CREATED:
The office of City Treasurer is hereby created. (1028)

1-18-2: EX OFFICIO TREASURER:
The duly appointed, qualified, and acting Finance Director of the City shall also be the City Treasurer of the City. (1393)

1-18-3: DUTIES OF CITY TREASURER:
The City Treasurer shall have such duties as are provided by the statutes of the State of Arizona and by the provisions of the Mesa City Code and as shall be prescribed from time to time by the City Council by ordinance, resolution, or other adoptive action, together with such duties as may be delegated from time to time by the City Manager. (1028)
CHAPTER 19

CITY ATTORNEY (5282)

SECTION:

1-19-1: APPOINTMENT

The Council shall appoint a City Attorney and fix his compensation. (Article IV, Section 401(B), Mesa City Charter)

1-19-2: DUTIES

The City Attorney shall serve as the chief legal advisor to the Council, the Manager, and all City departments, offices, and agencies. The City Attorney shall represent the City in all legal proceedings, and shall perform any other duties prescribed by this Charter, law, or ordinance. The City Attorney shall serve at the pleasure of the Council. (Article IV, Section 401(B), Mesa City Charter) (5282)

1-19-3: ADDITIONAL AUTHORITY

The City Attorney is authorized to file, pursue, and defend civil and criminal misdemeanor cases and appeals in any court or administrative tribunal on behalf of the City. The City Attorney shall provide advice and information about cases and appeals to Council at the request of, or when needed by, the Council. (5282)
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CHAPTER 20

CITY MANAGER

SECTION:

1-20-1: OFFICE CREATED
1-20-2: APPOINTMENT
1-20-3: REMOVAL
1-20-4: DUTIES
1-20-5: RESTRICTIONS
1-20-6: PUBLIC RELATIONS
1-20-7: BOND
1-20-8: COMPENSATION
1-20-9: ACTING CITY MANAGER

1-20-1: OFFICE CREATED:
The office of City Manager is hereby created. (312)

1-20-2: APPOINTMENT:
The Council shall by vote of at least two-thirds (2/3) of its members appoint the City Manager for an indefinite term, and the Council shall fix his compensation. He shall be chosen on the basis of his qualifications for the office, with first preference given to applicants who reside in Mesa. He shall within sixty (60) days after his appointment and thereafter during his tenure in office reside in the City. He shall be a citizen of the United States of America. (312; Article III, Section 301, Mesa City Charter)

1-20-3: REMOVAL:
The Council may remove the Manager at any regular or special meeting by a vote of at least two-thirds (2/3) of the Council. It may pay him severance pay not exceeding two (2) months' salary. A dismissed Manager shall, upon his request, have a public hearing; however, the action of the Council shall be final and not subject to review by any court or agency. This Chapter vests all authority to suspend and remove the Manager in the Council. (312; Article III, Section 302, Mesa City Charter)

1-20-4: DUTIES:
The Manager shall be the chief administrative officer of the City, responsible to the Council for administration and coordination of all departments, boards, and affairs assigned to him by this Chapter, by ordinance, or by resolution. He shall have authority and responsibility to: (312; Article III, Section 303, Mesa City Charter)

(A) Attend Council meetings and present information and recommendations he deems necessary or as requested by any member of the Council, but he shall have no vote. (312; Article III, Section 303, Mesa City Charter)

(B) Recommend to, and upon approval by the Council, appoint all City officers (except those subject to Council appointment pursuant to Section 401 of the Mesa City Charter), and when deemed necessary, suspend, and after approval of the Council, remove them. (312; Article III, Section 303, Mesa City Charter)

(C) Pursuant to the merit system regulations, appoint, and when necessary remove, all employees of the City, except as he may authorize heads of departments and offices to appoint and remove their own subordinates. Any unexcused voluntary absence of any employee shall constitute resignation. (312; Article III, Section 303, Mesa City Charter)
(D) Recommend to the Council personnel policies and assignments for efficient operation of the City government. (312; Article III, Section 303, Mesa City Charter)

(E) Submit to the Council the annual budget and capital program. (312; Article III, Section 303, Mesa City Charter)

(F) Supervise all expenditures and purchases of the City. (312; Article III, Section 303, Mesa City Charter)

(G) See that all laws, provisions of this Chapter, and acts of the Council subject to enforcement by him or by officers under his direction are faithfully executed. (312; Article III, Section 303, Mesa City Charter)

(H) Execute or cause to be executed by his designated representative all contracts and other lawful documents authorized by the Council. (Article III, Section 303, Mesa City Charter)

(I) Grant or assign easements to utility and telecommunication entities, public agencies, or governmental entities for utility and telecommunication easements, storm water and drainage easements, and similar types of easements that are intended to benefit the public or to allow utility services to City owned property. The grants or assignments may be from City owned property, City rights-of-way, or other property for which the City has a property right that allows it to grant or assign such easements. (4975)

(J) Dedicate rights-of-way and easements to the public from City owned property. (4975)

(K) Perform any other lawful duties required of him by the Council. (312; Article III, Section 303, Mesa City Charter)

1-20-5: RESTRICTIONS:

(A) The Manager shall not engage in any other employment during his tenure of office. (Article III, Section 304, Mesa City Charter)

(B) The Manager shall take no part in campaigns for election of Mayor or Councilmen other than to cast his vote and express privately his opinions. (Article III, Section 304, Mesa City Charter)

(C) The Manager shall not exercise any policy-making or legislative functions. All law enforcement policies shall be determined by the Council. (312; Article III, Section 304, Mesa City Charter)

1-20-6: PUBLIC RELATIONS:

In the discharge of his duties as City Manager, the person holding such position shall endeavor at all times to exercise the highest degree of tact, patience, and courtesy in his contacts with the public and with all City boards, departments, and employees and shall use his best efforts to establish and maintain a harmonious relationship between all personnel employed in the government of the City to the end that the highest possible standards of public service shall be continuously maintained. (312)

1-20-7: BOND:

The City Manager shall furnish a surety bond to be approved by the Council in the sum of one thousand dollars ($1,000.00), said bond to be conditioned on the faithful performance of his duties. (312)

1-20-8: COMPENSATION:

The City Manager shall receive such compensation as the Council shall fix from time to time by motion noted in its minutes. (312)

1-20-9: ACTING CITY MANAGER:

By letter filed with the Clerk, the Manager shall designate a qualified City employee and an alternate to become Acting Manager in the event of his temporary absence or disability. The Council may revoke such designation and appoint another employee to serve as Acting Manager until the Manager shall return. (Article III, Section 305, Mesa City Charter)
CHAPTER 21
(727, 885, 897, 933, 1548, 4215, 4683, 5019, 5089)

THE PROCUREMENT OF MATERIALS, NON-PROFESSIONAL CONTRACT SERVICES
AND CAPITAL IMPROVEMENTS (5089)

SECTION:

1-21-1: APPLICATION (5089)
1-21-2: DEFINITIONS (5089)
1-21-3: PROCEDURES FOR PROCUREMENT OF CAPITAL IMPROVEMENTS (5089)
1-21-4: PROCEDURES FOR PROCUREMENT OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES (5089)
1-21-5: COMPETITIVE PROCUREMENTS (5089)
1-21-6: SOLE SOURCE PROCUREMENTS (5089)
1-21-7: COOPERATIVE PROCUREMENTS (5089)
1-21-8: EMERGENCY PROCUREMENTS (5089)
1-21-9: DEBARMENT (5089)
1-21-10: PROTESTS AND APPEALS (5089)
1-21-11: CONFLICTS OF INTEREST (5089)

1-21-1: APPLICATION: (4215, 4683, 5019, 5089)

(A) The provisions of this Chapter shall apply to the Procurements of Materials, Non-Professional Contract Services and Capital Improvements by the City using public funds, including state and federal assistance funds. It shall not apply to contracts for Professional Services as defined below; or contracts between the City and the State, its political subdivisions or other Governmental Agencies or Governmental Organizations. (5089)

(B) Nothing in this Chapter shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or agreement. (5089)

(C) Except by mutual consent of the parties to the contract, this Chapter may not change any commitment, right or obligation of the City or of a contractor under a contract in existence on the effective date of this Chapter or any amendment thereto. (5089)

1-21-2: DEFINITIONS: (4215, 5019, 5089)

(A) CAPITAL IMPROVEMENTS: The construction of a building or structure, or additions to or alterations of existing buildings or structures. The term structure shall include without limitation paving, concrete, or other mortar work, streetlights, traffic signals, drainage facilities, pipes, grading, major improvements to landscaping, and other construction work. (4215, 5019, 5089)

(B) GOVERNMENTAL AGENCY: The State of Arizona or a political subdivision thereof, any other state of the United States, or a political subdivision thereof, or any department of the federal government. (4215, 5019, 5089)
(C) **GOVERNMENTAL ORGANIZATION:** An organization, the members of which are Governmental Agencies. (4215, 5019, 5089)

(D) **MATERIALS:** Materials, supplies, commodities, equipment and insurance. Materials do not include land or an interest in real property. (4215, 5019, 5089)

(E) **NON-PROFESSIONAL CONTRACT SERVICES:** Services which are primarily provided through semi-skilled labor. The primary criteria in the selection process will be qualifications of the vendor and price. (5089)

(F) **PERSON:** Any individual, corporation or business entity of whatever legal form, union, committee, club, other organization or group of individuals or subsidiary thereof, their representatives or affiliates. (5019, 5089)

(G) **PROCUREMENT:** The purchase of Materials, Non-Professional Contract Services, or the contracting for Capital Improvements. Procurement includes development of requirements, solicitation and selection of sources, and contract administration. (4215, 5019, 5089)

(H) **PROFESSIONAL SERVICES:** Services which require special knowledge, education or training. The primary criteria in the selection process will be the qualifications of the vendors. (5089)

  Professional Services include, but are not limited to; advertising; appraisers; architects; attorneys; consultants; certified public accountants; engineers; entertainers; environmental studies; financial and operational audits; personnel and benefits studies; physicians and other health professionals; land surveyors; landscape architects; renewals of proprietary computer hardware and software licensing; trainers and teachers; and other technical registrants as defined in Arizona Revised Statutes. (5089)

(I) **PUBLIC NOTICE:** The distribution or dissemination of information to interested parties at least one (1) time using methods established by the City Manager or Designee. The failure of any Person to receive notice shall not constitute grounds for a protest or to invalidate the actions of the City as to the Procurement for which the notice was given. (5089)

(J) **RESPONSE:** A bid or proposal submitted in response to an Invitation for Bids; Request for Proposals; Request for Information; or Request for Qualifications. (5019, 5089)

(I) **SOLICITATION:** An Invitation for Bids, Request for Proposals or Request for Qualifications. (5019, 5089)
1-21-3: PROCEDURES FOR PROCUREMENT OF CAPITAL IMPROVEMENTS: (5019, 5089)
All procurements for Capital Improvements, as defined herein, shall be awarded in accordance with the requirements of state law.

(A) Procurements for public improvements that exceed the amounts established in accordance with A.R.S. §34-201(c) shall be awarded in accordance with the procedures established in A.R.S. Title 34, including the procedures for alternative contracting. (5089)

(B) Procurements for public improvements that do not exceed the amounts established in accordance with A.R.S. 34-201(c) may be awarded in accordance with the requirements of Section 1-21-5 of the Mesa City Code or in accordance with the procedures established in A.R.S. Title 34 for alternative contracting. (5019, 5089)

(C) City Council Approved Procurements: Unless otherwise provided in this Chapter, procurements of, or change orders not prior approved as contingencies for, Capital Improvements that exceed twenty-five thousand dollars ($25,000) must be approved by Council. This applies to one-time procurements and annually for term procurements. (5089)

1-21-4: PROCEDURES FOR PROCUREMENT OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES: (4215, 5019, 5089)

(A) Small Dollar Procurements: Procurements that do not exceed twenty-five thousand dollars ($25,000) shall be made in accordance with procedures established by the City Manager or Designee. (4215, 5019, 5089)

(B) City Council Approved Procurements: Unless otherwise provided in this Chapter, procurements of, or change orders not prior approved as contingencies for, Materials and Non-Professional Contract Services that exceed twenty-five thousand dollars ($25,000) shall be made by Competitive Selection, Sole Source Procurement, Cooperative Procurement or Emergency Procurement and must be approved by the City Council. This applies to one-time procurements and annually for term procurements. (5019, 5089)

1-21-5: COMPETITIVE PROCUREMENTS: (5019, 5089)
Competitive Selection means a process whereby one or more providers are selected using a Solicitation in the form of an Invitation for Bids, Request for Proposals or Request for Qualifications. (5089)

(A) Solicitations

1. Solicitations shall include:

   (a) A purchase description and major contractual terms and conditions applicable to the procurement. (5019, 5089)

   (b) Public Notice (5019, 5089)

   (c) Criteria to evaluate the responses submitted. (5089)

2. Shall be available for public inspection at the City and copies shall be available to all who request them. (5019, 5089)
(B) Responses to Solicitations (5089)

1. Responses shall be received publicly at the time and place designated in the Solicitation. The results of the public opening shall be recorded on an abstract and the abstract shall be open to public inspection. (5019, 5089)

2. Any Response that is conditioned upon award to the respondent of both the particular contract being solicited and another contract shall be deemed non-responsive or unacceptable. (5019, 5089)

3. The City may accept the Response(s), or the City Council, City Manager or Designee may reject all Responses. (5019, 5089)

(C) The requirement for a Competitive Procurement will be satisfied if the City contracts with a broker to represent it (e.g., liability and property insurance). (5089)

1-21-6: SOLE SOURCE PROCUREMENTS: (5019, 5089)

A contract may be awarded without Competitive Selection if the City Manager or Designee determines that there is only one source for the required Material or Non-Professional Contract Service and that no other type of Material or Non-Professional Contract Service will satisfy the requirements of the City. The City shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the City. (5019, 5089)

Public notice inviting comment on the City’s determination for a sole source procurement shall be given not less than seven (7) calendar days before the award. (5019, 5089)

1-21-7: COOPERATIVE PROCUREMENTS: (5019, 5089)

The City Manager or Designee is authorized to participate with any Government Agency or Government Organization for the procurement of Materials or Non-Professional Contract Services in cooperative purchasing agreements, provided: (5019, 5089)

(A) The underlying contract was established with the intent to be used for cooperative procurements; and (5019, 5089)

(B) Procedures were used in the applicable Procurement, which are similar to the requirements of Sections 1-21-3 or 1-21-5; and (5019, 5089)

(C) There is a written agreement with the Governmental Agency or Governmental Organization executed by the City Manager or Designee establishing the Cooperative Procurement relationship. (5019, 5089)
1-21-8: **EMERGENCY PROCUREMENTS: (5019, 5089)**

The City Council, City Manager or Designee may authorize the Procurement of Materials, Non-Professional Contract Services or Capital Improvements without following the requirements of 1-21-3 and 1-21-4 if they determine that:

(A) The Procurement is necessary for the immediate preservation of the public peace, health, or safety, and (5019, 5089)

(B) Compliance with the requirements of this Chapter is impracticable or contrary to the public interest, provided that the Procurement is limited to the Materials, Non-Professional Contract Services, or Capital Improvements necessary to preserve the public peace, health, or safety. (5019, 5089)

Any Procurement authorized under this Section shall meet the requirements of Sections 1-21-3 and 1-21-5 (A) to the extent practicable or not contrary to the public interest. Any Procurement authorized under this Section that exceeds twenty-five thousand dollars ($25,000) shall be placed on the City Council agenda for ratification at the next reasonably available City Council meeting. (5019, 5089)

1-21-9: **DEBARMENT: (5019, 5089)**

(A) The City Manager or Designee may debar a Person from receiving an award or participating in City Procurements for a period of time not to exceed three (3) years. (5019, 5089)

(B) Causes for Debarment include but are not limited to the following: (5019, 5089)

1. Conviction of such Person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. (5019, 5089)

2. Conviction of such Person under any statute, code, ordinance or regulation of the federal government, the State of Arizona, the City or any other state or city for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a City contractor. (5019, 5089)

3. Conviction or civil judgment finding a violation by such Person under state or federal antitrust statutes, state or federal immigration statutes, procurement violations, or breach of contract. (5019, 5089)

4. Violations of contract provisions of a character which are deemed to be so serious as to justify Debarment action, such as but not limited to: (5019, 5089)

   (a) Knowingly fails to perform in accordance with the Specifications or within the time limits provided in the contract without good cause. (5019, 5089)

   (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment. (5019, 5089)

5. Any other cause deemed to affect Responsibility as a City contractor, including Debarment of such Person by another Governmental Agency for any cause listed herein. (5019, 5089)
(C) Persons being Debarred shall receive proper notice and shall have the right to protest the decision. (5019, 5089)

(D) The City Manager or Designee may allow a Debarred Person to participate in City contracts on a limited basis if determined that participation is advantageous to the City. (5019, 5089)

(E) The City Manager or Designee may reinstate a Debarred Person if the cause upon which the Debarment is based no longer exists and that it is not likely to recur. (5019, 5089)

**1-21-10: PROTESTS AND APPEALS: (5019, 5089)**

The City Manager or Designee shall have the authority to resolve protests and appeals and shall establish by rule a process to allow protests and appeals of Procurement decisions. (5019, 5089)

**1-21-11: CONFLICTS OF INTEREST: (4215, 5019, 5089)**

Notice is hereby given of the applicability of the Arizona Revised Statute on Conflicts of Interest of officers and employees of the City of Mesa related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, and as may be amended). (4215, 5019, 5089)
CHAPTER 22
BUILDING INSPECTOR
(Repealed by 727)

CHAPTER 23
PLUMBING INSPECTOR
(Repealed by 727)

CHAPTER 24
HEALTH OFFICER
(Repealed by 727)

CHAPTER 25
HOLIDAYS (128,1241,1414,1570)
(Repealed by 2610)
CHAPTER 26

GENERAL PENALTY

SECTION:

1-26-1: DEFINITIONS

1-26-2: GENERAL PENALTY

1-26-1: DEFINITIONS:

In this Code, unless the context otherwise requires: (3363)

(A) "Person" means an individual human being or any enterprise. (3363)

(B) "Enterprise" includes any corporation, company, partnership, association, firm, labor union, or other legal entity. (3363)

1-26-2: GENERAL PENALTY: (1958 CODE, 511,530,1411,2466,3363,4820)

All violations of this Code not expressly designated as civil violations shall be deemed misdemeanor violations. All misdemeanor violations shall be deemed to be a Class One (1) misdemeanor, unless a different misdemeanor designation is specifically set forth in this Code. Misdemeanors shall be punished as follows: (3363,4820)

(A) Any person convicted of a Class One (1) misdemeanor shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00), by imprisonment not to exceed six (6) months, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to three (3) years upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provided herein. (3363,4820)

(B) Any person convicted of a Class Two (2) misdemeanor shall be punished by a fine not to exceed seven hundred fifty dollars ($750.00), by imprisonment not to exceed four (4) months, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to two (2) years upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provide herein. (3363,4820)

(C) Any person convicted of a Class Three (3) misdemeanor shall be punished by a fine not to exceed five hundred dollars ($500.00), by imprisonment not to exceed thirty (30) days, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to one (1) year upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provided herein. (4820)

(D) The following fines apply to any enterprise convicted of a misdemeanor:

1. A fine not to exceed twenty thousand dollars ($20,000.00) for a Class One (1) misdemeanor;

2. A fine not to exceed ten thousand dollars ($10,000.00) for a Class Two (2) Misdemeanor;

3. A fine not to exceed two thousand dollars ($2,000.00) for a Class Three (3) Misdemeanor. (4820)
(E) The court may suspend imposition of part or all of a sentence and place an enterprise on probation as permitted in Subsections A, B, and C, upon such terms and conditions as the court deems appropriate, including payment of a fine up to the limits provided herein. (4820)

(F) An enterprise shall be liable for a misdemeanor violation of the City Code if the conduct constituting the offense is engaged in by an officer, director, or employee of the enterprise, or any other agent of the enterprise, while acting within the scope of their agency or employment on behalf of the enterprise. (3363,4820)

(G) Where this Code prescribes a continuing duty or forbids any act of a continuing nature, each day such duty remains unperformed or such act continues, shall constitute a separate offense. (3363,4820)
CHAPTER 27

CIVIL CODE VIOLATIONS

SECTION:

1-27-1: VIOLATIONS TREATED AS CIVIL MATTERS
Violations of this Code for which a civil sanction is imposed shall be treated as civil matters as provided in this Chapter. (2131)

1-27-2: COMMENCEMENT OF ACTION; JURISDICTION OF MESA CITY COURT
(A) A civil code violation case is commenced by issuance of a uniform civil code complaint as provided in this Chapter. A civil code violation case shall be commenced within one (1) year of the alleged violation. (2131)

(B) The Mesa City Court shall have jurisdiction over all civil violations of this Code except as provided in Section 1-27-8. (2131,4074)

1-27-3: SERVICE OF UNIFORM CIVIL CODE COMPLAINT:
(A) A uniform civil code complaint may be served by delivering a copy of the uniform civil code complaint citation to the person charged with the violation or by any means authorized by the Arizona Rules of Civil Procedure. (2131)

(B) The original complaint shall be filed in the Mesa City Court within five (5) days of the time that a complaint was issued. Any peace officer or duly authorized agent of the City may issue the complaint. (2131)

1-27-4: AUTHORITY TO DETAIN PERSONS TO SERVE CIVIL COMPLAINT; FAILURE TO PROVIDE EVIDENCE OF IDENTITY:
(A) A peace officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this Chapter and to serve a copy of the complaint for any alleged civil violation of this Chapter. (2131)
(B) A person who fails or refuses to provide evidence of his/her identity to a peace officer or duly authorized agent of the City upon request, when such officer or agent has reasonable cause to believe the person has committed a violation of this Code, is guilty of a misdemeanor. (2131)

1-27-5: **FORM FOR CIVIL VIOLATION COMPLAINTS:**

The civil violation complaint shall be in the form of the document marked Exhibit "A," following hereto and made a part hereof by reference, and shall contain the following notice: (2131)

If you fail to appear as directed in this complaint on a civil code violation, a default judgment will be entered against you and a civil sanction will be imposed. (2131)

<table>
<thead>
<tr>
<th>COMPLAINT NO.</th>
<th>DRIVER'S LICENSE NO.</th>
<th>STATE</th>
<th>SOCIAL SECURITY NO.</th>
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<tr>
<td>CITY OF MESA VS. DEFENDANT:</td>
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<tr>
<td>RESIDENCE ADDRESS: STREET TOWN STATE ZIP</td>
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<td>MAILING ADDRESS: SAME AS ABOVE</td>
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<tr>
<td>BUSINESS ADDRESS: STREET TOWN STATE ZIP</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>RESIDENCE PHONE: BUSINESS PHONE:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>OWNER OCCUPIED: NAME</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWNER'S ADDRESS: STREET TOWN STATE ZIP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>YOUR DATE AND TIME TO APPEAR IS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MESA CITY COURT 245 WEST 2ND STREET MESA, ARIZONA 85201</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>OR</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>ADMINISTRATIVE HEARING OFFICER LOCATED AT 245 WEST 2ND STREET MESA, ARIZONA 85201</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

EXHIBIT A

IF I FAIL TO APPEAR AS DIRECTED IN THIS COMPLAINT ON A CIVIL CODE VIOLATION, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST ME, AND A CIVIL SANCTION WILL BE IMPOSED.

I HEREBY CERTIFY THAT I HAVE REASONABLE GROUNDS TO BELIEVE AND DO BELIEVE THAT THE PERSON NAMED HEREIN COMMITTED THE CIVIL VIOLATION DESCRIBED HEREIN CONTRARY TO LAW.

1-27-6: **FALSE CERTIFICATION OF CIVIL VIOLATION COMPLAINTS:**

(A) A civil code violation complaint need not be sworn to if it contains a form of certification by the issuing officer in substance as follows: (2131)

"I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the civil violation described herein contrary to law." (2131)
1-27-6

(B) A false certification under the provision of Subsection (A) constitutes perjury. (2131)

1-27-7: ADMISSION OR DENIAL OF ALLEGATION IN COMPLAINT; HEARINGS; FINDINGS OF COURT; CIVIL SANCTION:

(A) A person with a civil code complaint shall appear at the time and place stated in the complaint or may appear prior to the time if so authorized by the court and upon the directions contained in the complaint and admit or deny the allegations of the complaint. Allegations not denied at the time of appearance are admitted. A fee shall not be charged for such appearance. (2131)

(B) If the allegations are admitted, the court shall enter judgment for the City and impose a civil sanction. Allegations may be admitted with an explanation. In such case the court shall enter judgment for the City and impose a civil sanction. In determining the civil sanction, the court shall consider the explanation submitted. (2131)

(C) If the person denies the allegations of the complaint, the court shall set the matter for hearing. All such hearings are informal and without a jury, and the City is required to prove the violation charged by preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the person elects to be represented by counsel, the person shall so notify the court at least ten (10) days prior to the hearing date. Hearings may be recorded. If the court finds in favor of the person, the court shall enter an order dismissing the allegation. (2131)

If the court finds in favor of the City, the court shall enter judgment for the City and impose a civil sanction. (2131)

(D) If the person served with a civil code complaint fails to appear on or before the time directed to appear or at the time set for hearing by the court, the allegations in the complaint shall be deemed admitted, and the court shall enter judgment for the City and impose a civil sanction. (2131)

(E) A civil sanction imposed pursuant to this Chapter shall not exceed one thousand dollars ($1,000.00). (2131)

1-27-8: HEARING OFFICERS

The City Manager, or his designated representative, may appoint one (1) or more hearing officers to preside over civil code matters arising under the Mesa City Code or the Arizona Revised Statutes that are filed and processed as administrative cases with a City department other than the Mesa Municipal Court. The judgment of the Administrative Hearing Officers constitutes a judgment that is subject to special action relief in accordance with the Arizona Supreme Court's Rules of Procedure for Special Actions. (3879)

1-27-9: APPEAL:

Any party may appeal the judgment of the court. The appeal may be to the Superior Court in the same manner as promulgated by the Supreme Court. The posting of an appeal bond stays enforcement of the judgment. Commissioners of the Superior Court may hear and determine appeals. (2131)
1-27-10:  SUBPOENA OF WITNESSES; NONAPPLICABILITY OF RULES OF CIVIL PROCEDURE:

(A) The City and the person charged with a civil code violation may subpoena witnesses as provided by Arizona Revised Statutes Section 13-4072. Such witnesses are not entitled to fees for appearing in connection with a civil violation proceeding. (2131)

(B) Except as otherwise provided in this Chapter, the rules of civil procedure do not apply. (2131)

1-27-11:  FAILURE TO PAY CIVIL SANCTION; COLLECTION PROCEDURE:

All civil sanctions shall be paid within thirty (30) days from entry of judgment, except that if payment within thirty (30) days will place an undue economic burden on the person, the court may extend the time for payment or may provide for installment payments. A civil sanction may be collected in the same manner as any other judgment in favor of the City. (2131)

1-27-12:  PENALTY:

That any person who shall violate any of the provisions of Section 1-27-4(B) hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (2131,2466)
CHAPTER 28

CLAIMS AND DEMANDS AGAINST THE CITY (566, 1125, 1427)

(Repealed by 2905)

CHAPTER 29

DEPUTY CITY MANAGER (977, 3766)

(Repealed by 5293)

CHAPTER 30

EXECUTIVE CITY ADMINISTRATOR (1242)

(Repealed by 1611)
CHAPTER 31

CITY AUDITOR (4608)

SECTION:

1-31-1: **APPOINTMENT:**
The Council shall appoint a City Auditor and set his compensation. (4608)

1-31-2: **DUTIES:**
The City Auditor shall conduct all audits requested by the City Council or the City Manager to ensure that the City is functioning economically, efficiently, and effectively in accordance with legislative and management directives. The City Auditor shall serve at the pleasure of the Council. (4608)
CHAPTER 32
(5005)

COLLECTION OF DELINQUENT AMOUNTS OWED TO THE CITY (5005)

SECTION:

1-32-1: APPLICABILITY (5005)
1-32-2: DEFINITIONS (5005)
1-32-100: SINGULARITY OF DEBT; SET-OFF (5005)
1-32-200: LIMITATIONS ON OBTAINING NEW LICENSES, SERVICES OR BENEFITS UNTIL DEBT IS PAID (5005)
1-32-300: PERSONAL LIABILITY; PRESUMPTIONS (5005)
1-32-400: LIMITATION ON RELATED PARTY OBTAINING LICENSES, SERVICES, OR BENEFITS (5005)
1-32-500: VOLUNTARY SUCCESSION; CREATION OF LIEN; TRANSFERRED LIABILITY; CONTINUED LIABILITY (5005)
1-32-600: INVOLUNTARY BUSINESS SUCCESSION; CREATION OF LIEN (5005)
1-32-700: NOTICE OF LIEN; RECORDING OF LIEN (5005)
1-32-800: RELEASE OF LIEN; WAIVER OF RIGHT TO LIEN AGAINST SUCCESSOR IF CERTIFICATE PRODUCED (5005)
1-32-900: CHANGE OF BUSINESS ENTITY FORM; CONTINUATION OF PRIOR LIABILITY (5005)
1-32-1000: COLLECTION CHARGES (5005)

1-32-1: APPLICABILITY. (5005)
The provisions of this Chapter shall apply unless expressly precluded by law. (5005)

1-32-2: DEFINITIONS. (5005)
For purposes of this Chapter, the following words and phrases shall have the meaning set forth herein. (5005)

(A) **BUSINESS** means all activities engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect. (5005)

(B) **COLLECTOR** means the Tax Collector or any City officer, manager or employee responsible for the collection of amounts owed to the City. (5005)

(C) **ORIGINAL BUSINESS** means the business activity, by whatever form conducted, that ceases operation, whether or not such cessation is by change in legal status, voluntary or involuntary cessation of activity, or transfer of assets, control or ownership to another person. (5005)

(D) **SUCCESSOR BUSINESS** means that person who continues in a substantially similar manner the original business activity of another person through the acquisition and use, by any means, of ownership or control over the operational characteristics of the original business activity so as to enable it to carry on or continue such activity. (5005)
(E) **TRANSFER** means the change in ownership or control over the day-to-day activities of the business. (5005)

(F) **PERSON** means an individual, partnership, limited partnership, limited liability company, corporation, trust, joint venture, or any other association of two or more persons who have as their objective a common gain, benefit, or advantage. (5005)

(G) **RELATED PARTY** means any person who has a commonality of business interest with any other person through their status as an identified person liable under Section 1-32-300(D) within such other person. (5005)

**1-32-100: SINGULARITY OF DEBT; SET-OFF (5005)**
A debt owed by a person to any City department or area of operation shall be subject to set-off against any credit, refund, deposit or payment owing to such person by the same or any other City department or area of operation. (5005)

**1-32-200: LIMITATIONS ON OBTAINING NEW LICENSES, SERVICES OR BENEFITS UNTIL DEBT IS PAID. (5005)**
Any person who has a current debt related to any open or closed account maintained or formerly maintained with the City shall be ineligible to receive any new or additional licenses, services or benefits from the City until such debt has been resolved to the satisfaction of the City. (5005)

This limitation includes, but is not limited to, the following situations:

- Establishing a commercial or residential utility account; (5005)
- Obtaining any license issued pursuant to the Mesa City Code; (5005)
- Obtaining or extending any building permit issued pursuant to Title 4 of the Mesa City Code; (5005)
- Extending any application for a building permit pursuant to Title 4 of the Mesa City Code. (5005)

**1-32-300: PERSONAL LIABILITY; PRESUMPTIONS (5005)**

(A) Every person with a duty, at any time, to account for and pay over any tax or other amount owed the City, every person who has control or supervision over the payment of any tax or other amount owed the City and every person who has been charged with the responsibility to pay over any tax or other amount owed the City shall be personally liable, jointly and severally, for any additional monies not paid to the City. (5005)

(B) The dissolution, termination or withdrawal from the City of any person shall not affect or discharge the personal liability established by Subsection A. (5005)

(C) The cessation of business by any person shall not affect or discharge the personal liability created by Subsection A. (5005)
For purposes of Subsection A, there shall be a rebuttable presumption that the following persons have a duty to account for and pay over tax and any other amount owed the City. (5005)

<table>
<thead>
<tr>
<th>BUSINESS FORM</th>
<th>PERSONS LIABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sole Proprietorship</td>
<td>The Proprietor</td>
</tr>
<tr>
<td>2. Partnership</td>
<td>Each Partner</td>
</tr>
<tr>
<td>3. Limited Partnership</td>
<td>General Partner</td>
</tr>
<tr>
<td>4. Joint Venture</td>
<td>Each participant in the joint venture</td>
</tr>
<tr>
<td>5. Corporation</td>
<td>Any officer with control over the activity giving rise to the debt</td>
</tr>
<tr>
<td>6. Limited Liability Company</td>
<td>Each member, manager, or officer</td>
</tr>
<tr>
<td>7. Trust</td>
<td>Any trustee</td>
</tr>
<tr>
<td>8. Other Association</td>
<td>Any individual with control over the activity giving rise to the debt</td>
</tr>
</tbody>
</table>

Any related party to any person liable for tax or any other amount owed to the City pursuant to Section 1-32-300 shall not obtain any additional licenses, services, or benefits until all underlying liabilities have been resolved to the City’s satisfaction. (5005)

Regarding the administration of the above provision for Limited Liability Companies (LLC), once the LLC’s account is delinquent, neither any member of such LLC nor any other LLC of which he may also be a member shall obtain new or addition City licenses, services, or benefits. (5005)

In the case of any succession in business activity that is accomplished by voluntary agreement between the original business and successor business, the agreement or mutual expression of intent to agree shall operate to immediately create a business succession lien in favor of the City in the total amount of such impositions. Such lien shall attach to all of the tangible and intangible assets of the original business. (5005)

The lien created by Subsection A shall, upon completion of the transfer of effective control from the original to the successor business, attach to all assets of the successor business to the extent of any liability remaining unpaid by the original business as of the date of transfer. (5005)
(C) The business succession lien created by Subsection A shall not alter in any way the liability of the original business or the personal liability created in Section 1-32-300 of this Chapter. (5005)

(D) The business succession lien created in this Section is separate and apart from and in addition to any tax liability lien against the original or successor business that might have existed or come into being separately and apart from the operation of this Chapter. (5005)

(E) All business succession shall be deemed to be voluntary except as described in Section 1-32-600 below. (5005)

1-32-600: INVOLUNTARY BUSINESS SUCCESSION; CREATION OF LIEN (5005)

(A) The following transfers of business activity shall be considered involuntary:

1. Transfer to a receiver or trustee in bankruptcy. (5005)

2. Transfer to a receiver pursuant to the order of a Superior Court of this State or equivalent action by a court of general jurisdiction in a foreign state. (5005)

3. Transfer to an executor, administrator or personal representative by virtue of the death of a sole proprietor or partner, provided that the transfer by operation of law of partnership assets to a surviving partner or partners is considered a voluntary transfer as to such partners’ partnership assets. (5005)

4. Transfer to a landlord by seizure or distraint for rent or similar remedy whether or not accompanied by judicial proceedings for recovery or redelivery of the demised premises. (5005)

5. Except as provided in Section 5-10-595 of the Mesa City Code, transfer to a secured party by operation of a mortgage, deed of trust or other security agreement, with or without judicial proceedings. (5005)

6. Voluntary or involuntary guardianship pursuant to Title 14, Arizona Revised Statutes, or equivalent proceedings under a foreign statute and foreign court of competent jurisdiction. (5005)

(B) In the event of any transfer described in Subsection A, a business succession lien shall immediately be created and shall attach as of the date of the first act or event that accomplishes the transfer. This lien shall attach to all remaining assets of the original business entity and any resulting estate. However, liabilities owed to the City as of such date covered by such lien shall be payable from the successor solely from the assets of the estate of the original business, subject to prior liens and court orders, and subject to any additional personal liability that may be imposed pursuant to Section 1-32-300. In the event that the debt owed to City exceeds the value of assets transferred, the successor will have no liability for the difference. (5005)

(C) Any transferee under Subsection A who continues to operate the business activity is liable for all taxes and other liability arising from the business activity conducted or carried on by the transferee. The transferee shall be subject to the personal liability provisions of Section 1-32-300. (5005)
1-32-700: NOTICE OF LIEN; RECORDING OF LIEN (5005)

Unless expressly precluded by law from recording a lien on the underlying debt or debtor, the collector shall provide thirty days advance written notice of “intent to file lien” to the named debtor(s). The collector shall effectuate the filing of a business succession lien by recording a lien notice in the office of the County Recorder in any county in which the original business or successor business may have property, assets or conduct business activity. A lien may also be filed with the Arizona Secretary of State. The lien notice shall be labeled “Business Succession Lien Notice” and shall state the type and amount of any imposition including recording cost. When applicable, a single lien may be filed that names both the original business and successor business. Nothing in this Section shall be deemed to limit the authority of the City to file tax liens pursuant to Mesa City Code Section 5-10-590. (5005)

1-32-800: RELEASE OF LIEN; WAIVER OF RIGHT TO LIEN AGAINST SUCCESSOR IF CERTIFICATE PRODUCED. (5005)

(A) Any lien, whether or not recorded, may be released in whole or in part by the collector, in his sole discretion. The release of any part of the lien shall not affect the remaining balance. (5005)

(B) The collector shall not record any lien against successor business if, prior to the expiration of the thirty day notice period set forth in Sec. 1-32-700, successor business produces a receipt from the collector showing that all amounts owed City have been paid or a certificate stating that no amount is due as then shown by the records of the collector. The collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued. (5005)

(C) If a subsequent investigation shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a successor business who has received a certificate from the collector. (5005)

(D) A voluntary successor business who fails to obtain a certificate as provided by this Section is personally liable for payment of the amount required to be paid by the original business on account of the business so purchased. (5005)

1-32-900: CHANGE OF BUSINESS ENTITY FORM; CONTINUATION OF PRIOR LIABILITY. (5005)

If any business entity changes its form of doing business, including but not limited to, a change from sole proprietorship to corporation or LLC, or dissolution of a partnership or corporation, while continuing to do business under substantially the same management and control, the liability of the original entity shall remain on such new entity, and shall further attach and become a lien upon the assets of and a liability of the new business entity. (5005)

1-32-1000: COLLECTION CHARGES. (5005)

Any person who has a delinquent account maintained by the City will also be responsible for all costs incurred by the City in collecting those delinquent funds. This includes a reasonable charge for staff time and any direct costs incurred. (5005)
CHAPTER 33
(5292)

CANDIDATE ELECTION DATES (5292)

SECTION:

1-33-1: DATE OF CANDIDATE ELECTIONS (5292)
1-33-2: TERM OF MAYOR AND COUNCILMEMBER (5292)

1-33-1: DATE OF CANDIDATE ELECTIONS: (5292)
The primary election for Candidates for the Offices of Mayor and Councilmember shall be held on the tenth Tuesday before the first Tuesday after the first Monday in November of even-numbered years. The general election, if required, shall be held on the first Tuesday after the first Monday in November of even-numbered years. (5292)

1-33-2: TERM OF MAYOR AND COUNCILMEMBER: (5292)
The term of office for the Office of Mayor and Councilmember shall commence on or after the first Monday in January in the year following the election and shall be for a period of four (4) years or until their successors are elected and qualified. (5292)
CHAPTER 1

PLANNING AND ZONING BOARD
(167, 558, 1620, 4476, 4960)

SECTION:

2-1-1: MEMBERSHIP
There is hereby created a Planning and Zoning Board to consist of seven (7) representative citizens of the City. Members of the Board shall hold no other City office, shall reside within the limits of the City, and shall be appointed as provided in Subsection (B) of Section 501 of the City Charter. (167, 558)

2-1-2: TERM OF OFFICE
The members of the Planning and Zoning Board shall serve for staggered three- (3-) year terms and until their successors are duly appointed. At the time of the original appointment under this Chapter, the Mayor shall designate the length of the term of all of the members to provide for staggered terms, which in no event shall be more than three (3) years. (167, 558)

2-1-3: VACANCIES; ABSENCE FROM MEETINGS
Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. Whenever a member of the Board ceases to reside in the City, a vacancy on the Board is created. (167, 558, 1620)

2-1-4: COMPENSATION
The members of the Planning and Zoning Board shall serve as such without compensation. (167, 558)

2-1-5: DUTIES

(A) The duties of the Board, in addition to any other matters directed by the City Council, shall be to study the development of the City and from time to time as may be necessary place before the Council recommendations for the better development of the City and contiguous areas surrounding the City with the intent that a complete and unified plan may be achieved. (4960)

(B) Such duties may include the ability to review and make recommendations concerning joint public/private projects in designated re-development areas and propose re-development actions to the City Council which are consistent with adopted plans and stated re-development goals and the objectives for the downtown area. The Board shall hold public hearings on proposed re-development plans or amendments to adopted plans. Such recommendations shall be advisory only and shall not be binding upon the City Council. (4960)
(C) The Board shall also prepare and present to the Council a Zoning Ordinance and map recommending the boundaries of the various districts and appropriate regulations to be enforced therein. The Board shall make a preliminary report on such proposed Ordinance and map and shall hold public hearings thereon before submitting its final report. (167, 558, 4476, 4960)

2-1-6: HEARINGS; FINAL ACTION: (167, 558, 4476, 4960)

(A) The Council shall take action on the recommendation(s) of the Planning and Zoning Board. The recommendation of the Planning and Zoning Board or the Planning Hearing Officer shall be forwarded to City Council, and shall be advisory only and shall not be binding upon the Council. (4960)

(B) The Council may also initiate any proposed amendment, change, or modification to such Zoning Ordinance and map. The Council may not approve the amendment, change or modification until it is noticed and heard by the Planning and Zoning Board, or Planning Hearing Officer. For public hearing and recommendation under same process as a zoning case filed by a property owner. The recommendation of the Planning and Zoning Board or the Planning Hearing Officer shall be forwarded to City Council, and shall be advisory only and shall not be binding upon the Council. (4960)

CHAPTER 2

HUMAN SERVICES ADVISORY BOARD (3220,4414,4757)

(Repealed By 5123)
CHAPTER 3
(1850,2390,3340)

JUDICIAL ADVISORY BOARD

SECTION:

2-3-1: CREATION OF BOARD:
There is hereby created a citizen Board to be known as the Judicial Advisory Board. Board members shall serve without salary or compensation. (3340)

2-3-2: PURPOSE OF BOARD:
The purpose of the Judicial Advisory Board is to recommend to the City Council the best qualified persons to become City Magistrates, and to evaluate the performance of appointed Magistrates and advise the City Council about retaining them. (3340)

2-3-3: MEMBERSHIP:
(A) The Board shall be composed of seven (7) persons, as follows: (3340)

1. The Presiding Judge of the Arizona Superior Court for Maricopa County, or designee; (3340)

2. An Arizona Appellate Court Judge to be appointed by the Chief Justice of the Arizona Supreme Court; (3340)

3. An active member of the State Bar of Arizona who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the State Bar's Board of Governors; (3340)

4. A member of the Maricopa County Bar Association who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the Association's Board of Directors; (3340)

5. Three (3) Mesa electors who are not City employees, Judges in any official capacity, retired Judges, nor members of the State Bar of Arizona, but who have distinguished themselves through their public service, impartiality, and objectivity. (3340)
(B) Subject to the concurrence of the City Council, the Mayor shall appoint the members of the Board for staggered terms of three (3) years each. At the time of the initial appointment, the Mayor shall designate the length of term for each such member to provide for staggered terms. (3340)

(C) No member of the Board shall serve for more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. (3340)

(D) Absences of any member from meetings of the Board shall, at the discretion of the City Council, render such member liable for immediate removal from the Board by the Council. Any member absent from three (3) consecutive meetings without being excused by the chairperson shall be considered as having vacated his or her appointment. (3340)

2-3-4: BOARD OFFICERS:

(A) The Board's officers shall consist of a chairperson and vice chairperson, each selected by the Board from the Board's members. (3340)

(B) Board officers shall serve one- (1-) year terms. No member shall serve more than two (2) terms as chairperson or two (2) terms as vice chairperson, not including any term filled for the remainder of another member's unexpired term. (3340)

2-3-5: BOARD REPRESENTATION:

(A) Pursuant to Administrative Order 93-17 of the Arizona Supreme Court, and such subsequent orders as may issue which address this objective, in selecting Judicial Advisory Board members, the appointing authorities shall be sensitive to representation reflecting the racial, ethnic, gender, and political diversity of the community served by the Mesa City Court. (3340)

(B) The appointing authority for each Advisory Board member shall advise each Board member they appoint that the Board member's responsibilities include recruitment of qualified Magistrate applicants, including qualified minority and women applicants, who may not otherwise apply. (3340)

2-3-6: BOARD MEETINGS:

(A) Promptly upon learning of a City Magistrate vacancy, anticipated vacancy, the expiration of the existing term of a City Magistrate, or the need for a continuing appointment of a Pro Tempore Magistrate, the chairperson of the Board shall issue a call for a meeting of the Board. (3340)

1. A continuing appointment of a Pro Tempore Magistrate refers to a Magistrate who is anticipated to work on a regular basis over an extended period of time and not just in response to emergencies. (3340)

2. The Presiding Magistrate, with the approval of the City Manager, may appoint Magistrates Pro Tempore who do not work pursuant to a continuing appointment but, instead, are needed on an emergency basis, such as to fill in temporarily for regular Magistrates who are ill, on vacation, or attending training. (3340)

(B) All Board meetings shall comply with the Arizona Open Meeting Act (A.R.S. 38-431 et seq.) and Public Records Law (A.R.S. 39-121 et seq.), as amended. (3340)

(C) The City Clerk’s Office and the Personnel Office shall jointly act as secretary to the Board by preparing notices of meetings, minutes, sending information packets to members, and fulfilling all other clerical responsibilities of the Board. (3340)
2-3-7: APPOINTMENT AND REAPPOINTMENT PROCESS:

(A) Through the City’s Personnel Office, the Board shall advertise notice to the public and licensed attorneys of
the vacancy or reappointment. (3340)

1. In the case of a vacancy, the Board members shall actively seek and encourage well-qualified individuals to
apply. The Board shall advertise the vacancy in a manner designed to provide reasonable notice of the
opening, but shall at least publish notice in a professional newspaper once a week for two (2) successive
weeks. (3340)

2. In the case of a reappointment, the Board shall solicit public and professional comment in a manner designed
to elicit constructive appraisals of the Magistrate’s performance, but shall at least publish notice of the
potential reappointment in a daily newspaper of general circulation in Mesa once a week for two (2)
successive weeks. (3340)

(B) All applicants for appointment or reappointment shall complete an application containing such information as
the Board and the Personnel Office deem necessary and appropriate to comply with law and provide relevant
information about the ability of the applicant to perform an outstanding job as a City Magistrate. (3340)

1. For all appointments under this Chapter, the Board may use as a guide the "Application for Nomination to
Judicial Office," formulated under Rule 7 of the Arizona Supreme Court’s Uniform Rules of Procedure for
Commissions on Appellate and Trial Court Appointments. (3340)

2. For all reappointments under this Chapter, the Board may use as a guide all surveys, questionnaires, data
forms, and reports, formulated under Rule 6 of the Arizona Supreme Court’s Rules of Procedure for Judicial
Performance Review in Arizona. (3340)

(C) Applicants shall be given a meaningful opportunity to supplement their applications with letters of
recommendation. (3340)

(D) The Board shall not limit its investigation of applicants to the applications and letters of recommendation
received, but shall hold public hearings, personal interviews, and conduct such investigations into the
background, performance, and qualifications of the applicants as the Board deems necessary and appropriate.
(3340)

(E) Consistent with and in addition to the requirements of this Chapter, the Board is authorized to develop such
procedures as it deems reasonable to select and retain outstanding City Court Magistrates on the basis of
merit. In that regard, at a minimum the Board shall: (3340)

1. Conduct at least one (1) public hearing soliciting public input concerning sitting Magistrates seeking
reappointment. (3340)

2. Personally interview at least six (6) candidates for initial appointment as a City Magistrate, or for a continuing
appointment as a Pro Tempore Magistrate. (3340)
2-3-8: RECOMMENDATION PROCESS:

(A) All Board members shall consider all applicants in an impartial, objective manner, based only on the applicant’s merit as a potential or current City Magistrate. (3340)

1. At the earliest possible opportunity, a Board member shall disclose to all members of the Board: (3340)

   (a) All relationships with an applicant (such as business, personal, or attorney-client) or any possible cause for conflict of interest, bias, or prejudice; (3340)

   (b) All efforts to recruit a specific applicant; (3340)

   (c) All applicants who constitute "relatives" under the Arizona Conflict of Interest Laws (A.R.S. 38-501 et seq.), as amended, or those applicants who are at present, or have been in the last ten (10) years, a coworker in the same company or firm as the Board member or the Board member’s spouse. (3340)

2. A Board member shall refrain from voting or otherwise participating in discussing all persons required to be disclosed in paragraph 1, subparagraphs (a) and (c), above. Board members may discuss and vote on applications submitted by persons they recruit to apply, after having disclosed to all Board members the nature of their efforts to recruit the applicant. (3340,3391)

(B) In considering initial appointments or reappointments, the Board shall consider comment from all interested members of the public at a public hearing or in writing. For reappointments, the Board shall also make inquiry of the Arizona Commission on Judicial Conduct for any adverse rulings against the City Magistrate scheduled for reappointment consideration. (3340)

(C) Following Arizona Board of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991), or subsequent cases dealing with the same subject, the names of applicants and their applications shall not be disseminated to the public or the media. However, those applicants who both agree to be interviewed and who are selected to be interviewed shall become candidates whose names and applications, without the home addresses and telephone numbers, shall be made available, upon request, to the public and the media. (3340)

(D) The Board shall interview candidates in accordance with the Arizona Open Meeting Law. The Board shall vote on the candidates in an open meeting. (3340)

1. As soon as possible after the vote of the Board, the Board shall deliver its written recommendation concerning an initial Magistrate or continuing Magistrate appointment to the Mayor and City Council, or an appropriate Subcommittee of the Council. The Board shall identify in alphabetical order the three (3) best qualified candidates for each vacancy and summarize the relative strengths and weaknesses of each final candidate. (3340)

2. As soon as possible after the vote of the Board, the Board shall also deliver its written recommendation concerning reappointment of a City Magistrate to the Mayor and City Council, or an appropriate Subcommittee of the Council. The Board shall state that the Board does or does not recommend reappointment of the Magistrate, summarizing the reasons therefor. (3340)

2-3-9: COUNCIL DECISION:

The City Council may accept or reject the Board’s advice and recommendations. The City Council may also refer a specific appointment or reappointment back to the Board for more investigation and findings. The Council may also refer any judicial matter or issue to the Board for such review as the Council may direct. (3340)
CHAPTER 4

LIBRARY ADVISORY BOARD

SECTION:

2-4-1: CREATION OF LIBRARY ADVISORY BOARD
2-4-2: RESPONSIBILITIES

2-4-1: CREATION OF LIBRARY ADVISORY BOARD:
There is hereby created a Board to be known as the Library Advisory Board of the City. Such Board shall be composed of nine (9) persons who shall be appointed by the Mayor with the approval of the Council. Members of the Board shall serve for staggered terms of three (3) years, and no member shall serve more than two (2) complete consecutive terms, providing a person may be reappointed after the lapse of three (3) years from the end of his/her preceding term. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (561,1622,4025)

2-4-2: RESPONSIBILITIES:
The Library Advisory Board may:

(A) Recommend conditions for the acceptance of endowments, donations, or contributions for the benefit of the library; (1075,1622,4025)

(B) Recommend hours when the library shall be open to the public; (1075,1622)

(C) Recommend policies for the operation of the library and the development and management of its collections; (1075,1622,4025)

(D) Advise the City Council on the operation and management of the library; and (1075,1622,4025)

(E) Perform such other duties as may be delegated by the City Council. (1622,4025)
CHAPTER 5

MERIT SYSTEM BOARD

SECTION:

2-5-1: CREATING AND ESTABLISHING

There is hereby created and established a Merit System Board to consist of three (3) resident citizens and electors of the City who shall be appointed by the Mayor with the approval of the Council to serve for three- (3) year staggered terms. As of the effective date hereof, the Mayor shall designate the terms of the various members of the Board, which shall not be more than three (3) years in order to provide for staggered terms, with as nearly equal a number as possible to be appointed each year. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. Unless removed as herein provided, members of the Board shall serve until their term is expired and their successor appointed and qualified and shall select their own chairman from among their members to serve for a one- (1-) year term. (559,1623,2782)

2-5-2: PERSONNEL APPEALS BOARD: (728)  (Rep. by 1623)  (See Chapter 18)

2-5-3: AMENDING THE PERSONNEL SYSTEM:

That Rule 4, Section 4; Rule 6, Section 3, paragraph 2; Rule 11, Section 2, paragraph 1; and Rule 13, Section 3(B)2 of the Personnel Rules and Regulations as contained in Resolution No. 4467, together with all the provisions of said Resolution No. 4467, three (3) copies of which resolution are on file in the office of the City Clerk, are hereby referred to, adopted, and made a part hereof as if set forth fully in this Section, and Resolution No. 4467, together with the Amendments and Personnel Rules and Regulations contained therein and above referred to, are declared to be a public record pursuant to the provisions of Section 9-801, Arizona Revised Statutes. (728,1281,1317)
CHAPTER 6

CIVIL DEFENSE DISASTER

(Repealed by 706)

CHAPTER 7

PARKS AND RECREATION BOARD

SECTION:

2-7-1: CREATION OF PARKS AND RECREATION BOARD (4025)

2-7-2: POWERS AND DUTIES

2-7-1: CREATION OF PARKS AND RECREATION BOARD: (4025)

There is hereby created a Board to be known as the Parks and Recreation Board. The Parks and Recreation Board shall be composed of eleven (11) persons. The members of the Board shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of term for each member to provide for staggered terms. No member of the Parks and Recreation Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (563,571,1624,2712,4025)

2-7-2: POWERS AND DUTIES:

The Parks and Recreation Board shall advise the Council on policy matters relating to the operation and development of all City parks and recreational facilities, including all City-owned or operated golf courses, and on the recreational program of the City. The Board shall elect one (1) of its members to serve as chairman for a one-(1-) year term. (563,2712,4025)
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CHAPTER 8
TRANSPORTATION ADVISORY BOARD (3548)

SECTION:

2-8-1: CREATION OF BOARD
There is hereby created and established a Transportation Advisory Board to consist of eleven (11) resident citizens and electors of the City who shall be appointed by the Mayor with the approval of the Council to serve for three- (3-) year staggered terms. As of the effective date of this Chapter, the Mayor shall designate the terms of the various members of the Board, which shall not be more than three (3) years in order to provide for staggered terms, with as nearly equal a number as possible to be appointed each year. Members of the Board shall serve until their term expires and their successors appointed and qualified and shall select their own chairman from among their members to serve for a one- (1-) year term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. The members of the Board shall serve without compensation. (1569, 1620, 3548)

2-8-2: PURPOSE OF BOARD
A Transportation Advisory Board for the City of Mesa will assist and advise the Council in developing a community-based, multi-modal surface transportation system that provides mobility for all, complements land use, and improves air quality. (3548)

2-8-3: MEMBERSHIP
The Board will be comprised of a diverse body of Mesa citizens committed to developing an efficient, effective, multi-modal surface transportation system. Members of the Board shall have a background or strong interest in transportation issues. (3548)

2-8-4: POWERS AND DUTIES
The powers and duties of the Board shall be as follows: (3548)

(A) Make studies of traffic problems within the limits of the City and make recommendations to the City Council from time to time with respect thereto. (3548)

(B) Advise, assist, and make recommendations to the City Council on matters relating to surface transportation, including, but not limited to, transportation plans, projects, and ordinances relating to the surface street system, bicycles, pedestrians, freeways, and transit. (3548)

(C) Create a forum for communication, education, and dialogue with Mesa citizens on transportation issues. (3548)
CHAPTER 9

DESIGN REVIEW BOARD (3170)

SECTION:

2-9-1: CREATION OF BOARD

There is hereby created a Board to be known as the Design Review Board. The Design Review Board shall be composed of seven (7) persons who are citizens and electors of the City. The members of the Board shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of terms for each member to provide for staggered terms. No member of the Design Review Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. The membership of the Design Review Board shall include two (2) architects, two (2) other design professionals (i.e., landscape architecture, engineering, urban planning, interior design, or other design-related backgrounds), one (1) contractor/developer, and two (2) citizens. (2077,3170)

2-9-2: POWERS AND DUTIES

The Design Review Board shall advise the Council on issues concerning exterior design and landscaping guidelines for buildings, structures, and open space; review and decide on design and architectural elements of development proposals as specified by ordinance; and perform such other functions as may be assigned to them by the Mayor or City Council. The Board shall elect one (1) of its members to serve as chairman, and each chairman so elected shall serve for a one- (1-) year term. (2077,3170)

CHAPTER 10

PLUMBING, MECHANICAL, AND SOLAR ENERGY ADVISORY BOARD (864,1082,1620)

(Repealed by 4207)
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CHAPTER 11

BUILDING BOARD OF APPEALS (1024, 1620, 4205)

SECTION:

2-11-1: PURPOSE (4205)
There shall be, and is hereby created, a Building Board of Appeals, consisting of nine (9) members who are qualified by experience and training to pass judgment upon matters pertaining to building and construction. The purpose of the Building Board of Appeals (Board) shall be to hear appeals from determinations made by the Building Safety Director and the Fire Marshal; to provide for reasonable interpretations of the provisions of the Mesa Municipal Code, Title 4 - Building Regulations (all Chapters) and Chapter 2 Fire Code of Title 7 - Fire Regulations; to determine the suitability of alternate materials and methods of construction; and to recommend changes of the various building and fire codes to the City Council. (4205)

2-11-2: MEMBERSHIP (4205):
The members of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years each. No member shall serve more than two (2) complete consecutive terms, provided, however, a person may be reappointed after a lapse of three (3) years from the end of their last term. The Mayor shall designate, at the time of the initial appointment under this Chapter, the length of time for each of the members to provide for three (3) year staggered terms, and thereafter appointments shall be for three (3) years. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent for three (3) consecutive meetings without being excused shall be considered as having vacated their appointment. Appointments to fill unexpired terms shall be made in the same manner as the vacated member. Members of the Board shall serve without pay. (4205)

The Building Safety Director or designee shall serve as Secretary to the Board but shall have no vote therein. (4205)

2-11-3: QUALIFICATIONS (4205)
The members of the Board shall consist of: one (1) architect licensed by the State of Arizona; one (1) general building contractor licensed by the State of Arizona and experienced in the construction of commercial / industrial buildings; one (1) homebuilder experienced in the construction of one- (1-) and two- (2-) family dwelling units; one (1) plumbing or mechanical contractor registered by the State of Arizona or one (1) mechanical engineer licensed by the State of Arizona; one (1) electrical contractor registered by the State of Arizona or one (1) electrical engineer licensed by the State of Arizona; one (1) person with experience in fire fighting techniques or fire protection systems or one (1) fire protection engineer licensed by the State of Arizona; and three (3) general public members. It is encouraged that one (1) of the general public members be a person with disabilities as defined by the Americans with Disabilities Act of 1990. (4205)
Members shall have had at least five (5) years of recent experience in their respective trade or profession. No member shall be a current employee of the City of Mesa. Members shall comply with the City of Mesa Ethics Handbook for Elected Officials and Advisory Board Members. (4205)

2-11-4: PROCEDURES: (4205)

The Board shall annually select one (1) of its members to serve as Chair and one (1) member to serve as Vice Chair. From time to time, the Board shall establish rules and regulations for its own procedures that are not inconsistent with the provisions of this Chapter. (4205)

An appeal of a determination of the Building Safety Director or the Fire Marshal shall be filed within thirty (30) days from the date of the determination. (4205)

The Board shall have the authority to overturn, uphold, or modify a determination of the Building Safety Director or the Fire Marshal, and shall have the same authority as the official in so doing. The Board shall be authorized to approve an alternate material or method of construction to that required by Title 4, provided the Board finds that the proposed design is satisfactory, complies with the intent of the requirements of Title 4, and the material, method, or work to be provided meets the intended purpose and is at least the equivalent to that prescribed in Title 4 in quality, strength, effectiveness, fire resistance, durability, and safety. (4205)

Appeals shall generally follow the following steps: (4205)

(A) The Building Safety Director or Fire Marshal, as appropriate, shall brief the Board on the key elements of the appeal, including the Code requirements and other pertinent information, (4205)

(B) The appellant may present further information explaining the facts and reasons for the appeal, (4205)

(C) Appropriate City staff may add additional information, and (4205)

(D) The Board shall deliberate the case and may hear additional testimony relevant to the appeal prior to reaching a decision. (4205)

The Board shall reach a decision without unreasonable or unnecessary delay. The Board shall render all decisions and findings in writing, signed by the Chair or Vice Chair. The Building Safety Director shall forward a notice of decision to the appellant by certified mail or personal delivery. Said notice of decision shall state the determination, reasons for the decision, conditions related to the granting of the determination as established by the Board, and whether or not the appeal meets the requirements of this Chapter. The decision of the Board shall be final, subject to court review only, and shall not be appealable to the City Council. (4205)

2-11-5: MEETINGS: (4205)

The Board shall meet upon notice of the Building Safety Director or Fire Marshal, at the request of the Chair or Vice Chair, within thirty (30) calendar days after the receipt by the Building Safety Director or the Fire Marshal of an appeal, or at stated periodic meetings. Meetings and hearings of the Board shall be public and in the presence of a quorum. Meetings shall conform to the requirements of the Open Meeting Laws of the State of Arizona. Appellants and their representatives shall be given an opportunity to be heard. (4205)
Minutes of meetings shall be made, and after approval at a subsequent meeting, shall be signed by the Chair or Vice Chair and retained on file in the Building Safety Division. (4205)

2-11-6: QUORUM AND VOTING: (4205)
Five (5) members of the Board shall constitute a quorum. In varying the application of any provision of the Building Code, Fire Code, or related codes of the City or in modifying an order of the Building Safety Director or the Fire Marshal, the affirmative vote of five (5) members shall be required. Failure to secure five (5) concurring votes shall be deemed a confirmation of the decision of the Building Safety Director or the Fire Marshal. Members shall be present to vote. (4205)

No member of the Board shall discuss or vote on any agenda item concerning a job or project in which they are engaged as a contractor, material dealer, or consultant, or in the preparation of drawings or specifications on any job or project in which they have any personal or financial interest. (4205)

2-11-7: COURT REVIEW: (4205)
Any person aggrieved by the decision of the Board, whether or not a previous party to the decision, or any municipal officer or official department of the City may, at any time within thirty (30) days after the filing of the Board's decision in the office of the Building Safety Director, file an appeal in writing with the Superior Court of the County by following the methods of appeal or review procedures in Arizona as set forth by the applicable statutes of the State of Arizona. (4205)

2-11-8: ENFORCEMENT: (4205)
The Building Safety Director is authorized to enforce decisions of the Board or, upon successful review, of the Superior Court. (4205)

2-11-9: FEES (4205)
The fee for each appeal to the Building Board of Appeals shall be as set forth in the schedule of fees and charges for the Development Services Department, Building Safety Division. Said fee shall be paid with the filing of the appeal and shall be refunded only if the Building Safety Director determines that the appeal cannot proceed. (4205)
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CHAPTER 12
(880,902,1620,2712)

HUMAN RELATIONS
ADVISORY BOARD

SECTION:

2-12-1: BOARD CREATED
2-12-2: PURPOSE AND FUNCTIONS
2-12-3: MEMBERSHIP

2-12-1: BOARD CREATED:
The City Council hereby creates a citizens advisory board to be known as the Human Relations Advisory Board. (3617)

2-12-2: PURPOSE AND FUNCTIONS:
In addition to such functions as the City Council may delegate to it, the Human Relations Advisory Board shall advise the City Council about racial, religious, ethnic, cultural, disability, or other human relations issues affecting Mesa City government and the delivery of City services. The Board may recommend policies to eliminate discrimination and prejudice, and to promote mutual understanding and harmony. The Board may also serve as a public forum for citizen input on issues related to the purpose and functions of the Board. (3617)

2-12-3: MEMBERSHIP:

(A) The Board shall be composed of eleven (11) persons who are residents and electors of the City. Subject to the concurrence of the City Council, the Mayor shall appoint Board members for staggered terms of three (3) years each. At the time of initial appointment, the Mayor shall designate the length of term for each Board member to provide for staggered terms. (3617)

(B) No Board member shall serve more than two (2) complete consecutive terms; however, a Board member may be reappointed after the lapse of three (3) years from the end of the previous term. (3617)

(C) Continued absence of any Board member shall, at the discretion of the City Council, render such member liable for immediate removal from office by the Council. Any Board member absent from three (3) consecutive meetings without being excused by the Board shall constitute abandonment of office and the Board member is deemed to have vacated his or her office without further action of the Board or Council. (3617)

(D) The Board’s officers shall consist of a chairperson and a vice chairperson, each of whom shall be selected by the Board from the Board’s members. Board officers shall serve a one- (1-) year term. No member shall serve more than two (2) full terms as chairperson and two (2) full terms as vice chairperson, not including partial terms in either capacity. (3617)

CHAPTER 13
ELECTRICAL ADVISORY BOARD
(945,1068,1621,2582)

(Repealed by 4206)
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CHAPTER 14

SOLICITATION AND LICENSE APPEAL BOARD
(1275,1620,1816)

(Repealed by 2383)

CHAPTER 15

HUMAN SERVICES ADVISORY BOARD
(1620, 2194)

(Repealed by 3220)

CHAPTER 16

MUSEUM AND CULTURAL ADVISORY BOARD

SECTION:

2-16-1: CREATION OF MUSEUM AND CULTURAL ADVISORY BOARD (4025)
2-16-2: POWERS AND DUTIES

2-16-1: CREATION OF MUSEUM AND CULTURAL ADVISORY BOARD: (4025)
There is hereby created a Board to be known as the Museum and Cultural Advisory Board. The Museum and Cultural Advisory Board shall consist of eleven (11) persons who shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of term for each member to provide for staggered terms. No member of the Museum and Cultural Advisory Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after a lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (1051,1620,2352,4025)

2-16-2: POWERS AND DUTIES:
The Museum and Cultural Advisory Board shall advise the Council regarding policies pertaining to the development of City museums, arts centers, cultural services, and the Public Arts Program and shall perform such other duties as delegated by the City Council from time to time. The Board shall elect one (1) of its members to serve as chairman for a one- (1-) year term. (1051,2352,4025)
CHAPTER 17

SELF-INSURANCE PROGRAM
BOARD OF TRUSTEES (5125)

SECTION:

2-17-1: BOARD CREATED
2-17-2: POWERS AND DUTIES

2-17-1: BOARD CREATED:
There is hereby created a Self-Insurance Program Board of Trustees to consist of five (5) members, all of whom shall be residents of the City. One (1) of such Board members shall be a Councilmember; one (1) member of such Board shall be an employee of the City; and none of the other three (3) members shall be either Councilmembers or employees of the City. The Councilmember and the City employee shall be appointed by the Mayor with the approval of the Council, and these two (2) Board members shall serve at the pleasure of the Council. The other three (3) Board members shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment of such members, the Mayor shall designate the length of term to provide for staggered terms. No member of the Self-Insurance Program Board of Trustees, excepting for the Councilmember and the City employee, shall serve more than two (2) complete consecutive terms; however, such member may be reappointed after a lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. (1260, 1620)

2-17-2: POWERS AND DUTIES:
The Self-Insurance Program Board of Trustees shall act in an advisory role with regard to the financial viability of the Property and Public Liability, Employee Benefits, and Workers' Compensation Trust Funds, and shall perform such other duties and responsibilities set forth in the Restatements of Trust for the public and property liability and Employee Benefits Trust Funds, and the Restatement of Trust for the Workers' Compensation Trust Fund. The Board shall elect one (1) of its members to serve as chairman, and each chairman so elected shall serve for a one- (1-) year term. (1260, 5125)
CHAPTER 18

PERSONNEL APPEALS BOARD

SECTION:

2-18-1: MEMBERS OF BOARD, ALTERNATE MEMBERS
2-18-2: BOARD HEARINGS AND PROCEDURAL RULES
2-18-3: CITY MANAGER DECISION

2-18-1: MEMBERS OF BOARD, ALTERNATE MEMBERS:
The Personnel Appeals Board created by Section 404 of the Mesa City Charter shall consist of five (5) members and shall have the qualifications set forth in the Charter. The members of the Personnel Appeals Board shall serve staggered terms of three (3) years each. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. (1625, 2798, 5272)

2-18-2: BOARD HEARINGS AND PROCEDURAL RULES:
(A) The Board shall conduct a hearing upon receiving notice from the Human Resources Department concerning a review of a grievance or appeal of a dismissal brought pursuant to the Personnel Rules. The Board shall make every effort to schedule the hearing at the earliest possible mutually convenient time. The Board shall provide the parties a written notice of the time, date, and place of hearing not less than ten (10) business days before the first date of such hearing. At least three (3) board members must be present to proceed with a hearing and for deliberations and voting. The executive session must be attended by at least three (3) board members that were present for the entire hearing. If five (5) board members were present for the entire hearing, all five board members may deliberate and vote on the recommendation to the City Manager. If only four (4) board members are present for the hearing, the last appointed board member may participate in the deliberations but may not vote. (3687, 4956, 5250, 5272)

(B) All Board hearings shall comply with the Arizona Open Meeting Law (A.R.S. §§38-431 et seq.) and Public Records Law (A.R.S. §§39-121 et seq.), as amended. All Board hearings shall further be conducted in accordance with the Personnel Appeals Board Hearing Procedural Rules for Classified Employees (excluding sworn law enforcement) or the Personnel Appeals Board Hearing Procedural Rules for Sworn Law Enforcement Employees, which were declared to be public records by resolution adopted on September 22, 2014, and to which reference is hereby made and which are incorporated herein, three copies of which are on file and available for public use and inspection in the Office of the City Clerk. (3687, 5250)

(C) The City Clerk's Office shall ensure that proper public notice, including an agenda, is provided for all Board hearings. The Personnel Office shall act as secretary to the Board in sending information packets to members and fulfilling other clerical responsibilities of the Board. (3687, 5250)

2-18-3: CITY MANAGER DECISION:

(A) After receiving the written advisory opinion, the City Manager may contact the Board to seek additional advice or information concerning the matter. (3687, 5250)

(B) The City Manager may accept or reject the Board's advisory opinion. Within a reasonable period of time, not to exceed thirty (30) days, from receipt of the Board's advisory opinion, the City Manager shall notify the appellant, affected department head, and Personnel Director of the City Manager's decision. The thirty- (30-) day period may be extended should circumstances arise that preclude the City Manager from completing a review in a timely manner. Such decision shall be in writing and final for purposes of judicial review. (3687, 5250)
CHAPTER 19

CRIME PREVENTION ADVISORY BOARD (2351, 3361)

(Repealed by 3945)

CHAPTER 20

DOWNTOWN DEVELOPMENT COMMITTEE (2461, 2481, 2744, 3114)

(Repealed by 4960)
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CHAPTER 21

ECONOMIC DEVELOPMENT ADVISORY BOARD

SECTION:

2-21-1: CREATION OF BOARD
2-21-2: MEMBERSHIP
2-21-3: POWERS AND DUTIES

2-21-1: CREATION OF BOARD:
There is hereby created a Board to be known as the Economic Development Advisory Board. The Economic Development Advisory Board shall be composed of nine (9) persons who are residents of the City and six (6) nonvoting ex officio members. (2705,4216)

2-21-2: MEMBERSHIP:
The members of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years. All terms shall terminate on June 30 of the applicable year. No member shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of one (1) year from the ending of the previous term. (2705,4216)

The membership of the Economic Development Advisory Board shall include: nine (9) voting members, and six (6) ex officio nonvoting members. Three (3) of the ex officio members shall be the Mayor, City Manager, the president and chief executive officer of the Mesa Chamber of Commerce, and three (3) may be members representing Mesa that are currently sitting on the Greater Phoenix Economic Council Board of Directors. (2705,4216)

The Economic Development Advisory Board shall elect one (1) of its members to serve as chairperson and one (1) of its members to serve as vice chairperson. All members shall serve without compensation. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated the appointment. (2705,4216)

2-21-3: POWERS AND DUTIES:
The Economic Development Advisory Board shall act as the advisory board to the Mesa City Council on matters pertaining to economic development. (2705,4216)

Members of the Economic Development Advisory Board shall, among other duties, review and recommend to the City Council an annual work program, monitor such work program, and recommend changes to enhance economic development efforts. The Board shall also serve as a forum for economic development policy discussion and present findings and recommendations of such discussions to the City Council. The Board shall serve as advisors to the Economic Development Director and assist in identifying assets, resources, and incentives appropriate for implementation of Mesa's economic development strategy. This Board shall serve as a contact for persons or companies seeking to invest in the City of Mesa. (2705,4216)

Individual Board members may serve as representatives of the City of Mesa at state, regional, and local economic development forums. In working towards accomplishing the goal of providing enhanced economic development opportunities, the Board will work in collaboration with the Arizona Department of Commerce, Arizona State University, Arizona Technology Council, Business Coalition, Downtown Development Committee, East Valley Partnership, Falcon Field Area Alliance, Gilbert Public Schools, Greater Phoenix Economic Council, Maricopa Association of Governments, Mesa Chamber of Commerce, Mesa Community College, Mesa Convention and Visitors Bureau, Mesa Public Schools, Mesa Town Center Corporation, Williams Gateway Airport Authority, and other strategic partners. (4216)
CHAPTER 22

HISTORIC PRESERVATION COMMITTEE

SECTION:

2-22-1: CREATION OF COMMITTEE
2-22-2: MEMBERSHIP
2-22-3: POWERS AND DUTIES

2-22-1: CREATION OF COMMITTEE:
The Historic Preservation Committee is hereby created, consisting of seven (7) members who are residents of the City at large to be appointed by the Mayor with the approval of the City Council within sixty (60) days of the adoption of this Chapter.* Members shall serve for three (3) years, except that the members of the first Committee shall serve as designated by the City Council for the following terms: three (3) members for one (1) year; two (2) members for two (2) years; and two (2) members for three (3) years.** Any vacancy shall be filled by the Mayor and City Council within a reasonable time after the vacancy occurs, for the unexpired term. Members shall serve until their successors are appointed. The members of the Committee shall serve without compensation. (3373)

2-22-2: MEMBERSHIP:
Members of the Committee shall be selected from the areas of architecture, history, architectural history, planning, landscape architecture, archaeology, cultural geography or anthropology, or have demonstrated strong interest in past matters that involve historic preservation issues. (3373)

The Committee shall elect a chairman and vice chairman from among its members annually. (3373)

The Committee shall adopt rules for the conduct of its business. The Committee may, in such rules, delegate certain responsibilities and/or tasks to be performed by a Subcommittee or Subcommittees of the Committee. (3373)

2-22-3: POWERS AND DUTIES:
The powers and duties of the Committee shall be as follows: (3373)

(A) Review and make recommendations on any matter or request or appeal that will appear on an agenda before the Downtown Development Committee or Planning and Zoning Board or City Council involving sites nominated or approved for Historic Landmark (HL) or Historic Preservation (HP) overlay district, or other matters involving general historic preservation issues as they pertain to Mesa. (3373)

(B) Hold public hearings and make recommendations to the Downtown Development Committee or Planning and Zoning Board on requests for amendments to the zoning map and Zoning Ordinance regarding Historic Preservation (HP) overlay districts and designation of Historic Landmarks (HL) within the corporate City limits. (3373)

(C) Hear and decide appeals from the decisions of the Historic Preservation Officer regarding proposed development, renovation, additions, alterations, or demolition of buildings and structures or sites designated or nominated Historic Landmark (HL) or within Historic Preservation (HP) overlay districts for the purpose of deciding whether clearance for a building permit should be issued. The review shall be limited to building size, scale, exterior elevation, design, color, and appearance to assure compatibility with the historic character of the property, neighborhood, and environment. (3373)

* Ordinance 3373 was adopted on July 21, 1997.
** Ordinance 3373 was amended by Ordinance 3390 on September 15, 1997 to state that subject to Council concurrence under Section 501(B) of the City Charter, the Mayor is free to appoint, or not, the members of the former Subcommittee to the new Committee.
(D) Establish and maintain the Mesa Historic Property Register and periodically conduct studies for the purpose of assessing the potential of buildings, structures, or areas for designation as historic sites or districts. (3373)

(E) Hear and/or make recommendations to the City Council and periodically review guidelines to evaluate requests for development, renovation, alteration to historic districts, landmarks, and historic properties, or demolition of buildings and structures on sites designated as historic districts or historic landmarks. Such guidelines may include building location, minimum yard sizes, average heights, materials, color, architectural features, and other characteristics and cultural features found in the approved district. (3373)

(F) Hear and/or make recommendations to the City Council regarding acquisition by the City of structures or easements for maintenance or repair of structures for their preservation, where private preservation is not feasible. (3373)

(G) Hear and/or make recommendations on other matters as directed by the City Council. (3373)
CHAPTER 23

MESA HOUSING SERVICES GOVERNING BOARD

SECTION:

2-23-1: CREATION OF GOVERNING BOARD (4146)
There is hereby created a Board to be known as the Mesa Housing Services Governing Board. The Mesa Housing Services Governing Board shall be composed of eight (8) members, with such membership determined as provided in Section 2-23-2(A) hereof. (4146)

2-23-2: MEMBERSHIP (4146)
(A) The members of the Governing Board shall consist of: (4146)

1. One (1) Resident Board Member, as provided in Sections 2-23-2 and 2-23-4 hereof; (4146)

2. Six (6) Councilmembers, one (1) from each of the six (6) geographical districts within the City of Mesa; and (4146)

3. The Mayor. (4146)

(B) The Mayor and Councilmembers, while rightfully holding their respective offices, shall automatically be and act as a member of the Mesa Housing Services Governing Board. (4146)

2-23-3: RESIDENT BOARD MEMBER; APPOINTMENT, TERM (4146,4415)
(A) The Resident Board Member shall be appointed as provided in Subsection (B) of Section 501 of the City Charter, based on the recommendation of the Housing Advisory Board as provided in Section 2-23-4. (4146)

(B) The Resident Board Member shall serve for a one- (1-) year term, beginning on January 1 and ending on December 31 of the same calendar year. (4146)

2-23-4: RESIDENT BOARD MEMBER; QUALIFICATIONS (4146,4415)
(A) The Resident Board Member shall meet the qualifications, set forth in Subpart E of 24 C.F.R. Part 964, for being classified as an "Eligible Resident." (4146)
(B) The Housing Advisory Board shall review the eligibility of those who have applied for the Resident Board Member position. The Housing Advisory Board will forward to the Mayor the name of the applicant the Housing Advisory Board recommends for appointment as the Resident Board Member. (4146,4415)

2-23-5: RESIDENT BOARD MEMBER; NOTIFICATION OF AVAILABLE POSITION, NO QUALIFIED APPLICANTS: (4146)

(A) The Housing Services Director shall provide an annual notice to the Mesa Housing Services resident advisory board of the opportunity for residents to serve on the Mesa Housing Services Governing Board. This notice shall list the eligibility requirements, the reasons for removal from the Board, and the procedure for applying for the Resident Board Member Position. This notice shall be provided:

(i) not more than one hundred twenty (120) days and

(ii) not less than thirty (30) days before the January 1st beginning of the noticed term. (4146)

(B) In the event the Housing Services Director does not receive any applicants for the Resident Board Member position, which meet the qualifications set forth in Section 2-23-4 hereof, by the later of:

(i) the date which is thirty (30) days after the Housing Services Director provides the Housing Services resident advisory board with the notice set forth in Section 2-23-5(A) hereof, or

(ii) the date which is thirty (30) days before the January 1st beginning of the noticed term, the City shall be determined to meet the requirements for the exception to the requirement of having a Resident Board Member, set forth at 24 C.F.R. 964.425, for the noticed term. In such event, the Mayor may, but shall not be required to, appoint a Resident Board Member in accordance with the provisions of Section 2-23-3 hereof. (4146)

2-23-6: REMOVAL OF RESIDENT BOARD MEMBERS: (4146)

(A) A Resident Board Member may be removed pursuant to the provisions of Section 1-5-9 of the Mesa City Code. (4146)

(B) A Resident Board Member, who ceases to be directly assisted by Mesa Housing Services, may be removed by a vote of five (5) members of the City Council. A Council decision to remove the Resident Board Member shall be effective in accordance with its terms, and shall be final and nonappealable. (4146)

2-23-7: POWERS AND DUTIES: (4146)

The Mesa Housing Services Board shall have oversight responsibility for the administration, operation, and management of the City's Federal public housing programs and Section 8 tenant-based rental assistance programs, and the authority to make decisions related thereto. Such oversight responsibility does not extend to matters that:

(A) Exclusively relate to other types of housing assistance, such as State-financed housing assistance, or (4146)

(B) Do not involve housing assistance. (4146)

2-23-8: RESIDENT BOARD MEMBER; STATUS DOES NOT CREATE CONFLICT OF INTEREST: (4146)

The Resident Board Member shall not be excluded from participating in any matter before the Mesa Housing Services Governing Board on the grounds that the Resident Board Member's lease with the public housing agency, or the Resident Board Member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the Resident Board Member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcategory of residents. (4146)
CHAPTER 24

HOUSING AND COMMUNITY DEVELOPMENT ADVISORY BOARD (5123)

SECTION:

2-24-1: CREATION OF THE BOARD (4418, 5123)

There shall be and is hereby created a board to be known as the Housing and Community Development Advisory Board. The Housing and Community Development Advisory Board shall be composed of eleven (11) persons who reside in the City of Mesa. All members shall serve without compensation. (4418, 5123)

2-24-2: PURPOSE OF THE BOARD: (4418, 5123)

The purpose of the Housing and Community Development Advisory Board (“Board”) shall be to advise the Mesa City Council on housing, community development, and social services priorities, funding, and planning. The intent is to appoint citizens of Mesa who will address housing, community development, and social services issues across the community. The Board will be formed and its members will act in accordance with the City of Mesa Charter and Code. (4418, 5123)

2-24-3: MEMBERSHIP: (4418)

A. The membership of the Board shall include:

1. One (1) person from a financial institution that has lending experience with all types of housing developments; (4418, 5123)

2. One (1) representative from nonprofit providers; (4418, 5123)

3. One (1) representative of manufactured housing (resident or owner of manufactured housing); (4418, 5123)

4. One (1) representative from Special Needs Providers; (4418, 5123)

5. One (1) representative from multi-family housing development providers; (4418, 5123)

6. One (1) representative from single-family housing development providers; and (4418, 5123)

7. Five (5) community representatives. The number of community representatives may be increased to ensure there are eleven (11) board members, but only if there are no qualified applicants for categories 1 through 6. The purpose, preference and intent are for the Board to consist of six (6) housing representatives as listed in paragraphs 1 through 6 and five (5) community representatives. (4418, 5123)
B. The membership of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years each. For the initial 2012 Board appointments, the Mayor shall designate the length of service for each member to create staggered three (3) year terms. No member shall serve more than two (2) consecutive terms, provided, however a person may be reappointed after a lapse of three (3) years from the end of their last term. (4418, 5123)

C. The Board shall annually elect one (1) of its members to serve as Chairperson and one (1) of its members to serve as Vice Chairperson. The Board shall establish rules and regulations for its own procedures that are consistent with the provisions of this Chapter. (4418, 5123)

D. The Chairperson shall give notice to the City Council of excessive absences, constituting more than three (3) meetings in a year, of any member from meetings of the Board that shall, at the discretion of the City Council, render any such member liable for immediate removal from the Board by the City Council. Any member absent from three (3) consecutive meetings without notifying the Chairperson or Secretary shall be considered as having vacated the appointment. (4418, 5123)

2-24-4: MEETINGS: (4418, 5123)

A. The Board shall meet upon request by the Chairperson, or Housing and Community Development staff, at a minimum of four (4) times a year. (4418, 5123)

B. Meetings and hearings of the Board shall be public and in the presence of a quorum. Meetings shall conform to the requirements of the Open Meetings Laws of the State of Arizona. Minutes of meetings shall be made, and after approval at a subsequent meeting, shall be signed by the Chairperson or vice Chairperson and retained on file in the Office of the Mesa City Clerk. (4418)

C. The Housing and Community Development Department will assign staff that shall act as Secretary to the Board. (4418, 5123)

2-24-5: POWERS AND DUTIES: (4418, 5123)

The Board shall:

A. Review and make recommendations to the City Council regarding the City's General Plan Housing Element and Housing Master Plan. (4418, 5123)

B. Provide requested assistance to City departments and divisions on housing issues to ensure compatibility with the City's General Plan Housing Element and Housing Master Plan. (5123)

C. Review and make recommendations to the City Council on the operation of the housing programs managed by the City's Housing and Community Development Department as requested. (4418, 5123)
D. Participate in the annual evaluation process and, with City Council approval, make final allocations of the applications for funds awarded to the City by the U.S. Department of Housing and Urban Development under the following programs: (5123)

1. Community Development Block Grant (CDBG); (5123)

2. Home Investment Partnerships (HOME); (5123)

3. Emergency Solutions Grant (ESG); and (5123)

4. Neighborhood Stabilization Program (NSP) (5123)

E. Assess the human services needs of the community, determine any gaps in service, and utilize this information to develop priorities for human services funding, a better community funds, and any other grant or social service funds that may become available to the City. (5123)

F. Participate in the annual evaluation process and, when directed by City Council, make final allocations of the applications for human services funds and a better community funds. (5123)

G. Participate in the evaluation process and make final funding allocations of any other grant or social service funds that may become available to the City as directed by City Council or Housing and Community Development Department staff. (5123)

H. Perform such other powers and duties as may be approved by City Council. (5123)
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CHAPTER 25

INDEPENDENT COMMISSION ON COMPENSATION
FOR ELECTED OFFICIALS (5109, 5365)

SECTION:

2-25-1: POLICY ON ELECTED OFFICIALS' COMPENSATION (5109, 5365)
It shall be the policy of the City of Mesa that the Mayor and City Council shall be compensated for their time and effort on behalf of the City at a level that (1) is reasonable in light of the compensation paid to elected officials in other municipalities in the state of Arizona of similar size, or other municipalities in the United States of similar size, upon request of the Independent Commission on Compensation for Elected Officials, (2) will include the costs and expenses necessary to perform their duties, (3) is likely to attract competent and effective people to serve in public office, (4) makes public service possible for every eligible citizen, not just those whose financial status enables them to serve, (5) takes into account the financial circumstances of the City, and (6) is determined by an Independent Commission on Compensation for Elected Officials. (5109, 5365)

2-25-2: ESTABLISHMENT OF AN INDEPENDENT COMMISSION ON COMPENSATION FOR ELECTED OFFICIALS; MEMBERSHIP; AND MEETINGS (5109, 5365)
(A) The Independent Commission on Compensation for Elected Officials (the "Commission") shall be appointed by the City Council. The Commission shall consist of five (5) members and shall include (1) a representative of Mesa's business community, (2) a representative from Mesa's educational community, (3) a representative from Mesa's non-profit business community, and (4) two (2) members at large. The Chairperson shall be elected by the members of the Commission. Members of the Commission shall serve staggered three (3) year terms. At the time of the original appointment, the Mayor shall designate the length of the term of all members to provide for staggered terms, which in no event shall be more than three (3) years. (5109)

(B) Eligibility of Commission Members: Commission members shall be residents of the City of Mesa and shall be eighteen (18) years old or older. No member of the Commission shall be, or within two (2) years prior to service on the Commission have been an employee of the City of Mesa. No member of the Commission shall be serving or, within two (2) years prior to service on the Commission, have served, as an elected official for the City of Mesa. (5109)

(C) Timing of Meetings: The Commission shall hold its initial meeting no later than sixty (60) days after the effective date of this provision. Thereafter, the Commission may meet at the discretion of its Chairman or a majority of its members, but shall meet not less frequently than every three (3) years. Any recommendation to be made by the Commission must be approved by a majority of the members of the Commission. (5109, 5365)
(A) **Report and Recommendations.** The Commission shall render a written report and recommendations with respect to the compensation for elected officials of the City of Mesa to the City Manager no later one hundred twenty (120) days following its initial meeting in any year. Within ninety (90) days of receiving the written report and recommendations of the Commission, the City Council shall consider and vote on the Commission's recommendations. The recommendations of the Commission must be approved or rejected as a whole by the City Council. (5109, 5365)

(B) **Comparative Analysis by the Commission.** The Commission shall determine the compensation of the Council and the Mayor based on comparative information regarding the compensation of elected officials of municipalities in the state of Arizona of similar size, or other municipalities in the United States of similar size, upon request of the Independent Commission on Compensation for Elected Officials, as well as any special circumstances or issues that the Commission deems appropriate; provided, however, that such review shall not constitute performance review with respect to such elected officials, but shall relate solely to the compensation for elected officials in the City of Mesa compared to that of similarly situated officials in similar municipalities. (5109, 5365)
CHAPTER 1

POLICE DEPARTMENT

SECTION:

3-1-1: ORGANIZATION
3-1-2: APPOINTMENT
3-1-3: CHIEF OF POLICE

3-1-1: ORGANIZATION:
There is hereby established and created a regularly constituted police force to be known as the Mesa Police Department. The Mesa Police Department shall consist of a Chief of Police and all other classified service positions now existing or which in the future may be added or changed by Council action or personnel rules and regulations.

3-1-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Chief of Police and pursuant to the merit system regulations appoint, and when necessary remove, all other officers and members of the Police Department, except as the City Manager may authorize the Chief of Police to appoint and remove officers and employees in the Department. (1165)

3-1-3: CHIEF OF POLICE:
The Chief of Police shall be the head of the Police Department under the direction of the City Manager and Council. All other members of the Department shall be under his immediate supervision, direction and control and it shall be his duty to see that all laws are kept, obeyed and executed. He shall have such other powers and perform such other duties as are now or may hereafter be prescribed. (1962 Code)
CHAPTER 2  
FIRE DEPARTMENT

SECTION:

3-2-1: ORGANIZATION
3-2-2: APPOINTMENT

3-2-1: ORGANIZATION:
A regularly constituted Fire Department is hereby established, and the office of Chief of the Fire Department is hereby created. The Mesa Fire Department shall consist of the Chief of the Department and certain other classified service positions now existing, or which in the future may be added or changed by Council action or personnel rules and regulations.

The Chief of the Fire Department shall have immediate charge of the Fire Department and all equipment belonging thereto, and shall supervise and direct said Department in fighting fires, in the prevention of fires and in all things required so as to safeguard against loss by fire.

In the absence of the Fire Chief from duty, a command officer, designated by the Fire Chief, shall have the same authority and responsibility as the Chief in the performance of his duties.

3-2-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Chief of the Fire Department, and pursuant to the merit system regulations appoint, and when necessary remove, all other officers and members of the Fire Department, except as the City Manager may authorize the Chief of the Fire Department to appoint and remove officers and employees in the Department. (1166)
CHAPTER 3

UTILITIES DEPARTMENT

SECTION:

3-3-1: ORGANIZATION

The Utilities Department is hereby created, which shall consist of the office of Utilities Manager, which office is hereby created, and such additional employees of the Utilities Department as needs of that Department may demand and are properly authorized.

3-3-2: APPOINTMENT

The City Manager shall recommend to, and upon approval by the Council, appoint the Utilities Manager, and pursuant to the merit system regulations, appoint, and when necessary remove, all other employees of the Department, except as the Manager may authorize the Utilities Manager to appoint and remove employees in the Department.

3-3-3: DUTIES OF MANAGER

The Utilities Manager shall supervise all electric, water, gas and wastewater systems of the City; shall have authority to make water conservation, resource, and planning investigations for the purpose of meeting the water needs of the City; and shall perform such other duties and functions as may from time to time be delegated by the City Manager. (2491,3455)
CHAPTER 4

DEVELOPMENT SERVICES DEPARTMENT (3766)

SECTION:

3-4-1: ORGANIZATION
The Department of Development Services is hereby created, which shall consist of the office of Development Services Manager, which office is hereby created, and such additional employees of the Department of Development Services as the needs of that Department may demand and are properly authorized. (3766)

3-4-2: APPOINTMENT
The City Manager shall recommend to, and upon approval by the Council, appoint the Development Services Manager, and pursuant to the merit system regulations appoint, and when necessary remove, all other employees of the Department, except as the Manager may authorize the Development Services Manager to appoint and remove employees in the Department. (1394,3766)

3-4-3: DUTIES OF MANAGER
The Development Services Manager shall supervise all Development Services activities in the City; shall have the jurisdiction over Administrative Services, Engineering, Building Safety, Facilities Maintenance, Environmental Services, Real Estate Services, Planning, and Transportation of the City; shall have authority to make engineering and traffic investigations for the purpose of fixing reasonable and safe maximum speed limits; and shall perform such other duties and functions as may from time to time be delegated to him. (1421, 2491,3766,4250)
CHAPTER 5

RESERVE POLICE OFFICERS

SECTION:

3-5-1: RESERVE POLICE OFFICER SYSTEM ESTABLISHED
3-5-2: PURPOSE OF RESERVE POLICE OFFICERS
3-5-3: APPOINTMENT OF RESERVE POLICE OFFICERS BY CHIEF OF POLICE
3-5-4: QUALIFICATIONS FOR APPOINTMENT; APPLICATIONS
3-5-5: OATH OF OFFICE
3-5-6: PRE-ASSIGNMENT TRAINING
3-5-7: ASSIGNMENT TO SPECIFIED DUTIES
3-5-8: SUPERVISION BY CHIEF OF POLICE
3-5-9: COMPLIANCE WITH POLICE DEPARTMENT REGULATIONS AND ACTS OF THE COUNCIL
3-5-10: OFFICIAL STATUS OF RESERVE POLICE OFFICERS; COMPENSATION
3-5-11: BADGE AND UNIFORM
3-5-12: DISMISSAL
3-5-13: HONORARY APPOINTMENTS PROHIBITED
3-5-14: RELATION TO OTHER POLICE OFFICERS

3-5-1: RESERVE POLICE OFFICER SYSTEM ESTABLISHED:
There is hereby established in and for the City a Police Reserve System.

3-5-2: PURPOSE OF RESERVE POLICE OFFICERS:
The purpose of the appointment of reserve police officers is to preserve the public peace and to promote general welfare of the City by giving authority to certain persons to assist regular police officers of the City in enforcing City ordinances and State Statutes.

3-5-3: APPOINTMENT OF RESERVE POLICE OFFICERS BY CHIEF OF POLICE:
The Chief of Police is hereby authorized to appoint adult persons to be reserve police officers. Such officers shall serve under rules and regulations herein contained and hereafter promulgated by the Chief of Police and approved by the City Council of the City of Mesa, but in no event shall such officers have powers superior to those of private citizens unless such officers be acting as reserve police officers under the general supervision of regular police officers of the City who are themselves on duty.

3-5-4: QUALIFICATIONS FOR APPOINTMENT; APPLICATIONS:
The Chief of Police shall determine additional qualifications for appointment and duty as a reserve police officer, and shall pass on all applications for appointment as a reserve police officer.

3-5-5: OATH OF OFFICE:
Every person appointed by the Chief of Police as a reserve police officer shall be sworn to faithful performance of his required duties as outlined by the Chief of Police.

3-5-6: PRE-ASSIGNMENT TRAINING:
The Chief of Police shall conduct a period of pre-assignment training for reserve officers sufficient to enable said officers to properly and adequately perform their required duties, and the Chief of Police may require such additional continuing training as he may find necessary.
3-5-7: ASSIGNMENT TO SPECIFIED DUTIES:
The Chief of Police shall have full discretionary authority to assign reserve police officers to such
duties as shall be best suited to preserve the public peace and to promote the general welfare of the City.

3-5-8: SUPERVISION BY CHIEF OF POLICE:
The Chief of Police shall be the sole supervisor of the duties of reserve police officers, but may
delegate such authority to regular police officers as is necessary for the proper functioning of the police reserve
system.

3-5-9: COMPLIANCE WITH POLICE DEPARTMENT REGULATIONS AND ACTS OF THE
COUNCIL:
Reserve police officers shall adhere to and be governed by the rules and regulations laid down for
the guidance of regular police officers insofar as such rules and regulations are applicable to and consistent with the
special class of duty prescribed for reserve police officers by the Chief of Police. Reserve police officers shall also
comply with all other applicable ordinances, rules and regulations adopted by the City Council and as instructed by
the Chief of Police.

3-5-10: OFFICIAL STATUS OF RESERVE POLICE OFFICERS; COMPENSATION:
(A) Reserve police officers, while on duty in such capacity, shall have police powers equivalent to those of
regular police officers, subject to such limitations as the Chief of Police may direct. Reserve police officers
shall not be subject to or acquire any rights under the Personnel Rules and Regulations of the City or the

(B) Reserve police officers shall receive no salary from the City or the Police Department.

3-5-11: BADGE AND UNIFORM:
The Chief of Police shall specify the type of badge and the type and color of uniform to be worn by
reserve police officers. Such officers shall conform to the specifications as made by the Chief.

3-5-12: DISMISSAL:
The Chief of Police shall have the authority to dismiss reserve police officers when he finds such
dismissal to be in the best interest of the City, or when such officers fail to maintain active reserve police officer
status.

3-5-13: HONORARY APPOINTMENTS PROHIBITED:
The Chief of Police shall not appoint any person as a reserve police officer who does not or will not
serve as an active reserve police officer as specified herein.

3-5-14: RELATION TO OTHER POLICE OFFICERS:
The provisions of this Chapter shall not be construed as altering, limiting or expanding the powers,
duties and authority of regular police officers of the City. (1020)
CHAPTER 6

UNARMED POLICE AIDES AND TRAFFIC INVESTIGATORS

SECTION:

3-6-1: UNARMED POLICE AIDES

3-6-2: TRAFFIC INVESTIGATORS

3-6-3: VOLUNTEER PARKING ENFORCEMENT (4186)

3-6-1: UNARMED POLICE AIDES:
As authorized by A.R.S. §28-627(E), and pursuant to the merit system regulations, the City Manager is authorized to appoint, and when necessary remove, except as he may authorize the Chief of Police to appoint and remove, unarmed police aides who shall be employed by the Police Department and shall be empowered to commence an action or proceeding before a court or judge for any violation of the ordinances of the City of Mesa regulating the standing or parking of vehicles. The authority of unarmed police aides is to be strictly limited to the enforcement of ordinances of the City of Mesa regulating the standing or parking of vehicles, and in no way shall this Section be construed to grant other powers or benefits to which peace officers of this State are entitled.

3-6-2: TRAFFIC INVESTIGATORS:
As authorized by A.R.S. §28-627(E), and pursuant to the merit system regulations, the City Manager is authorized to appoint, and when necessary remove, except as he may authorize the Chief of Police to appoint and remove, traffic investigators who shall be employed by the Police Department, and who are authorized to investigate traffic accidents within the limits of the City of Mesa, and commence an action or proceeding before a court or judge for any violation of a State statute or ordinance of the City of Mesa relating to traffic laws, providing such violation is related to a traffic accident which occurred within the limits of the City of Mesa. Such traffic investigators shall be unarmed at all times during the course of their duties, be employees of the City of Mesa and file written reports as required by A.R.S. §28-667, but in no way shall this Section be construed to grant other powers or benefits to traffic investigators to which peace officers of this State are entitled. (1168)

3-6-3: VOLUNTEER PARKING ENFORCEMENT: (4186)
As authorized by A.R.S. §28-886, the City Manager may authorize the Chief of Police to establish a volunteer parking enforcement program for parking for persons with physical disabilities. The Chief of Police or his designated representative is authorized to appoint volunteers to issue citations only to persons who violate A.R.S. §28-884 or an ordinance regulating parking in parking spaces for persons with physical disabilities. (4186)
CHAPTER 7

GENERAL SERVICES DEPARTMENT

SECTION:

3-7-1: ORGANIZATION
3-7-2: APPOINTMENT
3-7-3: DUTIES OF MANAGER

3-7-1: ORGANIZATION:
A General Services Department is hereby created, which shall consist of the office of General Services Manager, which office is hereby created, and such additional employees of the General Services Department as the needs of that Department may demand and are properly authorized.

3-7-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the General Services Manager, and pursuant to the Merit System Regulations, appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the General Services Manager to appoint or remove employees in the Department. (1395)

3-7-3: DUTIES OF MANAGER:

(A) Function. Under general direction plans, the General Services Manager controls and directs the overall activities of Purchasing, Warehouse, Personnel, Information Services, Printing, and Mail Services, and shall perform such other duties and functions as may from time to time be delegated to him. (3455)

(B) Representative Duties. The General Services Manager shall plan, organize and direct the functions of several divisions within the City; develop and implement policies and procedures applicable to administrative functions; direct the work of professional Purchasing personnel as well as staff engaged in Warehousing, Personnel and Human Resources, Information Services, Printing, and Mail Services; review general operation of divisions directed to determine efficiency; provide direction on major project or problem areas; oversee the preparation of General Services’ administrative budget and review the subordinate division budgets; coordinate activities with other City departments to ensure effective working relationships; advise City Management and Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department. (1421,3455)
CHAPTER 8

PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT (5054)

SECTION:

3-8-1: ORGANIZATION
3-8-2: APPOINTMENT
3-8-3: DUTIES OF PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT DIRECTOR (5054)

3-8-1: ORGANIZATION:
A Parks, Recreation & Commercial Facilities Department is hereby created, which shall consist of the office of Parks, Recreation & Commercial Facilities Director, which office is hereby created, and such additional employees of the Parks, Recreation & Commercial Facilities Department as the needs of that Department may demand and are properly authorized. (5054)

3-8-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Parks, Recreation & Commercial Facilities Department Director, and pursuant to the Merit System Regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Parks, Recreation & Commercial Facilities Department Director to appoint or remove employees in the Department. (5054)

3-8-3: DUTIES OF PARKS, RECREATION & COMMERCIAL FACILITIES DIRECTOR OR DESIGNEE:

(A) Function. Under general direction, the Parks, Recreation & Commercial Facilities Department Director or Designee plans, controls and directs the overall activities of Parks and Recreation, Mesa Convention Center, Mesa Amphitheatre, Mesa Cemetery, municipal Golf Courses, and HoHoKam Stadium, and shall perform such other duties and functions as may from time to time be delegated to him. (3766, 5054)

(B) Representative Duties. The Parks, Recreation & Commercial Facilities Department Director or Designee shall plan, organize, and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Parks, Recreation & Commercial Facilities Department budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise City Management and the Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1396, 5054)
CHAPTER 9

FINANCIAL SERVICES DEPARTMENT (4125)

SECTION:

3-9-1: ORGANIZATION
3-9-2: APPOINTMENT
3-9-3: DUTIES OF MANAGER

3-9-1: ORGANIZATION:
The Department of Financial Services is hereby created, which shall consist of the office of Financial Services Manager, which office is hereby created, and such additional employees of the Financial Services Department as the needs of that Department may demand and are properly authorized. (4125)

3-9-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Financial Services Manager, and pursuant to the Merit System Regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Financial Services Manager to appoint or remove employees in the Department. (4125)

3-9-3: DUTIES OF MANAGER:

(A) Function. Under general direction plans, the Financial Services Manager controls and directs the overall activities of Finance, Budget and Research, Customer Services and Collections, Cable TV, Tax and Business Licenses, and Telecommunications, and shall also perform related work as required. (2491,3455,4125)

(B) Representative Duties. The Financial Services Manager shall plan, organize and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Financial Services budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise City Management and the City Council of departmental progress through oral and written reports; speak before public groups on the plans, programs and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1397,4125)
CHAPTER 10

ELECTRIC DEPARTMENT (1398)

(Repealed by 3455)

CHAPTER 11

AIRPORT DEPARTMENT (1331)

(Repealed by 3168)

CHAPTER 12

NEIGHBORHOOD SERVICES DEPARTMENT (3766)

SECTION:

3-12-1: ORGANIZATION
3-12-2: APPOINTMENT
3-12-3: DUTIES OF MANAGER

3-12-1: ORGANIZATION:
A Neighborhood Services Department is hereby created which shall consist of the office of Neighborhood Services Manager, which office is hereby created, and such additional employees of the Neighborhood Services Department as the needs of that Department may demand and are properly authorized. (1441,3766)

3-12-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Neighborhood Services Manager, and pursuant to the merit system regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Neighborhood Services Manager to appoint or remove employees in the Department. (3766)

3-12-3: DUTIES OF MANAGER:
(A) Function. Under general direction plans, the Neighborhood Services Manager shall control and direct the overall activities of the Community Revitalization (e.g., Community Development Block Grant Program), Code Compliance, Housing, Neighborhood Outreach Office, and Falcon Field Airport. The Neighborhood Services Manager shall also perform related work as required. (2491,3168, 3766)

(B) Representative Duties. The Neighborhood Services Manager shall plan, organize, and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Neighborhood Services Department’s budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise the City Manager and the City Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1441,3766)
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CHAPTER 1

ADOPTION OF OFFICIAL CODE

SECTION:

1-1-1: TITLE
1-1-2: ACCEPTANCE
1-1-3: AMENDMENTS
1-1-4: CONSTRUCTION OF WORDS
1-1-5: DEFINITIONS
1-1-6: INTERPRETATIONS

1-1-1: TITLE:
This compilation and codification of the general ordinances of the City of Mesa is hereby declared to be and shall hereafter constitute the "Mesa City Code." Any reference made to the number of any section contained herein shall be understood to refer to the position of the same under its appropriate title heading, its chapter heading, and its section heading and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this Code by title in any legal document. (See Charter; Article II, Section 214(B))

1-1-2: ACCEPTANCE:
This City Code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in all administrative tribunals of this State as the ordinances of a general and permanent effect of the City. (1958 Code)

1-1-3: AMENDMENTS:
Any ordinance amending this Code shall set forth the title, chapter, and section number of the section or sections to be amended, and this shall constitute a sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this Code. All such amendments or revisions by ordinance shall be immediately forwarded to the City Clerk, and the said ordinance material shall be prepared for insertion in its proper place in each copy of the City Code. Each such replacement page shall be properly identified and shall be inserted in each copy of the City Code within thirty (30) days from the date of its final passage. (1958 Code)

1-1-4: CONSTRUCTION OF WORDS:
Whenever any word in any section of this City Code importing the plural number is used in describing or referring to any matters, parties, or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party, or person is referred to in this City Code by words importing the singular number only or the masculine gender, several matters, parties, or persons and females as well as males and bodies corporate shall be deemed to be included. Provided, that these rules of construction shall not be applied to any section of this City Code which contains any express provision excluding such construction or where the subject matter or content may be repugnant thereto. (1958 Code)

1-1-5: DEFINITIONS:
In this Code, unless the context otherwise requires:

CHILD, CHILDREN, MINOR, MINOR CHILD, AND MINOR CHILDREN: Means a person or persons under the age of eighteen (18) years. (1664)
PERSON: Shall be deemed to include any "person, firm, association, or corporation" or any organization of any kind.

WRITTEN AND IN WRITING: May include printing.

PERSONAL PROPERTY: Includes every description of money, goods, chattels, effects, evidence of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished and every right or interest therein.

STREETS: Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, and sidewalks.

OWNER: Applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, or lessee of the whole or of a part of such building or land.

TENANT OR OCCUPANT: Applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

Words prohibiting anything being done, except in accordance with a license or permit or authority from a board or officer, shall be construed as giving such board or officer power to license or permit or authorize such thing to be done.

OFFICER: Shall include officers and boards in charge of departments and members of such boards. The word "City," "Clerk," "Treasurer," or other such title shall mean City, City Clerk, City Treasurer, or other City officer as the use may be applicable.

WILLFULLY: When applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another or to acquire an advantage.

NEGLECT, NEGLIGENCE, NEGLIGENT, AND NEGLIGENTLY: Imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.

KNOWINGLY: Imports only a knowledge that the facts exist which brings the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

I-1-6: INTERPRETATIONS:
In the determination of the provisions of each section of this Code, the following rules shall be observed: (1958 Code)

(A) Intent to Defraud. Whenever an intent to defraud is required in order to constitute an offense, it shall be sufficient if an intent appears to defraud any person. (1958 Code)

(B) Liability of Employers and Agents. When the provisions of any section of this Official Code prohibit the commission of an act, not only the person actually doing the prohibited act or omitting the directed act, but also the employer and all other persons concerned with or in aiding or abetting the said person shall be guilty of the offense described and liable to the penalty set forth. (1958 Code)
CHAPTER 2

SAVING CLAUSE

SECTION:

1-2-1: REPEAL OF GENERAL ORDINANCES
1-2-2: PUBLIC UTILITY ORDINANCES
1-2-3: PENDING SUITS

1-2-1: REPEAL OF GENERAL ORDINANCES:
All general ordinances of the City passed prior to the adoption of this Code are hereby repealed, except such as are referred to herein as being still in force or are by necessary implication herein reserved from repeal (subject to the saving clause contained in the following section), from which are excluded the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming, or vacating streets, alleys, or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

1-2-2: PUBLIC UTILITY ORDINANCES:
No ordinance relating to railroads or railroad crossings with streets and other public ways or relating to the conduct, duties, service, or rates of public utilities shall be repealed by virtue of the adoption of this Code or by virtue of the preceding Section, excepting as this Code may contain provisions for such matters, in which case this Code shall be considered as amending such ordinance or ordinances in respect of such provisions only.

1-2-3: PENDING SUITS:
No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising under the former ordinance or in any way whatever to affect any such offense or act so committed or so done or any penalty, forfeiture, or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture, or punishment be mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

Nothing contained in this or the preceding Section shall be construed as abating any action now pending under or by virtue of any general ordinance of the City herein repealed or as discontinuing, abating, modifying, or altering any penalty accrued or to accrue or as affecting the liability of any person, firm, or corporation or as waiving any right of the City under any ordinance or provision thereof in force at the time of adoption of this Code. (1961 Code)
CHAPTER 3

CITY LIMITS

SECTION:

1-3-1: CITY LIMITS

1-3-1: CITY LIMITS:
All annexation ordinances heretofore adopted are hereby declared to be and remain in full force and effect, and the City limits of the City of Mesa are hereby declared to be as they were constituted as of the date of the adoption of this Municipal Code.

CHAPTER 4

CORPORATE SEAL

SECTION:

1-4-1: CORPORATE SEAL

1-4-1: CORPORATE SEAL:
The corporate seal of the City of Mesa shall be circular in form, not less than one inch (1") or more than two (2") in diameter, with the words "City of Mesa, Maricopa County, Arizona, Seal," engraved thereon. (1015)
CHAPTER 5

THE COUNCIL

SECTION:

1-5-1: GENERAL POWERS
1-5-2: MEETINGS
1-5-3: VOTES OF MEMBERS
1-5-4: COMPULSORY ATTENDANCE
1-5-5: MISCONDUCT OF MEMBERS
1-5-6: VICE MAYOR AND MAYOR PRO TEM
1-5-7: AGENDA
1-5-8: COUNCIL PROCEDURE
1-5-9: REMOVAL OF BOARD AND COMMISSION MEMBERS; RESIGN TO RUN

1-5-1: GENERAL POWERS:
All powers and authority conferred upon the City of Mesa by the laws of the State of Arizona and not delegated to other officers or expressly reserved to the people of the City shall be vested in the Council. All powers vested in the Council shall be exercised in such manner as may be directed or authorized by law; provided, however, that only such action of the Council shall be by ordinance as may be required by the statutes of the State. All other powers of the Council shall be exercised by resolution, order, or motion. (1957 Code)

1-5-2: MEETINGS:
The regular meetings of the Mesa City Council will be held on the first and third Monday evenings of each month at five thirty (5:30) P.M. unless a notice providing otherwise is posted in accordance with the Arizona Open Meetings Act. Special meetings of the Council may be convened at any time by the Mayor or by the Clerk upon the written request of four (4) members. All meetings of the Council shall be held within the corporate limits of the City of Mesa (except that meetings with other governmental bodies may be held outside the City limits) and may be held at any place therein designated in the call of the meeting. Unless designated to be held at a place other than the Council Chambers, all meetings shall be held in the Council Chambers. (244,314,399,429,770,1458,2583)

1-5-3: VOTES OF MEMBERS:
The meetings of the Council shall be public, and a journal of its proceedings shall be kept by the Clerk under its direction. The ayes and nays shall be taken and entered on the journal in the final action upon the granting of franchises; making of contracts; purchasing, disposing of, or leasing City property; or the passage of any ordinance; and in all other cases, upon the call of any Councilman. Provided, however, that the Council may recess from time to time and meet in informal or executive sessions for the consideration of such matters as it may deem to be advisable or expedient.

1-5-4: COMPULSORY ATTENDANCE:
Any member of the Council at any regular or specially called meeting may, in writing, demand the attendance of the absent members, which said demand shall be entered on record forthwith by the Clerk; and it shall thereupon be the duty of the Chief of Police, upon the entry of said demand, to bring the said member forthwith to attend the Council meeting, and upon failure or refusal of said member to forthwith attend the Council meeting, it shall be the duty of the Chief of Police to arrest said member and bring him to the City Hall for attendance on such meeting, there to remain until the meeting has performed the business thereof and has regularly adjourned.
1-5-5: **MISCONDUCT OF MEMBERS:**
The Mayor shall be authorized to assess a fine of not more than twenty-five dollars ($25.00) upon any member for disorderly conduct at any meeting of the Council upon a concurring vote of three (3) members thereof and to hold and direct such to be imprisoned until the payment of such fine.

Any member of the Council may be expelled for any cause determined sufficient by the Council upon a vote of five (5) of the members.

The judgment of the Council as to the causes for fine or expulsion shall be conclusive. (131)

1-5-6: **VICE MAYOR AND MAYOR PRO TEM:**
Upon the failure or refusal of the Mayor for five (5) days to sign any ordinance, resolution, contract, warrant, or other document or instrument requiring his signature, the Vice Mayor is authorized to sign such document or instrument, and his signature to such ordinance, resolution, contract, warrant, or other document or instrument shall have the same force and effect as that of the Mayor. In the absence of the Mayor and Vice Mayor at any meeting, the Clerk or any member may call the Council to order, and thereupon a Mayor Pro Tem shall be chosen who shall have, for the time necessary, the same powers and duties as the Mayor. (802)

1-5-7: **AGENDA:** (3213)

(A) The City Manager will prepare and distribute all City Council meeting agendas. The City Manager will place such items on the agenda, and in such order, as necessary to accomplish the business of the City. (3213)

(B) The City Manager will also place an item on the agenda at the request of the Mayor or three (3) Councilmembers. (3213)

(C) At the request of any Councilmember, an item on a Council consent agenda will be removed from the consent portion of the agenda and will be separately considered. (3213)

1-5-8: **COUNCIL PROCEDURE:** (131,3213)

(A) The Mayor or other presiding officer in the Mayor’s absence will determine all questions of parliamentary or Council procedure not provided for by law. The Mayor will endeavor to conduct Council meetings so as to accomplish the public’s business fairly, yet efficiently. (3213)

(B) Neither staff nor a member of the audience shall speak at a Council meeting until recognized for that purpose by the Mayor. The Mayor shall not unreasonably refuse to recognize a Councilmember to speak; the Mayor may choose whether to recognize all other speakers. In addition, the Mayor may:

1. Determine the order in which persons speak; (3213)

2. Require a group to designate a spokesperson; (3213)

3. Establish time limits for agenda items and speakers; and (3213)

4. Take such other action as the Mayor deems necessary and appropriate in presiding over the meeting. (3213)

   All speakers at Council meetings shall address their remarks to the Mayor. (3213)
(C) The Mayor shall preserve order at all Council meetings. The Mayor may direct the sergeant-at-arms to remove persons from the meeting who, after warning:

1. Fail to address their remarks to the Mayor; (3213)

2. Fail to address the agenda item under consideration; (3213)

3. Make personal remarks about City Councilmembers or other persons; or (3213)

4. Disrupt the meeting in any way. (3213)

(D) A motion to reconsider a Council decision may be made only by a Councilmember who voted with the majority on that decision. (3213)

1. When the decision being reconsidered has an effective date, the motion to reconsider must be made before that effective date; otherwise, the motion is out of order. (3213)

2. When the decision being reconsidered has no effective date (such as a decision not to take action), a motion to reconsider must be made within two (2) weeks of the original Council decision. (3213)

(E) The Mayor’s decision regarding parliamentary or Council procedure is final and nonappealable unless five (5) Councilmembers approve a motion to overrule the Mayor. A motion to overrule the Mayor is in order only if made at the same meeting as the Mayor’s decision. If the Mayor’s decision is overruled, that decision is final, nonappealable, and not subject to a motion for reconsideration. (3213)

1-5-9: REMOVAL OF BOARD AND COMMISSION MEMBERS; RESIGN TO RUN

(A) By a vote of five (5) members of the City Council, Board and Commission members appointed by the Mayor and approved by the City Council under Section 501 of the City Charter may be removed for any cause deemed sufficient by the City Council, such as:

1. Lacking at any time during the Board member's term any qualification, including but not limited to Mesa residency or professional licensure, prescribed by the City Charter or law for that office; (3353)

2. Violating any prohibition of the City Charter or Code pertaining to their office; (3353)

3. Being convicted while in office of a felony or crime involving moral turpitude; or (3353)
4. Being absent from three (3) consecutive meetings of the Board without being excused by the chairperson. (3353)

(B) A Council decision to remove a Board or Commission member shall be effective in accordance with its terms, and shall be final and nonappealable. (3353)

(C) Board and Commission members appointed by the Mayor and approved by the City Council under Section 501 of the City Charter shall resign before running for any elective public office. This paragraph is self-executing and requires no vote by the City Council. (3353)
CHAPTER 6

COUNCIL COMMITTEES

SECTION:

1-6-1: COUNCIL COMMITTEES
The following Standing Council Committees are hereby established: (1459, 4675, 5022)

Audit, Finance and Enterprise Committee (4607, 5022)
Public Safety Committee (4675)
Economic Development Committee (2990, 3216, 4675, 5022)
Sustainability and Transportation Committee (4675, 5022)
Government Affairs Committee (4675, 5022)
Community and Cultural Development Committee (4675, 5022)

1-6-2: COMMITTEE MEMBERS:
Each committee shall consist of three (3) members of the Council. The Committee members shall be appointed by the Mayor, with the concurrence of the City Council, at the first regular meeting of the Council following any regular City election or as soon thereafter as is practicable. (5022)

The City Manager shall be a nonvoting; ex-officio member of the Audit, Finance and Enterprise Committee. (5022)

The chair of each committee shall be responsible to the Council for the function of the committee. (1459, 3114, 3216, 4607, 4675, 5022)

1-6-3: AGENDA:
Items may be placed on the Council Committee agenda by the Chairperson; the Mayor; 2 Councilmembers; or the City Manager. (4675, 5022)

1-6-4 through 1-6-8: (Repealed by 803)
CHAPTER 7

CITY MAGISTRATES

SECTION:

1-7-1: CITY MAGISTRATES
1-7-2: TERM OF OFFICE

1-7-1: CITY MAGISTRATES:
The Council shall appoint one (1) or more City Magistrates, each of whom shall be a member of the Arizona Bar. Compensation of City Magistrates shall be fixed by the Council. (1959)

1-7-2: TERM OF OFFICE:
City Magistrates shall serve for terms of two (2) years each for the first two terms. The term of office for those Magistrates serving prior to the first day of July 1985 shall commence on July 1, 1985, and terminate on June 30, 1987. The first term of office for City Magistrates appointed subsequent to July 1, 1985, other than Magistrates appointed on the first day of July of any year, shall be from the date of appointment until the third thirtieth day of June subsequent to the date of the appointment. Any Magistrate appointed on the first day of July of any year shall serve for a two- (2-) year term, terminating on the second thirtieth day of June subsequent to appointment. If reappointed for a second term, a Magistrate shall serve for a term of two (2) years, commencing on July 1 of the year of appointment and terminating on the thirtieth day of June in the second calendar year following. If reappointed for a third or subsequent term, a Magistrate shall serve for terms of four (4) years, commencing on July 1 of the year of appointment and terminating on the thirtieth day of June in the fourth calendar year following. (1959, 3714)
CHAPTER 8
QUALIFIED ELECTORS
(3326)

SECTION:

1-8-1: QUALIFIED ELECTOR; DEFINITION
1-8-2: PETITION CIRCULATORS

1-8-1: QUALIFIED ELECTOR; DEFINITION:

(A) Every resident of the City is qualified to register and vote in City of Mesa elections if he or she: (3326)

1. Is a citizen of the United States; (3326)

2. Will be eighteen (18) years of age or more on or before the date of the next City election following registration; (3326)

3. Will have been a resident of the City and registered to vote prior to midnight of the twenty-ninth (29th) day preceding the date of the next City election; (3326)

4. Is able to write his or her name, or make a mark, unless prevented from so doing by physical disability; (3326)

5. Has not been convicted of treason or a felony, unless restored to civil rights; and (3326)

6. Has not been adjudicated an incapacitated person as defined in A.R.S. §14-5101, or its successor statute. (3326)

(B) For purposes of this Title, "resident" means an individual who has actual physical presence in this City, combined with an intent to remain. A temporary absence does not result in a loss of residence if the individual has an intent to return following his or her absence. An individual has only one residence for purposes of this Title. (3326)

1-8-2: PETITION CIRCULATORS:

(A) All circulators of nomination petitions for Mayor or City Councilmember shall be qualified Mesa electors, as defined in Section 1-8-1 above.* (3326)

(B) All circulators of initiative or referenda petitions proposing to change the Mesa City Charter or Mesa City Code shall be qualified Mesa electors, as defined in Section 1-8-1 above.* (3326)

(C) In evaluating petitions presented for signature verification, the City Clerk shall not count or consider signatures on an initiative, referendum, or nomination petition under this Section that are circulated by persons other than a Mesa qualified elector, as defined in Section 1-8-1 above. * (3326)

* Effective August 6, 1999, pursuant to A.R.S. Titles 16 and 19, circulators of initiative, referendum, nomination, and recall petitions must be qualified to register to vote in this State (HB2656, Buckley v. American Constitutional Law Foundation).
CHAPTER 9

RECORDS

SECTION:

1-9-1: FORMS:
The Council is authorized to designate, prescribe, and approve the form of all records of the City.

1-9-2: RECORDS:
The public records of the City shall consist of minute records, resolutions and ordinance records, tax records, account records, form records, and such other records, books, and documents as the Council may prescribe.

The original ordinances, resolutions, and minutes of the City shall be recorded, at length, in books to be known, respectively, as the Mesa City Code Book, Resolution Record, and Minute Book and shall be deposited and kept by the Clerk.

1-9-3: FILES:
Authenticated copies of all ordinances, resolutions, and orders, with affidavit of posting or publishing, if any there be, attached and all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders, and other documents of whatsoever nature shall be numbered and filed separately by the Clerk.

1-9-4: MINUTES:
It shall be unnecessary to enter or record at length in the minutes of proceedings written ordinances, resolutions, or orders, unless expressly required to be so entered by the State statutes or the ordinances, resolutions, or orders of the City, but it shall be sufficient to refer to such by the number and name, the date of their passage, and such other facts as may be necessary to identify the same.

1-9-5: SPECIAL ORDINANCES:
Ordinances passed regarding special matters, such as franchises, bonds, or other special matter, shall not be incorporated in the compiled ordinances of the City. Only general ordinances then in effect shall be therein compiled, but all such special or extraordinary ordinances shall be filed, entered, and authenticated as provided herein.

1-9-6: APPROVED FORMS:
No blank or form shall be used in the transaction of business of the City until the same shall have been submitted for approval as to form to the City Attorney. It shall be the duty of the Clerk to keep all forms consecutively numbered and filed in his office.

1-9-7: REGULATORY AND DIRECTORY RESOLUTIONS:
All resolutions or orders regulating or relating to the government use, control, or service of public utilities, streets, health, office routine, and other similar matters shall be typewritten, authenticated by the Mayor and Clerk, and filed together in a suitable binder for convenient use and reference. The Clerk shall keep all such resolutions and orders up to date.
CHAPTER 10

PUBLICATION OF PROCEEDINGS

SECTION:

1-10-1: PUBLICATIONS
1-10-2: POSTING
1-10-3: BIENNIAL STATEMENT (REP. BY 1057)

1-10-1: PUBLICATIONS:
Only such ordinances, resolutions, orders, motions, regulations, or proceedings of the City Council shall be published as may be required by the Mesa City Charter, Section 211; by the applicable statutes of the State of Arizona (A.R.S. §9-811, §9-812); or as expressly ordered by the Council. (1057)

1-10-2: POSTING:
Every ordinance imposing any penalty, fine, forfeiture, or other punishment shall, after passage thereof, be posted by the Clerk in three (3) or more public places within the City, and a copy of said ordinance, with affidavit of posting attached, shall be filed in the office of the Clerk and shall be proof of said posting as provided by law.

1-10-3: BIENNIAL STATEMENT: (Rep. by 1057)

CHAPTER 11

RECALL

SECTION:

1-11-1: RECALL

1-11-1: RECALL:
Elective officers of the City shall be subject to recall from offices by the qualified electors of the City under the proceedings and in the manner prescribed for the recall of such officers by the State statutes.
CHAPTER 12

COURTS AND PROCEDURES

SECTION:

1-12-1: CITY MAY MAINTAIN ACTION
The City may also, in addition to any and all prosecutions for violation of any and all laws, rules, and regulations of the City government, maintain an action in the Police Court of the City in any proper state, county, or precinct court for the recovery of any penalty, forfeiture, debt, tax, account, demand, right, or benefit due to said City. When such action is brought into the Police Court, said action shall be brought and conducted as nearly as possible in the same manner as civil actions in justice courts. Said Police Court shall have power to issue any and all writs and to make any and all orders and judgments which may be necessary and proper in the premises. (119)

1-12-2: PROCEDURE OF POLICE COURT:
The service of processes and writs in civil actions in the Police Court shall be as nearly as practicable in the same manner as provided for the service of processes and writs in justice courts; in all other cases, proceedings, and matters (unless notices, processes, demands, and similar documents or writs are expressly required to be personally served upon the defendant, property owner, or party concerned), such notices, demands, and similar documents or writs may be served by posting a copy of the same at the door of the City Hall and by mailing a copy thereof to the person or party concerned at his last known post office address, and proof of service may be made by any person serving the same or causing the same to be served. (119)

1-12-3: COURT SUSTAINABILITY FEE:
A court sustainability fee in the amount of fifteen dollars ($15.00) is hereby established. The Mesa Municipal Court shall direct a defendant to pay the court sustainability fee on all charges where the court imposes a fine, sanction, penalty, or assessment except for parking violations. The court sustainability fee shall be in addition to all other fines, sanctions, penalties, or assessments of whatever type. (3477,3768,4203,5172,5327)

1-12-4: DEFAULT FEE:
A default fee in the amount of seventy dollars ($70.00) is hereby established. The Mesa Municipal Court shall direct a defendant to pay the default fee as part of each default judgment entered for failure to appear in a civil traffic violation case, for failure to satisfy in full a civil sanction imposed in a civil traffic violation case, and for failure to pay a court-ordered fine, restitution, or incarceration fees. The default fee shall not apply to parking violations. Default fees shall be deposited into the City’s General Fund. (3477,4204)

1-12-5: WAIVER OF FEES:
Municipal Court Magistrates and Civil Traffic Hearing Officers are authorized to waive the court sustainability fee, the court capital construction fee, and the default fee when such waiver would be in the interest of justice. Civil Traffic Hearing Officer waivers are limited to fees imposed in civil traffic cases. (3477,4027,4416,5172)
1-12-6: COLLECTION AGENCY FEES AND CHARGES:
A defendant who defaults in his or her obligation for the payment of monies owed or due to the Mesa Municipal Court, including but not limited to, restitution, fines, sanctions, surcharges, assessments, penalties, bonds, costs, and fees, is liable for all fees and charges assessed by a collection agency that is licensed pursuant to the Arizona Revised Statutes, and that is engaged by the City to collect and enforce payment by the defendant. Collection agency fees and charges shall be added to the sum or sums due from and chargeable against the defendant. (3477)

1-12-7: PAYMENT OF COSTS OF CONFINEMENT: (3768)

(A) Any person who is convicted of a misdemeanor criminal offense or misdemeanor criminal traffic offense in the Municipal Court, as part of any jail sentence imposed by the Municipal Court, shall be required to reimburse the City of Mesa for all expenses incurred by reason of such confinement. (3768)

(B) Municipal Court Magistrates are authorized to waive the costs of the confinement fee under this Section when the Magistrate finds such a waiver would be in the interests of justice. (3768)

1-12-8: APPOINTMENT OF CIVIL TRAFFIC HEARING OFFICERS AND COURT COMMISSIONERS: (4027,4947)

(A) The presiding City Magistrate may appoint one (1) or more Civil Traffic Hearing Officers and/or one (1) or more Court Commissioners when in the presiding City Magistrate's opinion, the appointment of such Civil Traffic Hearing Officers and/or Court Commissioners is necessary to assure prompt disposition of cases. Civil Traffic Hearing Officers and Court Commissioners shall serve for terms of two (2) years from the date of appointment and can be reappointed by the presiding City Magistrate. Civil Traffic Hearing Officers and Court Commissioners may be removed for good cause during their term by the presiding City Magistrate. (4027,4947)

(B) Civil Traffic Hearing Officers may hear and dispose of Civil Traffic violation cases, vicious dog cases, and Mesa Civil Code violation cases filed in the Mesa Municipal Court. Court Commissioners may hear and dispose of civil offenses as well as criminal offenses. The judgment of the Civil Traffic Hearing Officers and Court Commissioners constitutes the judgment of the Court, which is appealable to the Superior Court as prescribed by State statute and rules promulgated by the Arizona Supreme Court. (4027,4947)

1-12-9: COURT CAPITAL CONSTRUCTION FEE (4416,4621)

(A) A court capital construction fee in the amount of sixteen dollars and fifty cents ($16.50) is hereby established. (4416,4621)

(B) The Mesa Municipal Court shall direct a defendant to pay the court capital construction fee in all cases, except for parking violations. (4416)

(C) The court capital construction fee is for the purpose of offsetting costs associated with the construction, debt service, furniture, fixtures and equipment of a new Mesa Municipal Court facility and is not subject to state surcharges. (4416)

(D) The court capital construction fee shall be increased July 1, 2008 and every third year thereafter in the amount of three dollars ($3.00), and shall be discontinued upon retirement of debt associated with construction of the new court facility. (4416)

(E) The court capital construction fee and the applicable interest earned shall be deposited into the court construction fee fund (#465) and accounted for separately. (4416)
CHAPTER 13

PROPERTY IMPROVEMENT
ASSESSMENT SALES

SECTION:

1-13-1: PROCEDURE FOR SALE

1-13-2: LAND MAY AGAIN BE SOLD

1-13-3: NOTICE OF SALE BY REFERENCE TO PARCEL OF LAND

1-13-4: SALE OF PROPERTY TO THE CITY

1-13-1: PROCEDURE FOR SALE:

In any sale of property for nonpayment of public improvement assessments where there is no purchaser other than the City who will pay the entire amount of the assessment, penalty, and costs, including fifty cents ($0.50) to the Superintendent of Streets for a certificate of sale, the Superintendent shall sell the lot or portion thereof to the person who will take the least quantity of land and then and there pay the amount at the assessment then delinquent, including interest, penalty, and costs due, and fifty cents ($0.50) to the Superintendent of Streets for a certificate of sale, and deed shall issue to the purchaser, subject to redemption as provided by the statutes of the State. (162)

1-13-2: LAND MAY AGAIN BE SOLD:

The lien of public improvement on the entire lot, piece, or parcel of land assessed shall continue to be in effect for the amount of the assessment or portion thereof, including said interest, penalty, and costs thereafter to become due, and the land may again be sold should the assessment again become delinquent. (162)

1-13-3: NOTICE OF SALE BY REFERENCE TO PARCEL OF LAND:

When the right to sell a portion of any lot or any part thereof less than the whole is intended to be reserved, such fact shall be stated in the notice of sale by reference to this Chapter. (162)

1-13-4: SALE OF PROPERTY TO THE CITY:

In any sale of property for nonpayment of public improvement assessments where there is no purchaser other than the City, the property shall be struck off to the Municipality as the purchaser, and the Treasurer shall pay into the Special Improvement Fund out of the General Fund only the sum required to pay the installment then due or to become due upon the bonds issued for the assessment; and thereupon the City shall become obligated to pay from the General Fund succeeding installments and interest on the bonds as are payable by the assessments on the lot. At any time before the execution and delivery of a deed therefor, the property owner shall have the right to redeem the lot by paying to the City the amount of any installments and interest paid by the City on the assessments on the lot, together with the penalties assessed and the costs incurred by the City. If the property owner redeems the lot by paying the amounts above specified, the lien of the assessments shall not be extinguished. (162,1803)
CHAPTER 14

EMERGENCY POWERS OF MAYOR

SECTION:

1-14-1: EMERGENCY POWERS OF MAYOR

1-14-1: EMERGENCY POWERS OF MAYOR:
Whenever the Mayor of the City shall deem that an emergency exists due to fire, conflagration, flood, earthquake, explosion, war, bombing, acts of the enemy, or any other natural or manmade calamity or disaster or by reason of threats or occurrences of riots, routs, affrays, or other acts of civil disobedience which endanger life or property within the City, the Mayor is hereby authorized by proclamation to declare an emergency or a local emergency to exist, as defined in Title 26, Chapter 2, Article 1, Arizona Revised Statutes; and the Mayor is further authorized to exercise all of the rights, powers, and authorities granted to mayors pursuant to the provisions of said Article. (707,1610)

CHAPTER 15

SALARIES

SECTION:

1-15-1: SALARIES OF ELECTIVE OFFICERS

1-15-2: SALARIES OF APPOINTIVE OFFICERS

1-15-1: SALARIES OF ELECTIVE OFFICERS:
The salaries of elective officers of the City shall be as fixed by the appropriate statutes of the State of Arizona.

1-15-2: SALARIES OF APPOINTIVE OFFICERS:
The salaries for all appointive officers of the City shall be as fixed from time to time by the Council by motion noted in its minutes.

CHAPTER 16

BONDS OF OFFICERS

(Repealed by 1070)
CHAPTER 17

CLERK

SECTION:

1-17-1: APPOINTMENT
Upon the recommendation of the Manager, the Council shall appoint a City Clerk and fix his compensation. (Article IV, Section 401(A), Mesa City Charter)

1-17-2: DUTIES
The Clerk shall give notice of Council meetings to its members and to the public, keep the journal of its proceedings, and perform any other lawful duties assigned by this Charter, the Council, or the Manager. The Clerk shall serve at the pleasure of the Council and report to the City Manager or the Manager's designee. (Article IV, Section 401(A), Mesa City Charter, 3455)

CHAPTER 18

CITY TREASURER

SECTION:

1-18-1: OFFICE CREATED
The office of City Treasurer is hereby created. (1028)

1-18-2: EX OFFICIO TREASURER
The duly appointed, qualified, and acting Finance Director of the City shall also be the City Treasurer of the City. (1393)

1-18-3: DUTIES OF CITY TREASURER
The City Treasurer shall have such duties as are provided by the statutes of the State of Arizona and by the provisions of the Mesa City Code and as shall be prescribed from time to time by the City Council by ordinance, resolution, or other adoptive action, together with such duties as may be delegated from time to time by the City Manager. (1028)
CHAPTER 19

CITY ATTORNEY (5282)

SECTION:

1-19-1: APPOINTMENT:
The Council shall appoint a City Attorney and fix his compensation. (Article IV, Section 401(B), Mesa City Charter)

1-19-2: DUTIES:
The City Attorney shall serve as the chief legal advisor to the Council, the Manager, and all City departments, offices, and agencies. The City Attorney shall represent the City in all legal proceedings, and shall perform any other duties prescribed by this Charter, law, or ordinance. The City Attorney shall serve at the pleasure of the Council. (Article IV, Section 401(B), Mesa City Charter) (5282)

1-19-3: ADDITIONAL AUTHORITY:
The City Attorney is authorized to file, pursue, and defend civil and criminal misdemeanor cases and appeals in any court or administrative tribunal on behalf of the City. The City Attorney shall provide advice and information about cases and appeals to Council at the request of, or when needed by, the Council. (5282)
CHAPTER 20

CITY MANAGER

SECTION:

1-20-1: OFFICE CREATED
1-20-2: APPOINTMENT
1-20-3: REMOVAL
1-20-4: DUTIES
1-20-5: RESTRICTIONS
1-20-6: PUBLIC RELATIONS
1-20-7: BOND
1-20-8: COMPENSATION
1-20-9: Acting City Manager

1-20-1: OFFICE CREATED:
The office of City Manager is hereby created. (312)

1-20-2: APPOINTMENT:
The Council shall by vote of at least two-thirds (2/3) of its members appoint the City Manager for an indefinite term, and the Council shall fix his compensation. He shall be chosen on the basis of his qualifications for the office, with first preference given to applicants who reside in Mesa. He shall within sixty (60) days after his appointment and thereafter during his tenure in office reside in the City. He shall be a citizen of the United States of America. (312; Article III, Section 301, Mesa City Charter)

1-20-3: REMOVAL:
The Council may remove the Manager at any regular or special meeting by a vote of at least two-thirds (2/3) of the Council. It may pay him severance pay not exceeding two (2) months' salary. A dismissed Manager shall, upon his request, have a public hearing; however, the action of the Council shall be final and not subject to review by any court or agency. This Chapter vests all authority to suspend and remove the Manager in the Council. (312; Article III, Section 302, Mesa City Charter)

1-20-4: DUTIES:
The Manager shall be the chief administrative officer of the City, responsible to the Council for administration and coordination of all departments, boards, and affairs assigned to him by this Chapter, by ordinance, or by resolution. He shall have authority and responsibility to: (312; Article III, Section 303, Mesa City Charter)

(A) Attend Council meetings and present information and recommendations he deems necessary or as requested by any member of the Council, but he shall have no vote. (312; Article III, Section 303, Mesa City Charter)

(B) Recommend to, and upon approval by the Council, appoint all City officers (except those subject to Council appointment pursuant to Section 401 of the Mesa City Charter), and when deemed necessary, suspend, and after approval of the Council, remove them. (312; Article III, Section 303, Mesa City Charter)

(C) Pursuant to the merit system regulations, appoint, and when necessary remove, all employees of the City, except as he may authorize heads of departments and offices to appoint and remove their own subordinates. Any unexcused voluntary absence of any employee shall constitute resignation. (312; Article III, Section 303, Mesa City Charter)
(D) Recommend to the Council personnel policies and assignments for efficient operation of the City government. (312; Article III, Section 303, Mesa City Charter)

(E) Submit to the Council the annual budget and capital program. (312; Article III, Section 303, Mesa City Charter)

(F) Supervise all expenditures and purchases of the City. (312; Article III, Section 303, Mesa City Charter)

(G) See that all laws, provisions of this Chapter, and acts of the Council subject to enforcement by him or by officers under his direction are faithfully executed. (312; Article III, Section 303, Mesa City Charter)

(H) Execute or cause to be executed by his designated representative all contracts and other lawful documents authorized by the Council. (Article III, Section 303, Mesa City Charter)

(I) Grant or assign easements to utility and telecommunication entities, public agencies, or governmental entities for utility and telecommunication easements, storm water and drainage easements, and similar types of easements that are intended to benefit the public or to allow utility services to City owned property. The grants or assignments may be from City owned property, City rights-of-way, or other property for which the City has a property right that allows it to grant or assign such easements. (4975)

(J) Dedicate rights-of-way and easements to the public from City owned property. (4975)

(K) Perform any other lawful duties required of him by the Council. (312; Article III, Section 303, Mesa City Charter)

1-20-5: RESTRICTIONS:

(A) The Manager shall not engage in any other employment during his tenure of office. (Article III, Section 304, Mesa City Charter)

(B) The Manager shall take no part in campaigns for election of Mayor or Councilmen other than to cast his vote and express privately his opinions. (Article III, Section 304, Mesa City Charter)

(C) The Manager shall not exercise any policy-making or legislative functions. All law enforcement policies shall be determined by the Council. (312; Article III, Section 304, Mesa City Charter)

1-20-6: PUBLIC RELATIONS:

In the discharge of his duties as City Manager, the person holding such position shall endeavor at all times to exercise the highest degree of tact, patience, and courtesy in his contacts with the public and with all City boards, departments, and employees and shall use his best efforts to establish and maintain a harmonious relationship between all personnel employed in the government of the City to the end that the highest possible standards of public service shall be continuously maintained. (312)

1-20-7: BOND:

The City Manager shall furnish a surety bond to be approved by the Council in the sum of one thousand dollars ($1,000.00), said bond to be conditioned on the faithful performance of his duties. (312)

1-20-8: COMPENSATION:

The City Manager shall receive such compensation as the Council shall fix from time to time by motion noted in its minutes. (312)

1-20-9: ACTING CITY MANAGER:

By letter filed with the Clerk, the Manager shall designate a qualified City employee and an alternate to become Acting Manager in the event of his temporary absence or disability. The Council may revoke such designation and appoint another employee to serve as Acting Manager until the Manager shall return. (Article III, Section 305, Mesa City Charter)
CHAPTER 21
(727, 885, 897, 933, 1548, 4215, 4683, 5019, 5089)

THE PROCUREMENT OF MATERIALS, NON-PROFESSIONAL CONTRACT SERVICES
AND CAPITAL IMPROVEMENTS (5089)

SECTION:

1-21-1: APPLICATION (5089)
1-21-2: DEFINITIONS (5089)
1-21-3: PROCEDURES FOR PROCUREMENT OF CAPITAL IMPROVEMENTS (5089)
1-21-4: PROCEDURES FOR PROCUREMENT OF MATERIALS AND NON-PROFESSIONAL
   CONTRACT SERVICES (5089)
1-21-5: COMPETITIVE PROCUREMENTS (5089)
1-21-6: SOLE SOURCE PROCUREMENTS (5089)
1-21-7: COOPERATIVE PROCUREMENTS (5089)
1-21-8: EMERGENCY PROCUREMENTS (5089)
1-21-9: DEBARMENT (5089)
1-21-10: PROTESTS AND APPEALS (5089)
1-21-11: CONFLICTS OF INTEREST (5089)

1-21-1: APPLICATION: (4215, 4683, 5019, 5089)

(A) The provisions of this Chapter shall apply to the Procurements of Materials, Non-Professional Contract Services and Capital Improvements by the City using public funds, including state and federal assistance funds. It shall not apply to contracts for Professional Services as defined below; or contracts between the City and the State, its political subdivisions or other Governmental Agencies or Governmental Organizations. (5089)

(B) Nothing in this Chapter shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or agreement. (5089)

(C) Except by mutual consent of the parties to the contract, this Chapter may not change any commitment, right or obligation of the City or of a contractor under a contract in existence on the effective date of this Chapter or any amendment thereto. (5089)

1-21-2: DEFINITIONS: (4215, 5019, 5089)

(A) CAPITAL IMPROVEMENTS: The construction of a building or structure, or additions to or alterations of existing buildings or structures. The term structure shall include without limitation paving, concrete, or other mortar work, streetlights, traffic signals, drainage facilities, pipes, grading, major improvements to landscaping, and other construction work. (4215, 5019, 5089)

(B) GOVERNMENTAL AGENCY: The State of Arizona or a political subdivision thereof, any other state of the United States, or a political subdivision thereof, or any department of the federal government. (4215, 5019, 5089)
(C) **GOVERNMENTAL ORGANIZATION:** An organization, the members of which are Governmental Agencies. (4215, 5019, 5089)

(D) **MATERIALS:** Materials, supplies, commodities, equipment and insurance. Materials do not include land or an interest in real property. (4215, 5019, 5089)

(E) **NON-PROFESSIONAL CONTRACT SERVICES:** Services which are primarily provided through semi-skilled labor. The primary criteria in the selection process will be qualifications of the vendor and price. (5089)

(F) **PERSON:** Any individual, corporation or business entity of whatever legal form, union, committee, club, other organization or group of individuals or subsidiary thereof, their representatives or affiliates. (5019, 5089)

(G) **PROCUREMENT:** The purchase of Materials, Non-Professional Contract Services, or the contracting for Capital Improvements. Procurement includes development of requirements, solicitation and selection of sources, and contract administration. (4215, 5019, 5089)

(H) **PROFESSIONAL SERVICES:** Services which require special knowledge, education or training. The primary criteria in the selection process will be the qualifications of the vendors. (5089)

   Professional Services include, but are not limited to; advertising; appraisers; architects; attorneys; consultants; certified public accountants; engineers; entertainers; environmental studies; financial and operational audits; personnel and benefits studies; physicians and other health professionals; land surveyors; landscape architects; renewals of proprietary computer hardware and software licensing; trainers and teachers; and other technical registrants as defined in Arizona Revised Statutes. (5089)

(I) **PUBLIC NOTICE:** The distribution or dissemination of information to interested parties at least one (1) time using methods established by the City Manager or Designee. The failure of any Person to receive notice shall not constitute grounds for a protest or to invalidate the actions of the City as to the Procurement for which the notice was given. (5089)

(J) **RESPONSE:** A bid or proposal submitted in response to an Invitation for Bids; Request for Proposals; Request for Information; or Request for Qualifications. (5019, 5089)

(I) **SOLICITATION:** An Invitation for Bids, Request for Proposals or Request for Qualifications. (5019, 5089)
1-21-3: PROCEDURES FOR PROCUREMENT OF CAPITAL IMPROVEMENTS: (5019, 5089)

All procurements for Capital Improvements, as defined herein, shall be awarded in accordance with the requirements of state law.

(A) Procurements for public improvements that exceed the amounts established in accordance with A.R.S. §34-201(c) shall be awarded in accordance with the procedures established in A.R.S. Title 34, including the procedures for alternative contracting. (5089)

(B) Procurements for public improvements that do not exceed the amounts established in accordance with A.R.S. 34-201(c) may be awarded in accordance with the requirements of Section 1-21-5 of the Mesa City Code or in accordance with the procedures established in A.R.S. Title 34 for alternative contracting. (5019, 5089)

(C) City Council Approved Procurements: Unless otherwise provided in this Chapter, procurements of, or change orders not prior approved as contingencies for, Capital Improvements that exceed twenty-five thousand dollars ($25,000) must be approved by Council. This applies to one-time procurements and annually for term procurements. (5089)

1-21-4: PROCEDURES FOR PROCUREMENT OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES: (4215, 5019, 5089)

(A) Small Dollar Procurements: Procurements that do not exceed twenty-five thousand dollars ($25,000) shall be made in accordance with procedures established by the City Manager or Designee. (4215, 5019, 5089)

(B) City Council Approved Procurements: Unless otherwise provided in this Chapter, procurements of, or change orders not prior approved as contingencies for, Materials and Non-Professional Contract Services that exceed twenty-five thousand dollars ($25,000) shall be made by Competitive Selection, Sole Source Procurement, Cooperative Procurement or Emergency Procurement and must be approved by the City Council. This applies to one-time procurements and annually for term procurements. (5019, 5089)

1-21-5: COMPETITIVE PROCUREMENTS: (5019, 5089)

Competitive Selection means a process whereby one or more providers are selected using a Solicitation in the form of an Invitation for Bids, Request for Proposals or Request for Qualifications. (5089)

(A) Solicitations

1. Solicitations shall include:

   (a) A purchase description and major contractual terms and conditions applicable to the procurement. (5019, 5089)

   (b) Public Notice (5019, 5089)

   (c) Criteria to evaluate the responses submitted. (5089)

2. Shall be available for public inspection at the City and copies shall be available to all who request them. (5019, 5089)
(B) Responses to Solicitations (5089)

1. Responses shall be received publicly at the time and place designated in the Solicitation. The results of the public opening shall be recorded on an abstract and the abstract shall be open to public inspection. (5019, 5089)

2. Any Response that is conditioned upon award to the respondent of both the particular contract being solicited and another contract shall be deemed non-responsive or unacceptable. (5019, 5089)

3. The City may accept the Response(s), or the City Council, City Manager or Designee may reject all Responses. (5019, 5089)

(C) The requirement for a Competitive Procurement will be satisfied if the City contracts with a broker to represent it (e.g., liability and property insurance). (5089)

1-21-6: SOLE SOURCE PROCUREMENTS: (5019, 5089)

A contract may be awarded without Competitive Selection if the City Manager or Designee determines that there is only one source for the required Material or Non-Professional Contract Service and that no other type of Material or Non-Professional Contract Service will satisfy the requirements of the City. The City shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the City. (5019, 5089)

Public notice inviting comment on the City’s determination for a sole source procurement shall be given not less than seven (7) calendar days before the award. (5019, 5089)

1-21-7: COOPERATIVE PROCUREMENTS: (5019, 5089)

The City Manager or Designee is authorized to participate with any Government Agency or Government Organization for the procurement of Materials or Non-Professional Contract Services in cooperative purchasing agreements, provided: (5019, 5089)

(A) The underlying contract was established with the intent to be used for cooperative procurements; and (5019, 5089)

(B) Procedures were used in the applicable Procurement, which are similar to the requirements of Sections 1-21-3 or 1-21-5; and (5019, 5089)

(C) There is a written agreement with the Governmental Agency or Governmental Organization executed by the City Manager or Designee establishing the Cooperative Procurement relationship. (5019, 5089)
1-21-8: **EMERGENCY PROCUREMENTS: (5019, 5089)**

The City Council, City Manager or Designee may authorize the Procurement of Materials, Non-Professional Contract Services or Capital Improvements without following the requirements of 1-21-3 and 1-21-4 if they determine that:

(A) The Procurement is necessary for the immediate preservation of the public peace, health, or safety, and (5019, 5089)

(B) Compliance with the requirements of this Chapter is impracticable or contrary to the public interest, provided that the Procurement is limited to the Materials, Non-Professional Contract Services, or Capital Improvements necessary to preserve the public peace, health, or safety. (5019, 5089)

Any Procurement authorized under this Section shall meet the requirements of Sections 1-21-3 and 1-21-5 (A) to the extent practicable or not contrary to the public interest. Any Procurement authorized under this Section that exceeds twenty-five thousand dollars ($25,000) shall be placed on the City Council agenda for ratification at the next reasonably available City Council meeting. (5019, 5089)

1-21-9: **DEBARMENT: (5019, 5089)**

(A) The City Manager or Designee may debar a Person from receiving an award or participating in City Procurements for a period of time not to exceed three (3) years. (5019, 5089)

(B) Causes for Debarment include but are not limited to the following: (5019, 5089)

1. Conviction of such Person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. (5019, 5089)

2. Conviction of such Person under any statute, code, ordinance or regulation of the federal government, the State of Arizona, the City or any other state or city for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a City contractor. (5019, 5089)

3. Conviction or civil judgment finding a violation by such Person under state or federal antitrust statutes, state or federal immigration statutes, procurement violations, or breach of contract. (5019, 5089)

4. Violations of contract provisions of a character which are deemed to be so serious as to justify Debarment action, such as but not limited to: (5019, 5089)

   (a) Knowingly fails to perform in accordance with the Specifications or within the time limits provided in the contract without good cause. (5019, 5089)

   (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment. (5019, 5089)

5. Any other cause deemed to affect Responsibility as a City contractor, including Debarment of such Person by another Governmental Agency for any cause listed herein. (5019, 5089)
(C) Persons being Debarred shall receive proper notice and shall have the right to protest the decision. (5019, 5089)

(D) The City Manager or Designee may allow a Debarred Person to participate in City contracts on a limited basis if determined that participation is advantageous to the City. (5019, 5089)

(E) The City Manager or Designee may reinstate a Debarred Person if the cause upon which the Debarment is based no longer exists and that it is not likely to recur. (5019, 5089)

1-21-10: PROTESTS AND APPEALS: (5019, 5089)
   The City Manager or Designee shall have the authority to resolve protests and appeals and shall establish by rule a process to allow protests and appeals of Procurement decisions. (5019, 5089)

1-21-11: CONFLICTS OF INTEREST: (4215, 5019, 5089)
   Notice is hereby given of the applicability of the Arizona Revised Statute on Conflicts of Interest of officers and employees of the City of Mesa related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, and as may be amended). (4215, 5019, 5089)
CHAPTER 22
BUILDING INSPECTOR
(Repealed by 727)

CHAPTER 23
PLUMBING INSPECTOR
(Repealed by 727)

CHAPTER 24
HEALTH OFFICER
(Repealed by 727)

CHAPTER 25
HOLIDAYS (128,1241,1414,1570)
(Repealed by 2610)
CHAPTER 26

GENERAL PENALTY

SECTION:

1-26-1: DEFINITIONS

1-26-2: GENERAL PENALTY:

1-26-1: DEFINITIONS:

In this Code, unless the context otherwise requires: (3363)

(A) "Person" means an individual human being or any enterprise. (3363)

(B) "Enterprise" includes any corporation, company, partnership, association, firm, labor union, or other legal entity. (3363)

1-26-2: GENERAL PENALTY: (1958 CODE, 511,530,1411,2466,3363,4820)

All violations of this Code not expressly designated as civil violations shall be deemed misdemeanor violations. All misdemeanor violations shall be deemed to be a Class One (1) misdemeanor, unless a different misdemeanor designation is specifically set forth in this Code. Misdemeanors shall be punished as follows: (3363,4820)

(A) Any person convicted of a Class One (1) misdemeanor shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00), by imprisonment not to exceed six (6) months, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to three (3) years upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provided herein. (3363,4820)

(B) Any person convicted of a Class Two (2) misdemeanor shall be punished by a fine not to exceed seven hundred fifty dollars ($750.00), by imprisonment not to exceed four (4) months, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to two (2) years upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provide herein. (3363,4820)

(C) Any person convicted of a Class Three (3) misdemeanor shall be punished by a fine not to exceed five hundred dollars ($500.00), by imprisonment not to exceed thirty (30) days, or by both a fine and imprisonment. The court may suspend imposition of part or all of a sentence and place a person on probation for up to one (1) year upon such terms and conditions as the court deems appropriate, including payment of a fine, a term of imprisonment, or both, up to the limits provided herein. (4820)

(D) The following fines apply to any enterprise convicted of a misdemeanor:

1. A fine not to exceed twenty thousand dollars ($20,000.00) for a Class One (1) misdemeanor;

2. A fine not to exceed ten thousand dollars ($10,000.00) for a Class Two (2) Misdemeanor;

3. A fine not to exceed two thousand dollars ($2,000.00) for a Class Three (3) Misdemeanor. (4820)
(E) The court may suspend imposition of part or all of a sentence and place an enterprise on probation as permitted in Subsections A, B, and C, upon such terms and conditions as the court deems appropriate, including payment of a fine up to the limits provided herein. (4820)

(F) An enterprise shall be liable for a misdemeanor violation of the City Code if the conduct constituting the offense is engaged in by an officer, director, or employee of the enterprise, or any other agent of the enterprise, while acting within the scope of their agency or employment on behalf of the enterprise. (3363, 4820)

(G) Where this Code prescribes a continuing duty or forbids any act of a continuing nature, each day such duty remains unperformed or such act continues, shall constitute a separate offense. (3363, 4820)
CHAPTER 27

CIVIL CODE VIOLATIONS

SECTION:

1-27-1: VIOLATIONS TREATED AS CIVIL MATTERS
Violations of this Code for which a civil sanction is imposed shall be treated as civil matters as provided in this Chapter. (2131)

1-27-2: COMMENCEMENT OF ACTION; JURISDICTION OF MESA CITY COURT
(A) A civil code violation case is commenced by issuance of a uniform civil code complaint as provided in this Chapter. A civil code violation case shall be commenced within one (1) year of the alleged violation. (2131)

(B) The Mesa City Court shall have jurisdiction over all civil violations of this Code except as provided in Section 1-27-8. (2131,4074)

1-27-3: SERVICE OF UNIFORM CIVIL CODE COMPLAINT:
(A) A uniform civil code complaint may be served by delivering a copy of the uniform civil code complaint citation to the person charged with the violation or by any means authorized by the Arizona Rules of Civil Procedure. (2131)

(B) The original complaint shall be filed in the Mesa City Court within five (5) days of the time that a complaint was issued. Any peace officer or duly authorized agent of the City may issue the complaint. (2131)

1-27-4: AUTHORITY TO DETAIN PERSONS TO SERVE CIVIL COMPLAINT; FAILURE TO PROVIDE EVIDENCE OF IDENTITY:
(A) A peace officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this Chapter and to serve a copy of the complaint for any alleged civil violation of this Chapter. (2131)
(B) A person who fails or refuses to provide evidence of his/her identity to a peace officer or duly authorized agent of the City upon request, when such officer or agent has reasonable cause to believe the person has committed a violation of this Code, is guilty of a misdemeanor. (2131)

1-27-5: FORM FOR CIVIL VIOLATION COMPLAINTS:
The civil violation complaint shall be in the form of the document marked Exhibit "A," following hereto and made a part hereof by reference, and shall contain the following notice: (2131)

If you fail to appear as directed in this complaint on a civil code violation, a default judgment will be entered against you and a civil sanction will be imposed. (2131)

<table>
<thead>
<tr>
<th>COMPLAINT NO.</th>
<th>DRIVER'S LICENSE NO.</th>
<th>STATE</th>
<th>SOCIAL SECURITY NO.</th>
<th>IN THE CITY COURT, CITY OF MESA</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY OF MESA</td>
<td>VS.</td>
<td></td>
<td></td>
<td>OR BEFORE THE ADMINISTRATIVE HEARING OFFICER</td>
</tr>
<tr>
<td>DEFENDANT:</td>
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<td>THE UNDERSIGNED SAYS THE DEFENDANT NAMED HEREON</td>
</tr>
<tr>
<td>RESIDENCE</td>
<td>STREET</td>
<td>TOWN</td>
<td>STATE</td>
<td>ZIP</td>
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<tr>
<td>ADDRESS:</td>
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<tr>
<td>MAILING</td>
<td>ADDRESS:</td>
<td>SAME AS</td>
<td>STREET</td>
<td>TOWN</td>
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<tr>
<td>ADDRESS:</td>
<td></td>
<td>ABOVE</td>
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<tr>
<td>BUSINESS</td>
<td>ADDRESS:</td>
<td>STREET</td>
<td>TOWN</td>
<td>STATE</td>
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<td>ADDRESS:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>OWNER</td>
<td>PHONE:</td>
<td>BUSINESS</td>
<td>FIRST</td>
<td>MIDDLE</td>
</tr>
<tr>
<td>OCCUPIED</td>
<td>NAME</td>
<td>PHONE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWNER’S</td>
<td>STREET</td>
<td>TOWN</td>
<td>STATE</td>
<td>ZIP</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MESA CITY COURT</td>
<td>246 WEST 2ND STREET</td>
<td>MESA, ARIZONA 85201</td>
<td>IF I FAIL TO APPEAR AS DIRECTED IN THIS COMPLAINT ON A CIVIL CODE VIOLATION, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST ME, AND A CIVIL SANCTION WILL BE IMPOSED</td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td>ADMINISTRATIVE HEARING OFFICER</td>
<td>LOCATED AT</td>
<td>246 WEST 2ND STREET</td>
<td>MESA, ARIZONA 85201</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DEFENDANT’S SIGNATURE</td>
<td>OFFICER’S OR AGENTS SIGNATURE</td>
<td></td>
</tr>
</tbody>
</table>

1-27-6: FALSE CERTIFICATION OF CIVIL VIOLATION COMPLAINTS:

(A) A civil code violation complaint need not be sworn to if it contains a form of certification by the issuing officer in substance as follows: (2131)

"I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the civil violation described herein contrary to law." (2131)
(B) A false certification under the provision of Subsection (A) constitutes perjury. (2131)

1-27-7: ADMISSION OR DENIAL OF ALLEGATION IN COMPLAINT; HEARINGS; FINDINGS OF COURT; CIVIL SANCTION:

(A) A person with a civil code complaint shall appear at the time and place stated in the complaint or may appear prior to the time if so authorized by the court and upon the directions contained in the complaint and admit or deny the allegations of the complaint. Allegations not denied at the time of appearance are admitted. A fee shall not be charged for such appearance. (2131)

(B) If the allegations are admitted, the court shall enter judgment for the City and impose a civil sanction. Allegations may be admitted with an explanation. In such case the court shall enter judgment for the City and impose a civil sanction. In determining the civil sanction, the court shall consider the explanation submitted. (2131)

(C) If the person denies the allegations of the complaint, the court shall set the matter for hearing. All such hearings are informal and without a jury, and the City is required to prove the violation charged by preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the person elects to be represented by counsel, the person shall so notify the court at least ten (10) days prior to the hearing date. Hearings may be recorded. If the court finds in favor of the person, the court shall enter an order dismissing the allegation. (2131)

If the court finds in favor of the City, the court shall enter judgment for the City and impose a civil sanction. (2131)

(D) If the person served with a civil code complaint fails to appear on or before the time directed to appear or at the time set for hearing by the court, the allegations in the complaint shall be deemed admitted, and the court shall enter judgment for the City and impose a civil sanction. (2131)

(E) A civil sanction imposed pursuant to this Chapter shall not exceed one thousand dollars ($1,000.00). (2131)

1-27-8: HEARING OFFICERS

The City Manager, or his designated representative, may appoint one (1) or more hearing officers to preside over civil code matters arising under the Mesa City Code or the Arizona Revised Statutes that are filed and processed as administrative cases with a City department other than the Mesa Municipal Court. The judgment of the Administrative Hearing Officers constitutes a judgment that is subject to special action relief in accordance with the Arizona Supreme Court's Rules of Procedure for Special Actions. (3879)

1-27-9: APPEAL:

Any party may appeal the judgment of the court. The appeal may be to the Superior Court in the same manner as promulgated by the Supreme Court. The posting of an appeal bond stays enforcement of the judgment. Commissioners of the Superior Court may hear and determine appeals. (2131)
1-27-10: **SUBPOENA OF WITNESSES; NONAPPLICABILITY OF RULES OF CIVIL PROCEDURE:**

(A) The City and the person charged with a civil code violation may subpoena witnesses as provided by Arizona Revised Statutes Section 13-4072. Such witnesses are not entitled to fees for appearing in connection with a civil violation proceeding. (2131)

(B) Except as otherwise provided in this Chapter, the rules of civil procedure do not apply. (2131)

1-27-11: **FAILURE TO PAY CIVIL SANCTION; COLLECTION PROCEDURE:**

All civil sanctions shall be paid within thirty (30) days from entry of judgment, except that if payment within thirty (30) days will place an undue economic burden on the person, the court may extend the time for payment or may provide for installment payments. A civil sanction may be collected in the same manner as any other judgment in favor of the City. (2131)

1-27-12: **PENALTY:**

That any person who shall violate any of the provisions of Section 1-27-4(B) hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (2131,2466)
CHAPTER 28
CLAIMS AND DEMANDS AGAINST THE CITY (566, 1125, 1427)
(Repealed by 2905)

CHAPTER 29
DEPUTY CITY MANAGER (977, 3766)
(Repealed by 5293)

CHAPTER 30
EXECUTIVE CITY ADMINISTRATOR (1242)
(Repealed by 1611)
CHAPTER 31

CITY AUDITOR (4608)

SECTION:

1-31-1: APPOINTMENT:
The Council shall appoint a City Auditor and set his compensation. (4608)

1-31-2: DUTIES:
The City Auditor shall conduct all audits requested by the City Council or the City Manager to ensure that the City is functioning economically, efficiently, and effectively in accordance with legislative and management directives. The City Auditor shall serve at the pleasure of the Council. (4608)
CHAPTER 32
(5005)

COLLECTION OF DELINQUENT AMOUNTS OWED TO THE CITY (5005)

SECTION:

1-32-1: APPLICABILITY (5005)

1-32-2: DEFINITIONS (5005)

1-32-100: SINGULARITY OF DEBT; SET-OFF (5005)

1-32-200: LIMITATIONS ON OBTAINING NEW LICENSES, SERVICES OR BENEFITS UNTIL DEBT IS PAID (5005)

1-32-300: PERSONAL LIABILITY; PRESUMPTIONS (5005)

1-32-400: LIMITATION ON RELATED PARTY OBTAINING LICENSES, SERVICES, OR BENEFITS (5005)

1-32-500: VOLUNTARY SUCCESSION; CREATION OF LIEN; TRANSFERRED LIABILITY; CONTINUED LIABILITY (5005)

1-32-600: INVOLUNTARY BUSINESS SUCCESSION; CREATION OF LIEN (5005)

1-32-700: NOTICE OF LIEN; RECORDING OF LIEN (5005)

1-32-800: RELEASE OF LIEN; WAIVER OF RIGHT TO LIEN AGAINST SUCCESSOR IF CERTIFICATE PRODUCED (5005)

1-32-900: CHANGE OF BUSINESS ENTITY FORM; CONTINUATION OF PRIOR LIABILITY (5005)

1-32-1000: COLLECTION CHARGES (5005)

1-32-1: APPLICABILITY. (5005)

The provisions of this Chapter shall apply unless expressly precluded by law. (5005)

1-32-2: DEFINITIONS. (5005)

For purposes of this Chapter, the following words and phrases shall have the meaning set forth herein. (5005)

(A) BUSINESS means all activities engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect. (5005)

(B) COLLECTOR means the Tax Collector or any City officer, manager or employee responsible for the collection of amounts owed to the City. (5005)

(C) ORIGINAL BUSINESS means the business activity, by whatever form conducted, that ceases operation, whether or not such cessation is by change in legal status, voluntary or involuntary cessation of activity, or transfer of assets, control or ownership to another person. (5005)

(D) SUCCESSOR BUSINESS means that person who continues in a substantially similar manner the original business activity of another person through the acquisition and use, by any means, of ownership or control over the operational characteristics of the original business activity so as to enable it to carry on or continue such activity. (5005)
(E) **TRANSFER** means the change in ownership or control over the day-to-day activities of the business. (5005)

(F) **PERSON** means an individual, partnership, limited partnership, limited liability company, corporation, trust, joint venture, or any other association of two or more persons who have as their objective a common gain, benefit, or advantage. (5005)

(G) **RELATED PARTY** means any person who has a commonality of business interest with any other person through their status as an identified person liable under Section 1-32-300(D) within such other person. (5005)

1-32-100: **SINGULARITY OF DEBT; SET-OFF (5005)**
A debt owed by a person to any City department or area of operation shall be subject to set-off against any credit, refund, deposit or payment owing to such person by the same or any other City department or area of operation. (5005)

1-32-200: **LIMITATIONS ON OBTAINING NEW LICENSES, SERVICES OR BENEFITS UNTIL DEBT IS PAID. (5005)**
Any person who has a current debt related to any open or closed account maintained or formerly maintained with the City shall be ineligible to receive any new or additional licenses, services or benefits from the City until such debt has been resolved to the satisfaction of the City. (5005)

This limitation includes, but is not limited to, the following situations:

Establishing a commercial or residential utility account; (5005)

Obtaining any license issued pursuant to the Mesa City Code; (5005)

Obtaining or extending any building permit issued pursuant to Title 4 of the Mesa City Code; (5005)

Extending any application for a building permit pursuant to Title 4 of the Mesa City Code. (5005)

1-32-300: **PERSONAL LIABILITY; PRESUMPTIONS (5005)**

(A) Every person with a duty, at any time, to account for and pay over any tax or other amount owed the City, every person who has control or supervision over the payment of any tax or other amount owed the City and every person who has been charged with the responsibility to pay over any tax or other amount owed the City shall be personally liable, jointly and severally, for any additional monies not paid to the City. (5005)

(B) The dissolution, termination or withdrawal from the City of any person shall not affect or discharge the personal liability established by Subsection A. (5005)

(C) The cessation of business by any person shall not affect or discharge the personal liability created by Subsection A. (5005)
For purposes of Subsection A, there shall be a rebuttable presumption that the following persons have a duty to account for and pay over tax and any other amount owed the City. (5005)

<table>
<thead>
<tr>
<th>BUSINESS FORM</th>
<th>PERSONS LIABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sole Proprietorship</td>
<td>The Proprietor</td>
</tr>
<tr>
<td>2. Partnership</td>
<td>Each Partner</td>
</tr>
<tr>
<td>3. Limited Partnership</td>
<td>General Partner</td>
</tr>
<tr>
<td>4. Joint Venture</td>
<td>Each participant in the joint venture</td>
</tr>
<tr>
<td>5. Corporation</td>
<td>Any officer with control over the activity giving rise to the debt</td>
</tr>
<tr>
<td>6. Limited Liability Company</td>
<td>Each member, manager, or officer</td>
</tr>
<tr>
<td>7. Trust</td>
<td>Any trustee</td>
</tr>
<tr>
<td>8. Other Association</td>
<td>Any individual with control over the activity giving rise to the debt</td>
</tr>
</tbody>
</table>

LIMITATION ON RELATED PARTY OBTAINING LICENSES, SERVICES, OR BENEFITS. (5005)

Any related party to any person liable for tax or any other amount owed to the City pursuant to Section 1-32-300 shall not obtain any additional licenses, services, or benefits until all underlying liabilities have been resolved to the City’s satisfaction. (5005)

Regarding the administration of the above provision for Limited Liability Companies (LLC), once the LLC’s account is delinquent, neither any member of such LLC nor any other LLC of which he may also be a member shall obtain new or addition City licenses, services, or benefits. (5005)

VOLUNTARY SUCCESSION; CREATION OF LIEN; TRANSFERRED LIABILITY; CONTINUED LIABILITY. (5005)

In the case of any succession in business activity that is accomplished by voluntary agreement between the original business and successor business, the agreement or mutual expression of intent to agree shall operate to immediately create a business succession lien in favor of the City in the total amount of such impositions. Such lien shall attach to all of the tangible and intangible assets of the original business. (5005)

The lien created by Subsection A shall, upon completion of the transfer of effective control from the original to the successor business, attach to all assets of the successor business to the extent of any liability remaining unpaid by the original business as of the date of transfer. (5005)
(C) The business succession lien created by Subsection A shall not alter in any way the liability of the original business or the personal liability created in Section 1-32-300 of this Chapter. (5005)

(D) The business succession lien created in this Section is separate and apart from and in addition to any tax liability lien against the original or successor business that might have existed or come into being separately and apart from the operation of this Chapter. (5005)

(E) All business succession shall be deemed to be voluntary except as described in Section 1-32-600 below. (5005)

1-32-600: INVOLUNTARY BUSINESS SUCCESSION; CREATION OF LIEN (5005)

(A) The following transfers of business activity shall be considered involuntary:

1. Transfer to a receiver or trustee in bankruptcy. (5005)

2. Transfer to a receiver pursuant to the order of a Superior Court of this State or equivalent action by a court of general jurisdiction in a foreign state. (5005)

3. Transfer to an executor, administrator or personal representative by virtue of the death of a sole proprietor or partner, provided that the transfer by operation of law of partnership assets to a surviving partner or partners is considered a voluntary transfer as to such partners’ partnership assets. (5005)

4. Transfer to a landlord by seizure or distraint for rent or similar remedy whether or not accompanied by judicial proceedings for recovery or redelivery of the demised premises. (5005)

5. Except as provided in Section 5-10-595 of the Mesa City Code, transfer to a secured party by operation of a mortgage, deed of trust or other security agreement, with or without judicial proceedings. (5005)

6. Voluntary or involuntary guardianship pursuant to Title 14, Arizona Revised Statutes, or equivalent proceedings under a foreign statute and foreign court of competent jurisdiction. (5005)

(B) In the event of any transfer described in Subsection A, a business succession lien shall immediately be created and shall attach as of the date of the first act or event that accomplishes the transfer. This lien shall attach to all remaining assets of the original business entity and any resulting estate. However, liabilities owed to the City as of such date covered by such lien shall be payable from the successor solely from the assets of the estate of the original business, subject to prior liens and court orders, and subject to any additional personal liability that may be imposed pursuant to Section 1-32-300. In the event that the debt owed to City exceeds the value of assets transferred, the successor will have no liability for the difference. (5005)

(C) Any transferee under Subsection A who continues to operate the business activity is liable for all taxes and other liability arising from the business activity conducted or carried on by the transferee. The transferee shall be subject to the personal liability provisions of Section 1-32-300. (5005)
1-32-700: **NOTICE OF LIEN; RECORDING OF LIEN** *(5005)*

Unless expressly precluded by law from recording a lien on the underlying debt or debtor, the collector shall provide thirty days advance written notice of “intent to file lien” to the named debtor(s). The collector shall effectuate the filing of a business succession lien by recording a lien notice in the office of the County Recorder in any county in which the original business or successor business may have property, assets or conduct business activity. A lien may also be filed with the Arizona Secretary of State. The lien notice shall be labeled “Business Succession Lien Notice” and shall state the type and amount of any imposition including recording cost. When applicable, a single lien may be filed that names both the original business and successor business. Nothing in this Section shall be deemed to limit the authority of the City to file tax liens pursuant to Mesa City Code Section 5-10-590. *(5005)*

1-32-800: **RELEASE OF LIEN; WAIVER OF RIGHT TO LIEN AGAINST SUCCESSOR IF CERTIFICATE PRODUCED** *(5005)*

(A) Any lien, whether or not recorded, may be released in whole or in part by the collector, in his sole discretion. The release of any part of the lien shall not affect the remaining balance. *(5005)*

(B) The collector shall not record any lien against successor business if, prior to the expiration of the thirty day notice period set forth in Sec. 1-32-700, successor business produces a receipt from the collector showing that all amounts owed City have been paid or a certificate stating that no amount is due as then shown by the records of the collector. The collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued. *(5005)*

(C) If a subsequent investigation shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a successor business who has received a certificate from the collector. *(5005)*

(D) A voluntary successor business who fails to obtain a certificate as provided by this Section is personally liable for payment of the amount required to be paid by the original business on account of the business so purchased. *(5005)*

1-32-900: **CHANGE OF BUSINESS ENTITY FORM; CONTINUATION OF PRIOR LIABILITY.** *(5005)*

If any business entity changes its form of doing business, including but not limited to, a change from sole proprietorship to corporation or LLC, or dissolution of a partnership or corporation, while continuing to do business under substantially the same management and control, the liability of the original entity shall remain on such new entity, and shall further attach and become a lien upon the assets of and a liability of the new business entity. *(5005)*

1-32-1000: **COLLECTION CHARGES.** *(5005)*

Any person who has a delinquent account maintained by the City will also be responsible for all costs incurred by the City in collecting those delinquent funds. This includes a reasonable charge for staff time and any direct costs incurred. *(5005)*
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CHAPTER 33
(5292)

CANDIDATE ELECTION DATES (5292)

SECTION:

1-33-1: DATE OF CANDIDATE ELECTIONS (5292)
1-33-2: TERM OF MAYOR AND COUNCILMEMBER (5292)

1-33-1: DATE OF CANDIDATE ELECTIONS: (5292)
The primary election for Candidates for the Offices of Mayor and Councilmember shall be held on the tenth Tuesday before the first Tuesday after the first Monday in November of even-numbered years. The general election, if required, shall be held on the first Tuesday after the first Monday in November of even-numbered years. (5292)

1-33-2: TERM OF MAYOR AND COUNCILMEMBER: (5292)
The term of office for the Office of Mayor and Councilmember shall commence on or after the first Monday in January in the year following the election and shall be for a period of four (4) years or until their successors are elected and qualified. (5292)
CHAPTER 1

PLANNING AND ZONING BOARD
(167, 558, 1620, 4476, 4960)

SECTION:

2-1-1: MEMBERSHIP
There is hereby created a Planning and Zoning Board to consist of seven (7) representative citizens of the City. Members of the Board shall hold no other City office, shall reside within the limits of the City, and shall be appointed as provided in Subsection (B) of Section 501 of the City Charter. (167, 558)

2-1-2: TERM OF OFFICE
The members of the Planning and Zoning Board shall serve for staggered three- (3-) year terms and until their successors are duly appointed. At the time of the original appointment under this Chapter, the Mayor shall designate the length of the term of all of the members to provide for staggered terms, which in no event shall be more than three (3) years. (167, 558)

2-1-3: VACANCIES; ABSENCE FROM MEETINGS
Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. Whenever a member of the Board ceases to reside in the City, a vacancy on the Board is created. (167, 558, 1620)

2-1-4: COMPENSATION
The members of the Planning and Zoning Board shall serve as such without compensation. (167, 558)

2-1-5: DUTIES

(A) The duties of the Board, in addition to any other matters directed by the City Council, shall be to study the development of the City and from time to time as may be necessary place before the Council recommendations for the better development of the City and contiguous areas surrounding the City with the intent that a complete and unified plan may be achieved. (4960)

(B) Such duties may include the ability to review and make recommendations concerning joint public/private projects in designated re-development areas and propose re-development actions to the City Council which are consistent with adopted plans and stated re-development goals and the objectives for the downtown area. The Board shall hold public hearings on proposed re-development plans or amendments to adopted plans. Such recommendations shall be advisory only and shall not be binding upon the City Council. (4960)
(C) The Board shall also prepare and present to the Council a Zoning Ordinance and map recommending the boundaries of the various districts and appropriate regulations to be enforced therein. The Board shall make a preliminary report on such proposed Ordinance and map and shall hold public hearings thereon before submitting its final report. (167, 558, 4476, 4960)

2-1-6: HEARINGS; FINAL ACTION: (167, 558, 4476, 4960)

(A) The Council shall take action on the recommendation(s) of the Planning and Zoning Board. The recommendation of the Planning and Zoning Board or the Planning Hearing Officer shall be forwarded to City Council, and shall be advisory only and shall not be binding upon the Council. (4960)

(B) The Council may also initiate any proposed amendment, change, or modification to such Zoning Ordinance and map. The Council may not approve the amendment, change or modification until it is noticed and heard by the Planning and Zoning Board, or Planning Hearing Officer. For public hearing and recommendation under same process as a zoning case filed by a property owner. The recommendation of the Planning and Zoning Board or the Planning Hearing Officer shall be forwarded to City Council, and shall be advisory only and shall not be binding upon the Council. (4960)

CHAPTER 2

HUMAN SERVICES ADVISORY BOARD (3220,4414,4757)

(Repealed By 5123)
CHAPTER 3
(1850,2390,3340)

JUDICIAL ADVISORY BOARD

SECTION:

2-3-1: CREATION OF BOARD
There is hereby created a citizen Board to be known as the Judicial Advisory Board. Board members shall serve without salary or compensation. (3340)

2-3-2: PURPOSE OF BOARD
The purpose of the Judicial Advisory Board is to recommend to the City Council the best qualified persons to become City Magistrates, and to evaluate the performance of appointed Magistrates and advise the City Council about retaining them. (3340)

2-3-3: MEMBERSHIP
(A) The Board shall be composed of seven (7) persons, as follows: (3340)

1. The Presiding Judge of the Arizona Superior Court for Maricopa County, or designee; (3340)

2. An Arizona Appellate Court Judge to be appointed by the Chief Justice of the Arizona Supreme Court; (3340)

3. An active member of the State Bar of Arizona who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the State Bar's Board of Governors; (3340)

4. A member of the Maricopa County Bar Association who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the Association's Board of Directors; (3340)

5. Three (3) Mesa electors who are not City employees, Judges in any official capacity, retired Judges, nor members of the State Bar of Arizona, but who have distinguished themselves through their public service, impartiality, and objectivity. (3340)
Subject to the concurrence of the City Council, the Mayor shall appoint the members of the Board for staggered terms of three (3) years each. At the time of the initial appointment, the Mayor shall designate the length of term for each such member to provide for staggered terms. (3340)

No member of the Board shall serve for more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. (3340)

Absences of any member from meetings of the Board shall, at the discretion of the City Council, render such member liable for immediate removal from the Board by the Council. Any member absent from three (3) consecutive meetings without being excused by the chairperson shall be considered as having vacated his or her appointment. (3340)

The Board's officers shall consist of a chairperson and vice chairperson, each selected by the Board from the Board's members. (3340)

Board officers shall serve one- (1-) year terms. No member shall serve more than two (2) terms as chairperson or two (2) terms as vice chairperson, not including any term filled for the remainder of another member's unexpired term. (3340)

Pursuant to Administrative Order 93-17 of the Arizona Supreme Court, and such subsequent orders as may issue which address this objective, in selecting Judicial Advisory Board members, the appointing authorities shall be sensitive to representation reflecting the racial, ethnic, gender, and political diversity of the community served by the Mesa City Court. (3340)

The appointing authority for each Advisory Board member shall advise each Board member they appoint that the Board member's responsibilities include recruitment of qualified Magistrate applicants, including qualified minority and women applicants, who may not otherwise apply. (3340)

Promptly upon learning of a City Magistrate vacancy, anticipated vacancy, the expiration of the existing term of a City Magistrate, or the need for a continuing appointment of a Pro Tempore Magistrate, the chairperson of the Board shall issue a call for a meeting of the Board. (3340)

A continuing appointment of a Pro Tempore Magistrate refers to a Magistrate who is anticipated to work on a regular basis over an extended period of time and not just in response to emergencies. (3340)

The Presiding Magistrate, with the approval of the City Manager, may appoint Magistrates Pro Tempore who do not work pursuant to a continuing appointment but, instead, are needed on an emergency basis, such as to fill in temporarily for regular Magistrates who are ill, on vacation, or attending training. (3340)

All Board meetings shall comply with the Arizona Open Meeting Act (A.R.S. 38-431 et seq.) and Public Records Law (A.R.S. 39-121 et seq.), as amended. (3340)

The City Clerk’s Office and the Personnel Office shall jointly act as secretary to the Board by preparing notices of meetings, minutes, sending information packets to members, and fulfilling all other clerical responsibilities of the Board. (3340)
APPOINTMENT AND REAPPOINTMENT PROCESS:

(A) Through the City’s Personnel Office, the Board shall advertise notice to the public and licensed attorneys of the vacancy or reappointment. (3340)

1. In the case of a vacancy, the Board members shall actively seek and encourage well-qualified individuals to apply. The Board shall advertise the vacancy in a manner designed to provide reasonable notice of the opening, but shall at least publish notice in a professional newspaper once a week for two (2) successive weeks. (3340)

2. In the case of a reappointment, the Board shall solicit public and professional comment in a manner designed to elicit constructive appraisals of the Magistrate’s performance, but shall at least publish notice of the potential reappointment in a daily newspaper of general circulation in Mesa once a week for two (2) successive weeks. (3340)

(B) All applicants for appointment or reappointment shall complete an application containing such information as the Board and the Personnel Office deem necessary and appropriate to comply with law and provide relevant information about the ability of the applicant to perform an outstanding job as a City Magistrate. (3340)

1. For all appointments under this Chapter, the Board may use as a guide the "Application for Nomination to Judicial Office," formulated under Rule 7 of the Arizona Supreme Court’s Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments. (3340)

2. For all reappointments under this Chapter, the Board may use as a guide all surveys, questionnaires, data forms, and reports, formulated under Rule 6 of the Arizona Supreme Court’s Rules of Procedure for Judicial Performance Review in Arizona. (3340)

(C) Applicants shall be given a meaningful opportunity to supplement their applications with letters of recommendation. (3340)

(D) The Board shall not limit its investigation of applicants to the applications and letters of recommendation received, but shall hold public hearings, personal interviews, and conduct such investigations into the background, performance, and qualifications of the applicants as the Board deems necessary and appropriate. (3340)

(E) Consistent with and in addition to the requirements of this Chapter, the Board is authorized to develop such procedures as it deems reasonable to select and retain outstanding City Court Magistrates on the basis of merit. In that regard, at a minimum the Board shall: (3340)

1. Conduct at least one (1) public hearing soliciting public input concerning sitting Magistrates seeking reappointment. (3340)

2. Personally interview at least six (6) candidates for initial appointment as a City Magistrate, or for a continuing appointment as a Pro Tempore Magistrate. (3340)
2-3-8: RECOMMENDATION PROCESS:

(A) All Board members shall consider all applicants in an impartial, objective manner, based only on the applicant’s merit as a potential or current City Magistrate. (3340)

1. At the earliest possible opportunity, a Board member shall disclose to all members of the Board: (3340)

   (a) All relationships with an applicant (such as business, personal, or attorney-client) or any possible cause for conflict of interest, bias, or prejudice; (3340)

   (b) All efforts to recruit a specific applicant; (3340)

   (c) All applicants who constitute "relatives" under the Arizona Conflict of Interest Laws (A.R.S. 38-501 et seq.), as amended, or those applicants who are at present, or have been in the last ten (10) years, a coworker in the same company or firm as the Board member or the Board member’s spouse. (3340)

2. A Board member shall refrain from voting or otherwise participating in discussing all persons required to be disclosed in paragraph 1, subparagraphs (a) and (c), above. Board members may discuss and vote on applications submitted by persons they recruit to apply, after having disclosed to all Board members the nature of their efforts to recruit the applicant. (3340,3391)

(B) In considering initial appointments or reappointments, the Board shall consider comment from all interested members of the public at a public hearing or in writing. For reappointments, the Board shall also make inquiry of the Arizona Commission on Judicial Conduct for any adverse rulings against the City Magistrate scheduled for reappointment consideration. (3340)

(C) Following Arizona Board of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991), or subsequent cases dealing with the same subject, the names of applicants and their applications shall not be disseminated to the public or the media. However, those applicants who both agree to be interviewed and who are selected to be interviewed shall become candidates whose names and applications, without the home addresses and telephone numbers, shall be made available, upon request, to the public and the media. (3340)

(D) The Board shall interview candidates in accordance with the Arizona Open Meeting Law. The Board shall vote on the candidates in an open meeting. (3340)

1. As soon as possible after the vote of the Board, the Board shall deliver its written recommendation concerning an initial Magistrate or continuing Magistrate appointment to the Mayor and City Council, or an appropriate Subcommittee of the Council. The Board shall identify in alphabetical order the three (3) best qualified candidates for each vacancy and summarize the relative strengths and weaknesses of each final candidate. (3340)

2. As soon as possible after the vote of the Board, the Board shall also deliver its written recommendation concerning reappointment of a City Magistrate to the Mayor and City Council, or an appropriate Subcommittee of the Council. The Board shall state that the Board does or does not recommend reappointment of the Magistrate, summarizing the reasons therefor. (3340)

2-3-9: COUNCIL DECISION:

The City Council may accept or reject the Board’s advice and recommendations. The City Council may also refer a specific appointment or reappointment back to the Board for more investigation and findings. The Council may also refer any judicial matter or issue to the Board for such review as the Council may direct. (3340)
CHAPTER 4

LIBRARY ADVISORY BOARD

SECTION:

2-4-1: CREATION OF LIBRARY ADVISORY BOARD
2-4-2: RESPONSIBILITIES

2-4-1: CREATION OF LIBRARY ADVISORY BOARD:
There is hereby created a Board to be known as the Library Advisory Board of the City. Such Board shall be composed of nine (9) persons who shall be appointed by the Mayor with the approval of the Council. Members of the Board shall serve for staggered terms of three (3) years, and no member shall serve more than two (2) complete consecutive terms, providing a person may be reappointed after the lapse of three (3) years from the end of his/her preceding term. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (561,1622,4025)

2-4-2: RESPONSIBILITIES:
The Library Advisory Board may:

(A) Recommend conditions for the acceptance of endowments, donations, or contributions for the benefit of the library; (1075,1622,4025)

(B) Recommend hours when the library shall be open to the public; (1075,1622)

(C) Recommend policies for the operation of the library and the development and management of its collections; (1075,1622,4025)

(D) Advise the City Council on the operation and management of the library; and (1075,1622,4025)

(E) Perform such other duties as may be delegated by the City Council. (1622,4025)
CHAPTER 5
MERIT SYSTEM BOARD

SECTION:

2-5-1: CREATING AND ESTABLISHING
2-5-2: PERSONNEL APPEALS BOARD (REP. BY 1623)
2-5-3: AMENDING THE PERSONNEL SYSTEM

2-5-1: CREATING AND ESTABLISHING:
There is hereby created and established a Merit System Board to consist of three (3) resident citizens and electors of the City who shall be appointed by the Mayor with the approval of the Council to serve for three- (3) year staggered terms. As of the effective date hereof, the Mayor shall designate the terms of the various members of the Board, which shall not be more than three (3) years in order to provide for staggered terms, with as nearly equal a number as possible to be appointed each year. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. Unless removed as herein provided, members of the Board shall serve until their term is expired and their successor appointed and qualified and shall select their own chairman from among their members to serve for a one- (1-) year term. (559,1623,2782)

2-5-2: PERSONNEL APPEALS BOARD: (728)

(Rep. by 1623) (See Chapter 18)

2-5-3: AMENDING THE PERSONNEL SYSTEM:
That Rule 4, Section 4; Rule 6, Section 3, paragraph 2; Rule 11, Section 2, paragraph 1; and Rule 13, Section 3(B)2 of the Personnel Rules and Regulations as contained in Resolution No. 4467, together with all the provisions of said Resolution No. 4467, three (3) copies of which resolution are on file in the office of the City Clerk, are hereby referred to, adopted, and made a part hereof as if set forth fully in this Section, and Resolution No. 4467, together with the Amendments and Personnel Rules and Regulations contained therein and above referred to, are declared to be a public record pursuant to the provisions of Section 9-801, Arizona Revised Statutes. (728,1281,1317)
CHAPTER 6

CIVIL DEFENSE DISASTER

(Repealed by 706)

CHAPTER 7

PARKS AND RECREATION BOARD

SECTION:

2-7-1: CREATION OF PARKS AND RECREATION BOARD (4025)
2-7-2: POWERS AND DUTIES

2-7-1: CREATION OF PARKS AND RECREATION BOARD: (4025)
There is hereby created a Board to be known as the Parks and Recreation Board. The Parks and Recreation Board shall be composed of eleven (11) persons. The members of the Board shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of term for each member to provide for staggered terms. No member of the Parks and Recreation Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (563,571,1624,2712,4025)

2-7-2: POWERS AND DUTIES:
The Parks and Recreation Board shall advise the Council on policy matters relating to the operation and development of all City parks and recreational facilities, including all City-owned or operated golf courses, and on the recreational program of the City. The Board shall elect one (1) of its members to serve as chairman for a one-(1-) year term. (563,2712,4025)
CHAPTER 8

TRANSPORTATION ADVISORY BOARD (3548)

SECTION:

2-8-1: CREATION OF BOARD
2-8-2: PURPOSE OF BOARD
2-8-3: MEMBERSHIP
2-8-4: POWERS AND DUTIES

2-8-1: CREATION OF BOARD: (3548)
There is hereby created and established a Transportation Advisory Board to consist of eleven (11) resident citizens and electors of the City who shall be appointed by the Mayor with the approval of the Council to serve for three- (3-) year staggered terms. As of the effective date of this Chapter, the Mayor shall designate the terms of the various members of the Board, which shall not be more than three (3) years in order to provide for staggered terms, with as nearly equal a number as possible to be appointed each year. Members of the Board shall serve until their term expires and their successors appointed and qualified and shall select their own chairman from among their members to serve for a one- (1-) year term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. The members of the Board shall serve without compensation. (1569,1620,3548)

2-8-2: PURPOSE OF BOARD
A Transportation Advisory Board for the City of Mesa will assist and advise the Council in developing a community-based, multi-modal surface transportation system that provides mobility for all, complements land use, and improves air quality. (3548)

2-8-3: MEMBERSHIP
The Board will be comprised of a diverse body of Mesa citizens committed to developing an efficient, effective, multi-modal surface transportation system. Members of the Board shall have a background or strong interest in transportation issues. (3548)

2-8-4: POWERS AND DUTIES
The powers and duties of the Board shall be as follows: (3548)

(A) Make studies of traffic problems within the limits of the City and make recommendations to the City Council from time to time with respect thereto. (3548)

(B) Advise, assist, and make recommendations to the City Council on matters relating to surface transportation, including, but not limited to, transportation plans, projects, and ordinances relating to the surface street system, bicycles, pedestrians, freeways, and transit. (3548)

(C) Create a forum for communication, education, and dialogue with Mesa citizens on transportation issues. (3548)
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CHAPTER 9

DESIGN REVIEW BOARD (3170)

SECTION:

2-9-1:  CREATION OF BOARD
2-9-2:  POWERS AND DUTIES

2-9-1:  CREATION OF BOARD:
There is hereby created a Board to be known as the Design Review Board. The Design Review Board shall be composed of seven (7) persons who are citizens and electors of the City. The members of the Board shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of terms for each member to provide for staggered terms. No member of the Design Review Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. The membership of the Design Review Board shall include two (2) architects, two (2) other design professionals (i.e., landscape architecture, engineering, urban planning, interior design, or other design-related backgrounds), one (1) contractor/developer, and two (2) citizens. (2077,3170)

2-9-2:  POWERS AND DUTIES:
The Design Review Board shall advise the Council on issues concerning exterior design and landscaping guidelines for buildings, structures, and open space; review and decide on design and architectural elements of development proposals as specified by ordinance; and perform such other functions as may be assigned to them by the Mayor or City Council. The Board shall elect one (1) of its members to serve as chairman, and each chairman so elected shall serve for a one- (1-) year term. (2077,3170)

CHAPTER 10

PLUMBING, MECHANICAL, AND SOLAR ENERGY ADVISORY BOARD (864,1082,1620)

(Repealed by 4207)
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CHAPTER 11

BUILDING BOARD OF APPEALS (1024,1620,4205)

SECTION:

2-11-1: PURPOSE (4205)
There shall be, and is hereby created, a Building Board of Appeals, consisting of nine (9) members who are qualified by experience and training to pass judgment upon matters pertaining to building and construction. The purpose of the Building Board of Appeals (Board) shall be to hear appeals from determinations made by the Building Safety Director and the Fire Marshal; to provide for reasonable interpretations of the provisions of the Mesa Municipal Code, Title 4 - Building Regulations (all Chapters) and Chapter 2 Fire Code of Title 7 - Fire Regulations; to determine the suitability of alternate materials and methods of construction; and to recommend changes of the various building and fire codes to the City Council. (4205)

2-11-2: MEMBERSHIP (4205):
The members of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years each. No member shall serve more than two (2) complete consecutive terms, provided, however, a person may be reappointed after a lapse of three (3) years from the end of their last term. The Mayor shall designate, at the time of the initial appointment under this Chapter, the length of time for each of the members to provide for three- (3-) year staggered terms, and thereafter appointments shall be for three (3) years. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent for three (3) consecutive meetings without being excused shall be considered as having vacated their appointment. Appointments to fill unexpired terms shall be made in the same manner as the vacated member. Members of the Board shall serve without pay. (4205)

The Building Safety Director or designee shall serve as Secretary to the Board but shall have no vote therein. (4205)

2-11-3: QUALIFICATIONS (4205)
The members of the Board shall consist of: one (1) architect licensed by the State of Arizona; one (1) general building contractor licensed by the State of Arizona and experienced in the construction of commercial / industrial buildings; one (1) homebuilder experienced in the construction of one- (1-) and two- (2-) family dwelling units; one (1) plumbing or mechanical contractor registered by the State of Arizona or one (1) mechanical engineer licensed by the State of Arizona; one (1) electrical contractor registered by the State of Arizona or one (1) electrical engineer licensed by the State of Arizona; one (1) person with experience in fire fighting techniques or fire protection systems or one (1) fire protection engineer licensed by the State of Arizona; and three (3) general public members. It is encouraged that one (1) of the general public members be a person with disabilities as defined by the Americans with Disabilities Act of 1990. (4205)
Members shall have had at least five (5) years of recent experience in their respective trade or profession. No member shall be a current employee of the City of Mesa. Members shall comply with the City of Mesa Ethics Handbook for Elected Officials and Advisory Board Members. (4205)

2-11-4: PROCEDURES: (4205)
The Board shall annually select one (1) of its members to serve as Chair and one (1) member to serve as Vice Chair. From time to time, the Board shall establish rules and regulations for its own procedures that are not inconsistent with the provisions of this Chapter. (4205)

An appeal of a determination of the Building Safety Director or the Fire Marshal shall be filed within thirty (30) days from the date of the determination. (4205)

The Board shall have the authority to overturn, uphold, or modify a determination of the Building Safety Director or the Fire Marshal, and shall have the same authority as the official in so doing. The Board shall be authorized to approve an alternate material or method of construction to that required by Title 4, provided the Board finds that the proposed design is satisfactory, complies with the intent of the requirements of Title 4, and the material, method, or work to be provided meets the intended purpose and is at least the equivalent to that prescribed in Title 4 in quality, strength, effectiveness, fire resistance, durability, and safety. (4205)

Appeals shall generally follow the following steps: (4205)

(A) The Building Safety Director or Fire Marshal, as appropriate, shall brief the Board on the key elements of the appeal, including the Code requirements and other pertinent information, (4205)

(B) The appellant may present further information explaining the facts and reasons for the appeal, (4205)

(C) Appropriate City staff may add additional information, and (4205)

(D) The Board shall deliberate the case and may hear additional testimony relevant to the appeal prior to reaching a decision. (4205)

The Board shall reach a decision without unreasonable or unnecessary delay. The Board shall render all decisions and findings in writing, signed by the Chair or Vice Chair. The Building Safety Director shall forward a notice of decision to the appellant by certified mail or personal delivery. Said notice of decision shall state the determination, reasons for the decision, conditions related to the granting of the determination as established by the Board, and whether or not the appeal meets the requirements of this Chapter. The decision of the Board shall be final, subject to court review only, and shall not be appealable to the City Council. (4205)

2-11-5: MEETINGS: (4205)
The Board shall meet upon notice of the Building Safety Director or Fire Marshal, at the request of the Chair or Vice Chair, within thirty (30) calendar days after the receipt by the Building Safety Director or the Fire Marshal of an appeal, or at stated periodic meetings. Meetings and hearings of the Board shall be public and in the presence of a quorum. Meetings shall conform to the requirements of the Open Meeting Laws of the State of Arizona. Appellants and their representatives shall be given an opportunity to be heard. (4205)
Minutes of meetings shall be made, and after approval at a subsequent meeting, shall be signed by the Chair or Vice Chair and retained on file in the Building Safety Division. (4205)

2-11-6: QUORUM AND VOTING: (4205)

Five (5) members of the Board shall constitute a quorum. In varying the application of any provision of the Building Code, Fire Code, or related codes of the City or in modifying an order of the Building Safety Director or the Fire Marshal, the affirmative vote of five (5) members shall be required. Failure to secure five (5) concurring votes shall be deemed a confirmation of the decision of the Building Safety Director or the Fire Marshal. Members shall be present to vote. (4205)

No member of the Board shall discuss or vote on any agenda item concerning a job or project in which they are engaged as a contractor, material dealer, or consultant, or in the preparation of drawings or specifications on any job or project in which they have any personal or financial interest. (4205)

2-11-7: COURT REVIEW: (4205)

Any person aggrieved by the decision of the Board, whether or not a previous party to the decision, or any municipal officer or official department of the City may, at any time within thirty (30) days after the filing of the Board's decision in the office of the Building Safety Director, file an appeal in writing with the Superior Court of the County by following the methods of appeal or review procedures in Arizona as set forth by the applicable statutes of the State of Arizona. (4205)

2-11-8: ENFORCEMENT: (4205)

The Building Safety Director is authorized to enforce decisions of the Board or, upon successful review, of the Superior Court. (4205)

2-11-9: FEES (4205)

The fee for each appeal to the Building Board of Appeals shall be as set forth in the schedule of fees and charges for the Development Services Department, Building Safety Division. Said fee shall be paid with the filing of the appeal and shall be refunded only if the Building Safety Director determines that the appeal cannot proceed. (4205)
CHAPTER 12
(880,902,1620,2712)

HUMAN RELATIONS
ADVISORY BOARD

SECTION:

2-12-1: BOARD CREATED
2-12-2: PURPOSE AND FUNCTIONS
2-12-3: MEMBERSHIP

2-12-1: BOARD CREATED:
The City Council hereby creates a citizens advisory board to be known as the Human Relations Advisory Board. (3617)

2-12-2: PURPOSE AND FUNCTIONS:
In addition to such functions as the City Council may delegate to it, the Human Relations Advisory Board shall advise the City Council about racial, religious, ethnic, cultural, disability, or other human relations issues affecting Mesa City government and the delivery of City services. The Board may recommend policies to eliminate discrimination and prejudice, and to promote mutual understanding and harmony. The Board may also serve as a public forum for citizen input on issues related to the purpose and functions of the Board. (3617)

2-12-3: MEMBERSHIP:

(A) The Board shall be composed of eleven (11) persons who are residents and electors of the City. Subject to the concurrence of the City Council, the Mayor shall appoint Board members for staggered terms of three (3) years each. At the time of initial appointment, the Mayor shall designate the length of term for each Board member to provide for staggered terms. (3617)

(B) No Board member shall serve more than two (2) complete consecutive terms; however, a Board member may be reappointed after the lapse of three (3) years from the end of the previous term. (3617)

(C) Continued absence of any Board member shall, at the discretion of the City Council, render such member liable for immediate removal from office by the Council. Any Board member absent from three (3) consecutive meetings without being excused by the Board shall constitute abandonment of office and the Board member is deemed to have vacated his or her office without further action of the Board or Council. (3617)

(D) The Board’s officers shall consist of a chairperson and a vice chairperson, each of whom shall be selected by the Board from the Board’s members. Board officers shall serve a one- (1-) year term. No member shall serve more than two (2) full terms as chairperson and two (2) full terms as vice chairperson, not including partial terms in either capacity. (3617)

CHAPTER 13

ELECTRICAL ADVISORY BOARD
(945,1068,1621,2582)

(Repealed by 4206)
CHAPTER 14

SOLICITATION AND LICENSE APPEAL BOARD
(1275,1620,1816)

(Repealed by 2383)

CHAPTER 15

HUMAN SERVICES ADVISORY BOARD
(1620, 2194)

(Repealed by 3220)

CHAPTER 16

MUSEUM AND CULTURAL
ADVISORY BOARD

SECTION:

2-16-1: CREATION OF MUSEUM AND CULTURAL ADVISORY BOARD (4025)
2-16-2: POWERS AND DUTIES

2-16-1: CREATION OF MUSEUM AND CULTURAL ADVISORY BOARD: (4025)
There is hereby created a Board to be known as the Museum and Cultural Advisory Board. The Museum and Cultural Advisory Board shall consist of eleven (11) persons who shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment, pursuant to this Chapter, the Mayor shall designate the length of term for each member to provide for staggered terms. No member of the Museum and Cultural Advisory Board shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after a lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his/her appointment. (1051,1620,2352,4025)

2-16-2: POWERS AND DUTIES:
The Museum and Cultural Advisory Board shall advise the Council regarding policies pertaining to the development of City museums, arts centers, cultural services, and the Public Arts Program and shall perform such other duties as delegated by the City Council from time to time. The Board shall elect one (1) of its members to serve as chairman for a one- (1-) year term. (1051,2352,4025)
CHAPTER 17

SELF-INSURANCE PROGRAM
BOARD OF TRUSTEES (5125)

SECTION:

2-17-1: BOARD CREATED
2-17-2: POWERS AND DUTIES

2-17-1: BOARD CREATED:
There is hereby created a Self-Insurance Program Board of Trustees to consist of five (5) members, all of whom shall be residents of the City. One (1) of such Board members shall be a Councilmember; one (1) member of such Board shall be an employee of the City; and none of the other three (3) members shall be either Councilmembers or employees of the City. The Councilmember and the City employee shall be appointed by the Mayor with the approval of the Council, and these two (2) Board members shall serve at the pleasure of the Council. The other three (3) Board members shall be appointed by the Mayor with the approval of the Council for staggered terms of three (3) years each. At the time of the initial appointment of such members, the Mayor shall designate the length of term to provide for staggered terms. No member of the Self-Insurance Program Board of Trustees, excepting for the Councilmember and the City employee, shall serve more than two (2) complete consecutive terms; however, such member may be reappointed after a lapse of three (3) years from the end of the previous term. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. (1260, 1620)

2-17-2: POWERS AND DUTIES:
The Self-Insurance Program Board of Trustees shall act in an advisory role with regard to the financial viability of the Property and Public Liability, Employee Benefits, and Workers' Compensation Trust Funds, and shall perform such other duties and responsibilities set forth in the Restatements of Trust for the public and property liability and Employee Benefits Trust Funds, and the Restatement of Trust for the Workers' Compensation Trust Fund. The Board shall elect one (1) of its members to serve as chairman, and each chairman so elected shall serve for a one- (1-) year term. (1260, 5125)
CHAPTER 18

PERSONNEL APPEALS BOARD

SECTION:

2-18-1:        MEMBERS OF BOARD, ALTERNATE MEMBERS
2-18-2:        BOARD HEARINGS AND PROCEDURAL RULES
2-18-3:        CITY MANAGER DECISION

2-18-1:        MEMBERS OF BOARD, ALTERNATE MEMBERS:
The Personnel Appeals Board created by Section 404 of the Mesa City Charter shall consist of five (5) members and shall have the qualifications set forth in the Charter. The members of the Personnel Appeals Board shall serve staggered terms of three (3) years each. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. (1625, 2798, 5272)

2-18-2:        BOARD HEARINGS AND PROCEDURAL RULES:

(A) The Board shall conduct a hearing upon receiving notice from the Human Resources Department concerning a review of a grievance or appeal of a dismissal brought pursuant to the Personnel Rules. The Board shall make every effort to schedule the hearing at the earliest possible mutually convenient time. The Board shall provide the parties a written notice of the time, date, and place of hearing not less than ten (10) business days before the first date of such hearing. At least three (3) board members must be present to proceed with a hearing and for deliberations and voting. The executive session must be attended by at least three (3) board members that were present for the entire hearing. If five (5) board members were present for the entire hearing, all five board members may deliberate and vote on the recommendation to the City Manager. If only four (4) board members are present for the hearing, the last appointed board member may participate in the deliberations but may not vote. (3687, 4956, 5250, 5272)

(B) All Board hearings shall comply with the Arizona Open Meeting Law (A.R.S. §§38-431 et seq.) and Public Records Law (A.R.S. §§39-121 et seq.), as amended. All Board hearings shall further be conducted in accordance with the Personnel Appeals Board Hearing Procedural Rules for Classified Employees (excluding sworn law enforcement) or the Personnel Appeals Board Hearing Procedural Rules for Sworn Law Enforcement Employees, which were declared to be public records by resolution adopted on September 22, 2014, and to which reference is hereby made and which are incorporated herein, three copies of which are on file and available for public use and inspection in the Office of the City Clerk. (3687, 5250)

(C) The City Clerk's Office shall ensure that proper public notice, including an agenda, is provided for all Board hearings. The Personnel Office shall act as secretary to the Board in sending information packets to members and fulfilling other clerical responsibilities of the Board. (3687, 5250)

2-18-3:        CITY MANAGER DECISION:

(A) After receiving the written advisory opinion, the City Manager may contact the Board to seek additional advice or information concerning the matter. (3687, 5250)

(B) The City Manager may accept or reject the Board's advisory opinion. Within a reasonable period of time, not to exceed thirty (30) days, from receipt of the Board's advisory opinion, the City Manager shall notify the appellant, affected department head, and Personnel Director of the City Manager's decision. The thirty- (30-) day period may be extended should circumstances arise that preclude the City Manager from completing a review in a timely manner. Such decision shall be in writing and final for purposes of judicial review. (3687, 5250)
CHAPTER 19

CRIME PREVENTION ADVISORY BOARD (2351, 3361)

(Repealed by 3945)

CHAPTER 20

DOWNTOWN DEVELOPMENT COMMITTEE (2461, 2481, 2744, 3114)

(Repealed by 4960)
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CHAPTER 21

ECONOMIC DEVELOPMENT ADVISORY BOARD

SECTION:

2-21-1: CREATION OF BOARD

There is hereby created a Board to be known as the Economic Development Advisory Board. The Economic Development Advisory Board shall be composed of nine (9) persons who are residents of the City and six (6) nonvoting ex officio members. (2705,4216)

2-21-2: MEMBERSHIP

The members of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years. All terms shall terminate on June 30 of the applicable year. No member shall serve more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of one (1) year from the ending of the previous term. (2705,4216)

The membership of the Economic Development Advisory Board shall include: nine (9) voting members, and six (6) ex officio nonvoting members. Three (3) of the ex officio members shall be the Mayor, City Manager, the president and chief executive officer of the Mesa Chamber of Commerce, and three (3) may be members representing Mesa that are currently sitting on the Greater Phoenix Economic Council Board of Directors. (2705,4216)

The Economic Development Advisory Board shall elect one (1) of its members to serve as chairperson and one (1) of its members to serve as vice chairperson. All members shall serve without compensation. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated the appointment. (2705,4216)

2-21-3: POWERS AND DUTIES

The Economic Development Advisory Board shall act as the advisory board to the Mesa City Council on matters pertaining to economic development. (2705,4216)

Members of the Economic Development Advisory Board shall, among other duties, review and recommend to the City Council an annual work program, monitor such work program, and recommend changes to enhance economic development efforts. The Board shall also serve as a forum for economic development policy discussion and present findings and recommendations of such discussions to the City Council. The Board shall serve as advisors to the Economic Development Director and assist in identifying assets, resources, and incentives appropriate for implementation of Mesa's economic development strategy. This Board shall serve as a contact for persons or companies seeking to invest in the City of Mesa. (2705,4216)

Individual Boardmembers may serve as representatives of the City of Mesa at state, regional, and local economic development forums. In working towards accomplishing the goal of providing enhanced economic development opportunities, the Board will work in collaboration with the Arizona Department of Commerce, Arizona State University, Arizona Technology Council, Business Coalition, Downtown Development Committee, East Valley Partnership, Falcon Field Area Alliance, Gilbert Public Schools, Greater Phoenix Economic Council, Maricopa Association of Governments, Mesa Chamber of Commerce, Mesa Community College, Mesa Convention and Visitors Bureau, Mesa Public Schools, Mesa Town Center Corporation, Williams Gateway Airport Authority, and other strategic partners. (4216)
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CHAPTER 22
HISTORIC PRESERVATION COMMITTEE

SECTION:

2-22-1: CREATION OF COMMITTEE
2-22-2: MEMBERSHIP
2-22-3: POWERS AND DUTIES

2-22-1: CREATION OF COMMITTEE:
The Historic Preservation Committee is hereby created, consisting of seven (7) members who are residents of the City at large to be appointed by the Mayor with the approval of the City Council within sixty (60) days of the adoption of this Chapter.* Members shall serve for three (3) years, except that the members of the first Committee shall serve as designated by the City Council for the following terms: three (3) members for one (1) year; two (2) members for two (2) years; and two (2) members for three (3) years.** Any vacancy shall be filled by the Mayor and City Council within a reasonable time after the vacancy occurs, for the unexpired term. Members shall serve until their successors are appointed. The members of the Committee shall serve without compensation. (3373)

2-22-2: MEMBERSHIP:
Members of the Committee shall be selected from the areas of architecture, history, architectural history, planning, landscape architecture, archaeology, cultural geography or anthropology, or have demonstrated strong interest in past matters that involve historic preservation issues. (3373)
The Committee shall elect a chairman and vice chairman from among its members annually. (3373)
The Committee shall adopt rules for the conduct of its business. The Committee may, in such rules, delegate certain responsibilities and/or tasks to be performed by a Subcommittee or Subcommittees of the Committee. (3373)

2-22-3: POWERS AND DUTIES:
The powers and duties of the Committee shall be as follows: (3373)

(A) Review and make recommendations on any matter or request or appeal that will appear on an agenda before the Downtown Development Committee or Planning and Zoning Board or City Council involving sites nominated or approved for Historic Landmark (HL) or Historic Preservation (HP) overlay district, or other matters involving general historic preservation issues as they pertain to Mesa. (3373)

(B) Hold public hearings and make recommendations to the Downtown Development Committee or Planning and Zoning Board on requests for amendments to the zoning map and Zoning Ordinance regarding Historic Preservation (HP) overlay districts and designation of Historic Landmarks (HL) within the corporate City limits. (3373)

(C) Hear and decide appeals from the decisions of the Historic Preservation Officer regarding proposed development, renovation, additions, alterations, or demolition of buildings and structures or sites designated or nominated Historic Landmark (HL) or within Historic Preservation (HP) overlay districts for the purpose of deciding whether clearance for a building permit should be issued. The review shall be limited to building size, scale, exterior elevation, design, color, and appearance to assure compatibility with the historic character of the property, neighborhood, and environment. (3373)

* Ordinance 3373 was adopted on July 21, 1997.
** Ordinance 3373 was amended by Ordinance 3390 on September 15, 1997 to state that subject to Council concurrence under Section 501(B) of the City Charter, the Mayor is free to appoint, or not, the members of the former Subcommittee to the new Committee.
(D) Establish and maintain the Mesa Historic Property Register and periodically conduct studies for the purpose of assessing the potential of buildings, structures, or areas for designation as historic sites or districts. (3373)

(E) Hear and/or make recommendations to the City Council and periodically review guidelines to evaluate requests for development, renovation, alteration to historic districts, landmarks, and historic properties, or demolition of buildings and structures on sites designated as historic districts or historic landmarks. Such guidelines may include building location, minimum yard sizes, average heights, materials, color, architectural features, and other characteristics and cultural features found in the approved district. (3373)

(F) Hear and/or make recommendations to the City Council regarding acquisition by the City of structures or easements for maintenance or repair of structures for their preservation, where private preservation is not feasible. (3373)

(G) Hear and/or make recommendations on other matters as directed by the City Council. (3373)
CHAPTER 23

MESA HOUSING SERVICES GOVERNING BOARD

SECTION:

2-23-1: CREATION OF GOVERNING BOARD (4146)
2-23-2: MEMBERSHIP (4146)
2-23-3: RESIDENT BOARD MEMBER; APPOINTMENT, TERM (4146,4415)
2-23-4: RESIDENT BOARD MEMBER; QUALIFICATIONS (4146,4415)
2-23-5: RESIDENT BOARD MEMBER; NOTIFICATION OF AVAILABLE POSITION, NO QUALIFIED APPLICANTS (4146)
2-23-6: REMOVAL OF RESIDENT BOARD MEMBERS (4146)
2-23-8: RESIDENT BOARD MEMBER; STATUS DOES NOT CREATE CONFLICT OF INTEREST (4146)

2-23-1: CREATION OF GOVERNING BOARD: (4146)
There is hereby created a Board to be known as the Mesa Housing Services Governing Board. The Mesa Housing Services Governing Board shall be composed of eight (8) members, with such membership determined as provided in Section 2-23-2(A) hereof. (4146)

2-23-2: MEMBERSHIP: (4146)

(A) The members of the Governing Board shall consist of: (4146)

1. One (1) Resident Board Member, as provided in Sections 2-23-2 and 2-23-4 hereof; (4146)

2. Six (6) Councilmembers, one (1) from each of the six (6) geographical districts within the City of Mesa; and (4146)

3. The Mayor. (4146)

(B) The Mayor and Councilmembers, while rightfully holding their respective offices, shall automatically be and act as a member of the Mesa Housing Services Governing Board. (4146)

2-23-3: RESIDENT BOARD MEMBER; APPOINTMENT, TERM: (4146,4415)

(A) The Resident Board Member shall be appointed as provided in Subsection (B) of Section 501 of the City Charter, based on the recommendation of the Housing Advisory Board as provided in Section 2-23-4. (4146,4415)

(B) The Resident Board Member shall serve for a one- (1-) year term, beginning on January 1 and ending on December 31 of the same calendar year. (4146)

2-23-4: RESIDENT BOARD MEMBER; QUALIFICATIONS: (4146,4415)

(A) The Resident Board Member shall meet the qualifications, set forth in Subpart E of 24 C.F.R. Part 964, for being classified as an "Eligible Resident." (4146)
(B) The Housing Advisory Board shall review the eligibility of those who have applied for the Resident Board Member position. The Housing Advisory Board will forward to the Mayor the name of the applicant the Housing Advisory Board recommends for appointment as the Resident Board Member. (4146,4415)

2-23-5: RESIDENT BOARD MEMBER; NOTIFICATION OF AVAILABLE POSITION, NO QUALIFIED APPLICANTS: (4146)

(A) The Housing Services Director shall provide an annual notice to the Mesa Housing Services resident advisory board of the opportunity for residents to serve on the Mesa Housing Services Governing Board. This notice shall list the eligibility requirements, the reasons for removal from the Board, and the procedure for applying for the Resident Board Member Position. This notice shall be provided:

(i) not more than one hundred twenty (120) days and

(ii) not less than thirty (30) days before the January 1st beginning of the noticed term. (4146)

(B) In the event the Housing Services Director does not receive any applicants for the Resident Board Member position, which meet the qualifications set forth in Section 2-23-4 hereof, by the later of:

(i) the date which is thirty (30) days after the Housing Services Director provides the Housing Services resident advisory board with the notice set forth in Section 2-23-5(A) hereof, or

(ii) the date which is thirty (30) days before the January 1st beginning of the noticed term, the City shall be determined to meet the requirements for the exception to the requirement of having a Resident Board Member, set forth at 24 C.F.R. 964.425, for the noticed term. In such event, the Mayor may, but shall not be required to, appoint a Resident Board Member in accordance with the provisions of Section 2-23-3 hereof. (4146)

2-23-6: REMOVAL OF RESIDENT BOARD MEMBERS: (4146)

(A) A Resident Board Member may be removed pursuant to the provisions of Section 1-5-9 of the Mesa City Code. (4146)

(B) A Resident Board Member, who ceases to be directly assisted by Mesa Housing Services, may be removed by a vote of five (5) members of the City Council. A Council decision to remove the Resident Board Member shall be effective in accordance with its terms, and shall be final and nonappealable. (4146)

2-23-7: POWERS AND DUTIES: (4146)

The Mesa Housing Services Board shall have oversight responsibility for the administration, operation, and management of the City's Federal public housing programs and Section 8 tenant-based rental assistance programs, and the authority to make decisions related thereto. Such oversight responsibility does not extend to matters that:

(A) Exclusively relate to other types of housing assistance, such as State-financed housing assistance, or (4146)

(B) Do not involve housing assistance. (4146)

2-23-8: RESIDENT BOARD MEMBER; STATUS DOES NOT CREATE CONFLICT OF INTEREST: (4146)

The Resident Board Member shall not be excluded from participating in any matter before the Mesa Housing Services Governing Board on the grounds that the Resident Board Member's lease with the public housing agency, or the Resident Board Member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the Resident Board Member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcategory of residents. (4146)
CHAPTER 24

HOUSING AND COMMUNITY DEVELOPMENT ADVISORY BOARD (5123)

SECTION:

2-24-1: CREATION OF THE BOARD (4418, 5123)

There shall be and is hereby created a board to be known as the Housing and Community Development Advisory Board. The Housing and Community Development Advisory Board shall be composed of eleven (11) persons who reside in the City of Mesa. All members shall serve without compensation. (4418, 5123)

2-24-2: PURPOSE OF THE BOARD: (4418, 5123)

The purpose of the Housing and Community Development Advisory Board (“Board”) shall be to advise the Mesa City Council on housing, community development, and social services priorities, funding, and planning. The intent is to appoint citizens of Mesa who will address housing, community development, and social services issues across the community. The Board will be formed and its members will act in accordance with the City of Mesa Charter and Code. (4418, 5123)

2-24-3: MEMBERSHIP: (4418)

A. The membership of the Board shall include:

1. One (1) person from a financial institution that has lending experience with all types of housing developments; (4418, 5123)

2. One (1) representative from nonprofit providers; (4418, 5123)

3. One (1) representative of manufactured housing (resident or owner of manufactured housing); (4418, 5123)

4. One (1) representative from Special Needs Providers; (4418, 5123)

5. One (1) representative from multi-family housing development providers; (4418, 5123)

6. One (1) representative from single-family housing development providers; and (4418, 5123)

7. Five (5) community representatives. The number of community representatives may be increased to ensure there are eleven (11) board members, but only if there are no qualified applicants for categories 1 through 6. The purpose, preference and intent are for the Board to consist of six (6) housing representatives as listed in paragraphs 1 through 6 and five (5) community representatives. (4418, 5123)
B. The membership of the Board shall be appointed by the Mayor with the approval of the City Council for staggered terms of three (3) years each. For the initial 2012 Board appointments, the Mayor shall designate the length of service for each member to create staggered three (3) year terms. No member shall serve more than two (2) consecutive terms, provided, however a person may be reappointed after a lapse of three (3) years from the end of their last term. (4418, 5123)

C. The Board shall annually elect one (1) of its members to serve as Chairperson and one (1) of its members to serve as Vice Chairperson. The Board shall establish rules and regulations for its own procedures that are consistent with the provisions of this Chapter. (4418, 5123)

D. The Chairperson shall give notice to the City Council of excessive absences, constituting more than three (3) meetings in a year, of any member from meetings of the Board that shall, at the discretion of the City Council, render any such member liable for immediate removal from the Board by the City Council. Any member absent from three (3) consecutive meetings without notifying the Chairperson or Secretary shall be considered as having vacated the appointment. (4418, 5123)

2-24-4: MEETINGS: (4418, 5123)

A. The Board shall meet upon request by the Chairperson, or Housing and Community Development staff, at a minimum of four (4) times a year. (4418, 5123)

B. Meetings and hearings of the Board shall be public and in the presence of a quorum. Meetings shall conform to the requirements of the Open Meetings Laws of the State of Arizona. Minutes of meetings shall be made, and after approval at a subsequent meeting, shall be signed by the Chairperson or vice Chairperson and retained on file in the Office of the Mesa City Clerk. (4418)

C. The Housing and Community Development Department will assign staff that shall act as Secretary to the Board. (4418, 5123)

2-24-5: POWERS AND DUTIES: (4418, 5123)

The Board shall:

A. Review and make recommendations to the City Council regarding the City's General Plan Housing Element and Housing Master Plan. (4418, 5123)

B. Provide requested assistance to City departments and divisions on housing issues to ensure compatibility with the City's General Plan Housing Element and Housing Master Plan. (5123)

C. Review and make recommendations to the City Council on the operation of the housing programs managed by the City's Housing and Community Development Department as requested. (4418, 5123)
D. Participate in the annual evaluation process and, with City Council approval, make final allocations of the applications for funds awarded to the City by the U.S. Department of Housing and Urban Development under the following programs: (5123)

1. Community Development Block Grant (CDBG); (5123)
2. Home Investment Partnerships (HOME); (5123)
3. Emergency Solutions Grant (ESG); and (5123)
4. Neighborhood Stabilization Program (NSP) (5123)

E. Assess the human services needs of the community, determine any gaps in service, and utilize this information to develop priorities for human services funding, a better community funds, and any other grant or social service funds that may become available to the City. (5123)

F. Participate in the annual evaluation process and, when directed by City Council, make final allocations of the applications for human services funds and a better community funds. (5123)

G. Participate in the evaluation process and make final funding allocations of any other grant or social service funds that may become available to the City as directed by City Council or Housing and Community Development Department staff. (5123)

H. Perform such other powers and duties as may be approved by City Council. (5123)
CHAPTER 25

INDEPENDENT COMMISSION ON COMPENSATION
FOR ELECTED OFFICIALS (5109, 5365)

SECTION:

2-25-1: POLICY ON ELECTED OFFICIALS' COMPENSATION (5109, 5365)
It shall be the policy of the City of Mesa that the Mayor and City Council shall be compensated for their time and effort on behalf of the City at a level that (1) is reasonable in light of the compensation paid to elected officials in other municipalities in the state of Arizona of similar size, or other municipalities in the United States of similar size, upon request of the Independent Commission on Compensation for Elected Officials, (2) will include the costs and expenses necessary to perform their duties, (3) is likely to attract competent and effective people to serve in public office, (4) makes public service possible for every eligible citizen, not just those whose financial status enables them to serve, (5) takes into account the financial circumstances of the City, and (6) is determined by an Independent Commission on Compensation for Elected Officials. (5109, 5365)

2-25-2: ESTABLISHMENT OF AN INDEPENDENT COMMISSION ON COMPENSATION FOR ELECTED OFFICIALS; MEMBERSHIP; AND MEETINGS (5109, 5365)

(A) The Independent Commission on Compensation for Elected Officials (the "Commission") shall be appointed by the City Council. The Commission shall consist of five (5) members and shall include (1) a representative of Mesa's business community, (2) a representative from Mesa's educational community, (3) a representative from Mesa's non-profit business community, and (4) two (2) members at large. The Chairperson shall be elected by the members of the Commission. Members of the Commission shall serve staggered three (3) year terms. At the time of the original appointment, the Mayor shall designate the length of the term of all members to provide for staggered terms, which in no event shall be more than three (3) years. (5109)

(B) Eligibility of Commission Members: Commission members shall be residents of the City of Mesa and shall be eighteen (18) years old or older. No member of the Commission shall be, or within two (2) years prior to service on the Commission have been an employee of the City of Mesa. No member of the Commission shall be serving or, within two (2) years prior to service on the Commission, have served, as an elected official for the City of Mesa. (5109)

(C) Timing of Meetings. The Commission shall hold its initial meeting no later than sixty (60) days after the effective date of this provision. Thereafter, the Commission may meet at the discretion of its Chairman or a majority of its members, but shall meet not less frequently than every three (3) years. Any recommendation to be made by the Commission must be approved by a majority of the members of the Commission. (5109, 5365)
(A) **Report and Recommendations.** The Commission shall render a written report and recommendations with respect to the compensation for elected officials of the City of Mesa to the City Manager no later one hundred twenty (120) days following its initial meeting in any year. Within ninety (90) days of receiving the written report and recommendations of the Commission, the City Council shall consider and vote on the Commission's recommendations. The recommendations of the Commission must be approved or rejected as a whole by the City Council. (5109, 5365)

(B) **Comparative Analysis by the Commission.** The Commission shall determine the compensation of the Council and the Mayor based on comparative information regarding the compensation of elected officials of municipalities in the state of Arizona of similar size, or other municipalities in the United States of similar size, upon request of the Independent Commission on Compensation for Elected Officials, as well as any special circumstances or issues that the Commission deems appropriate; provided, however, that such review shall not constitute performance review with respect to such elected officials, but shall relate solely to the compensation for elected officials in the City of Mesa compared to that of similarly situated officials in similar municipalities. (5109, 5365)
CHAPTER 1

POLICE DEPARTMENT

SECTION:

3-1-1: ORGANIZATION
There is hereby established and created a regularly constituted police force to be known as the Mesa Police Department. The Mesa Police Department shall consist of a Chief of Police and all other classified service positions now existing or which in the future may be added or changed by Council action or personnel rules and regulations.

3-1-2: APPOINTMENT
The City Manager shall recommend to, and upon approval by the Council, appoint the Chief of Police and pursuant to the merit system regulations appoint, and when necessary remove, all other officers and members of the Police Department, except as the City Manager may authorize the Chief of Police to appoint and remove officers and employees in the Department. (1165)

3-1-3: CHIEF OF POLICE
The Chief of Police shall be the head of the Police Department under the direction of the City Manager and Council. All other members of the Department shall be under his immediate supervision, direction and control and it shall be his duty to see that all laws are kept, obeyed and executed. He shall have such other powers and perform such other duties as are now or may hereafter be prescribed. (1962 Code)
CHAPTER 2
FIRE DEPARTMENT

SECTION:

3-2-1: ORGANIZATION
3-2-2: APPOINTMENT

3-2-1: ORGANIZATION:
A regularly constituted Fire Department is hereby established, and the office of Chief of the Fire Department is hereby created. The Mesa Fire Department shall consist of the Chief of the Department and certain other classified service positions now existing, or which in the future may be added or changed by Council action or personnel rules and regulations.

The Chief of the Fire Department shall have immediate charge of the Fire Department and all equipment belonging thereto, and shall supervise and direct said Department in fighting fires, in the prevention of fires and in all things required so as to safeguard against loss by fire.

In the absence of the Fire Chief from duty, a command officer, designated by the Fire Chief, shall have the same authority and responsibility as the Chief in the performance of his duties.

3-2-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Chief of the Fire Department, and pursuant to the merit system regulations appoint, and when necessary remove, all other officers and members of the Fire Department, except as the City Manager may authorize the Chief of the Fire Department to appoint and remove officers and employees in the Department. (1166)
CHAPTER 3

UTILITIES DEPARTMENT

SECTION:

3-3-1: ORGANIZATION
3-3-2: APPOINTMENT
3-3-3: DUTIES OF MANAGER

3-3-1: ORGANIZATION:
The Utilities Department is hereby created, which shall consist of the office of Utilities Manager, which office is hereby created, and such additional employees of the Utilities Department as needs of that Department may demand and are properly authorized.

3-3-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Utilities Manager, and pursuant to the merit system regulations, appoint, and when necessary remove, all other employees of the Department, except as the Manager may authorize the Utilities Manager to appoint and remove employees in the Department.

3-3-3: DUTIES OF MANAGER:
The Utilities Manager shall supervise all electric, water, gas and wastewater systems of the City; shall have authority to make water conservation, resource, and planning investigations for the purpose of meeting the water needs of the City; and shall perform such other duties and functions as may from time to time be delegated by the City Manager. (2491,3455)
CHAPTER 4

DEVELOPMENT SERVICES DEPARTMENT (3766)

SECTION:

3-4-1: ORGANIZATION:
The Department of Development Services is hereby created, which shall consist of the office of Development Services Manager, which office is hereby created, and such additional employees of the Department of Development Services as the needs of that Department may demand and are properly authorized. (3766)

3-4-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Development Services Manager, and pursuant to the merit system regulations appoint, and when necessary remove, all other employees of the Department, except as the Manager may authorize the Development Services Manager to appoint and remove employees in the Department. (1394,3766)

3-4-3: DUTIES OF MANAGER:
The Development Services Manager shall supervise all Development Services activities in the City; shall have the jurisdiction over Administrative Services, Engineering, Building Safety, Facilities Maintenance, Environmental Services, Real Estate Services, Planning, and Transportation of the City; shall have authority to make engineering and traffic investigations for the purpose of fixing reasonable and safe maximum speed limits; and shall perform such other duties and functions as may from time to time be delegated to him. (1421, 2491,3766,4250)
CHAPTER 5

RESERVE POLICE OFFICERS

SECTION:

3-5-1: RESERVE POLICE OFFICER SYSTEM ESTABLISHED:
There is hereby established in and for the City a Police Reserve System.

3-5-2: PURPOSE OF RESERVE POLICE OFFICERS:
The purpose of the appointment of reserve police officers is to preserve the public peace and to promote general welfare of the City by giving authority to certain persons to assist regular police officers of the City in enforcing City ordinances and State Statutes.

3-5-3: APPOINTMENT OF RESERVE POLICE OFFICERS BY CHIEF OF POLICE:
The Chief of Police is hereby authorized to appoint adult persons to be reserve police officers. Such officers shall serve under rules and regulations herein contained and hereafter promulgated by the Chief of Police and approved by the City Council of the City of Mesa, but in no event shall such officers have powers superior to those of private citizens unless such officers be acting as reserve police officers under the general supervision of regular police officers of the City who are themselves on duty.

3-5-4: QUALIFICATIONS FOR APPOINTMENT; APPLICATIONS:
The Chief of Police shall determine additional qualifications for appointment and duty as a reserve police officer, and shall pass on all applications for appointment as a reserve police officer.

3-5-5: OATH OF OFFICE:
Every person appointed by the Chief of Police as a reserve police officer shall be sworn to faithful performance of his required duties as outlined by the Chief of Police.

3-5-6: PRE-ASSIGNMENT TRAINING:
The Chief of Police shall conduct a period of pre-assignment training for reserve officers sufficient to enable said officers to properly and adequately perform their required duties, and the Chief of Police may require such additional continuing training as he may find necessary.
3-5-7: **ASSIGNMENT TO SPECIFIED DUTIES:**
The Chief of Police shall have full discretionary authority to assign reserve police officers to such duties as shall be best suited to preserve the public peace and to promote the general welfare of the City.

3-5-8: **SUPERVISION BY CHIEF OF POLICE:**
The Chief of Police shall be the sole supervisor of the duties of reserve police officers, but may delegate such authority to regular police officers as is necessary for the proper functioning of the police reserve system.

3-5-9: **COMPLIANCE WITH POLICE DEPARTMENT REGULATIONS AND ACTS OF THE COUNCIL:**
Reserve police officers shall adhere to and be governed by the rules and regulations laid down for the guidance of regular police officers insofar as such rules and regulations are applicable to and consistent with the special class of duty prescribed for reserve police officers by the Chief of Police. Reserve police officers shall also comply with all other applicable ordinances, rules and regulations adopted by the City Council and as instructed by the Chief of Police.

3-5-10: **OFFICIAL STATUS OF RESERVE POLICE OFFICERS; COMPENSATION:**

(A) Reserve police officers, while on duty in such capacity, shall have police powers equivalent to those of regular police officers, subject to such limitations as the Chief of Police may direct. Reserve police officers shall not be subject to or acquire any rights under the Personnel Rules and Regulations of the City or the Public Safety Personnel Retirement System of the State of Arizona.

(B) Reserve police officers shall receive no salary from the City or the Police Department.

3-5-11: **BADGE AND UNIFORM:**
The Chief of Police shall specify the type of badge and the type and color of uniform to be worn by reserve police officers. Such officers shall conform to the specifications as made by the Chief.

3-5-12: **DISMISSAL:**
The Chief of Police shall have the authority to dismiss reserve police officers when he finds such dismissal to be in the best interest of the City, or when such officers fail to maintain active reserve police officer status.

3-5-13: **HONORARY APPOINTMENTS PROHIBITED:**
The Chief of Police shall not appoint any person as a reserve police officer who does not or will not serve as an active reserve police officer as specified herein.

3-5-14: **RELATION TO OTHER POLICE OFFICERS:**
The provisions of this Chapter shall not be construed as altering, limiting or expanding the powers, duties and authority of regular police officers of the City. (1020)
CHAPTER 6

UNARMED POLICE AIDES AND
TRAFFIC INVESTIGATORS

SECTION:

3-6-1: UNARMED POLICE AIDES
3-6-2: TRAFFIC INVESTIGATORS
3-6-3: VOLUNTEER PARKING ENFORCEMENT (4186)

3-6-1: UNARMED POLICE AIDES:
As authorized by A.R.S. §28-627(E), and pursuant to the merit system regulations, the City Manager is authorized to appoint, and when necessary remove, except as he may authorize the Chief of Police to appoint and remove, unarmed police aides who shall be employed by the Police Department and shall be empowered to commence an action or proceeding before a court or judge for any violation of the ordinances of the City of Mesa regulating the standing or parking of vehicles. The authority of unarmed police aides is to be strictly limited to the enforcement of ordinances of the City of Mesa regulating the standing or parking of vehicles, and in no way shall this Section be construed to grant other powers or benefits to which peace officers of this State are entitled.

3-6-2: TRAFFIC INVESTIGATORS:
As authorized by A.R.S. §28-627(E), and pursuant to the merit system regulations, the City Manager is authorized to appoint, and when necessary remove, except as he may authorize the Chief of Police to appoint and remove, traffic investigators who shall be employed by the Police Department, and who are authorized to investigate traffic accidents within the limits of the City of Mesa, and commence an action or proceeding before a court or judge for any violation of a State statute or ordinance of the City of Mesa relating to traffic laws, providing such violation is related to a traffic accident which occurred within the limits of the City of Mesa. Such traffic investigators shall be unarmed at all times during the course of their duties, be employees of the City of Mesa and file written reports as required by A.R.S. §28-667, but in no way shall this Section be construed to grant other powers or benefits to traffic investigators to which peace officers of this State are entitled. (1168)

3-6-3: VOLUNTEER PARKING ENFORCEMENT: (4186)
As authorized by A.R.S. §28-886, the City Manager may authorize the Chief of Police to establish a volunteer parking enforcement program for parking for persons with physical disabilities. The Chief of Police or his designated representative is authorized to appoint volunteers to issue citations only to persons who violate A.R.S. §28-884 or an ordinance regulating parking in parking spaces for persons with physical disabilities. (4186)
CHAPTER 7

GENERAL SERVICES DEPARTMENT

SECTION:

3-7-1: ORGANIZATION

A General Services Department is hereby created, which shall consist of the office of General Services Manager, which office is hereby created, and such additional employees of the General Services Department as the needs of that Department may demand and are properly authorized.

3-7-2: APPOINTMENT

The City Manager shall recommend to, and upon approval by the Council, appoint the General Services Manager, and pursuant to the Merit System Regulations, appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the General Services Manager to appoint or remove employees in the Department. (1395)

3-7-3: DUTIES OF MANAGER

(A) Function. Under general direction plans, the General Services Manager controls and directs the overall activities of Purchasing, Warehouse, Personnel, Information Services, Printing, and Mail Services, and shall perform such other duties and functions as may from time to time be delegated to him. (3455)

(B) Representative Duties. The General Services Manager shall plan, organize and direct the functions of several divisions within the City; develop and implement policies and procedures applicable to administrative functions; direct the work of professional Purchasing personnel as well as staff engaged in Warehousing; Personnel and Human Resources, Information Services, Printing, and Mail Services; review general operation of divisions directed to determine efficiency; provide direction on major project or problem areas; oversee the preparation of General Services’ administrative budget and review the subordinate division budgets; coordinate activities with other City departments to ensure effective working relationships; advise City Management and Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department. (1421, 3455)
CHAPTER 8

PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT (5054)

SECTION:

3-8-1: ORGANIZATION
3-8-2: APPOINTMENT
3-8-3: DUTIES OF PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT DIRECTOR (5054)

3-8-1: ORGANIZATION:
A Parks, Recreation & Commercial Facilities Department is hereby created, which shall consist of the office of Parks, Recreation & Commercial Facilities Director, which office is hereby created, and such additional employees of the Parks, Recreation & Commercial Facilities Department as the needs of that Department may demand and are properly authorized. (5054)

3-8-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Parks, Recreation & Commercial Facilities Department Director, and pursuant to the Merit System Regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Parks, Recreation & Commercial Facilities Department Director to appoint or remove employees in the Department. (5054)

3-8-3: DUTIES OF PARKS, RECREATION & COMMERCIAL FACILITIES DIRECTOR OR DESIGNEE:

(A) Function. Under general direction, the Parks, Recreation & Commercial Facilities Department Director or Designee plans, controls and directs the overall activities of Parks and Recreation, Mesa Convention Center, Mesa Amphitheatre, Mesa Cemetery, municipal Golf Courses, and HoHoKam Stadium, and shall perform such other duties and functions as may from time to time be delegated to him. (3766, 5054)

(B) Representative Duties. The Parks, Recreation & Commercial Facilities Department Director or Designee shall plan, organize, and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Parks, Recreation & Commercial Facilities Department budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise City Management and the Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1396, 5054)
CHAPTER 9

FINANCIAL SERVICES DEPARTMENT (4125)

SECTION:

3-9-1: ORGANIZATION
3-9-2: APPOINTMENT
3-9-3: DUTIES OF MANAGER

3-9-1: ORGANIZATION:
The Department of Financial Services is hereby created, which shall consist of the office of Financial Services Manager, which office is hereby created, and such additional employees of the Financial Services Department as the needs of that Department may demand and are properly authorized. (4125)

3-9-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Financial Services Manager, and pursuant to the Merit System Regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Financial Services Manager to appoint or remove employees in the Department. (4125)

3-9-3: DUTIES OF MANAGER:

(A) Function. Under general direction plans, the Financial Services Manager controls and directs the overall activities of Finance, Budget and Research, Customer Services and Collections, Cable TV, Tax and Business Licenses, and Telecommunications, and shall also perform related work as required. (2491,3455,4125)

(B) Representative Duties. The Financial Services Manager shall plan, organize and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Financial Services budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise City Management and the City Council of departmental progress through oral and written reports; speak before public groups on the plans, programs and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1397,4125)
CHAPTER 10

ELECTRIC DEPARTMENT (1398)

(Repealed by 3455)

CHAPTER 11

AIRPORT DEPARTMENT (1331)

(Repealed by 3168)

CHAPTER 12

NEIGHBORHOOD SERVICES DEPARTMENT (3766)

SECTION:

3-12-1: ORGANIZATION
3-12-2: APPOINTMENT
3-12-3: DUTIES OF MANAGER

3-12-1: ORGANIZATION:
A Neighborhood Services Department is hereby created which shall consist of the office of Neighborhood Services Manager, which office is hereby created, and such additional employees of the Neighborhood Services Department as the needs of that Department may demand and are properly authorized. (1441,3766)

3-12-2: APPOINTMENT:
The City Manager shall recommend to, and upon approval by the Council, appoint the Neighborhood Services Manager, and pursuant to the merit system regulations appoint, and when necessary remove, all other employees of the Department except as the Manager may authorize the Neighborhood Services Manager to appoint or remove employees in the Department. (3766)

3-12-3: DUTIES OF MANAGER:

(A) Function. Under general direction plans, the Neighborhood Services Manager shall control and direct the overall activities of the Community Revitalization (e.g., Community Development Block Grant Program), Code Compliance, Housing, Neighborhood Outreach Office, and Falcon Field Airport. The Neighborhood Services Manager shall also perform related work as required. (2491,3168, 3766)

(B) Representative Duties. The Neighborhood Services Manager shall plan, organize, and direct the functions of the various activities under his general direction; develop and implement policies and procedures applicable to administrative functions; provide policy guidance thereto; review the general operation of the activities directed by him to determine efficiency; provide direction on major project or problem areas; oversee the preparation of the Neighborhood Services Department’s budget and review the subordinate budgets; coordinate activities with other City departments to ensure effective work relationships; advise the City Manager and the City Council of departmental progress through oral and written reports; speak before public groups on the plans, programs, and goals of the Department; and perform such other duties as may be delegated by the City Manager. (1441,3766)
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CHAPTER 1
MESA ADMINISTRATIVE CODE
(1093,1474,1830,2206,2207,2225,2305,2504,2507,2508,2650,2781,3070,3071,3099,3310,3434,3435,3958,4067,4106,4242,4493,4579,4807,5055,5273,5481 / RESO. 8108,4109)

SECTION:
4-1-1: GENERAL (4242,5055,5481)
4-1-2: APPLICABILITY (4242,4807)
4-1-3: BUILDING SAFETY (4242)
4-1-4: PERMITS (4242,4493,4807)
4-1-5: INSPECTIONS (4242,4807)
4-1-6: CERTIFICATES (4242,4493,4807)
4-1-7: UNSAFE STRUCTURES AND EQUIPMENT (4242)
4-1-8: FEES (4242,4493,4807)
4-1-9: PENALTIES (4242)
4-1-10: SWIMMING POOL AND SPA CODE (5481)

4-1-1: GENERAL: (4242,5055,5481)

(A) Title. These regulations shall be known as the "Mesa Administrative Code," may be cited as such, and will be referred to herein, as "this Chapter." (4242)

(B) Scope. The provisions of this Chapter shall serve as the administrative, organizational, and enforcement rules and regulations for the technical codes which regulate site preparation and construction, alteration, movement, enlargement, replacement, demolition, repair, maintenance, use, and occupancy of buildings, structures, and building service equipment or appurtenances attached thereto within the City of Mesa, Arizona. The intent of the technical codes is to establish the minimum requirements to safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to firefighters and emergency responders during emergency operations. (4242)

(C) Technical Codes. The technical codes shall include all of the following codes applied as indicated, plus the codes and standards referenced in the technical codes shall be considered part of the requirements of the technical codes to the prescribed extent of each such reference. (4242)

1. Building Code. The provisions of the Mesa Building Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. Refer to Chapter 4-2 for the requirements of the Mesa Building Code. (4242)

EXCEPTIONS: (4242,4579)

(a) R-5 occupancies and their accessory structures shall comply with the Mesa Residential Code, Chapter 4-3. (4242,4579)

(b) Existing buildings undergoing repair, alteration, or additions and change of occupancy shall be permitted to comply with the Mesa existing Building Code, Chapter 4-8. (4242,4579)

2. Residential Code. The provisions of the Mesa Residential Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and
demolition of detached one- (1-) and two- (2-) family dwellings and multiple single-family dwellings (townhouses) not more than three (3) stories above grade plane in height with separate means of egress and their accessory structures. Such dwellings and occupancies shall be designated as R-5 occupancies. Refer to Chapter 4-3 for the requirements of the Mesa Residential Code. (4242,4579)

3. Electrical Code. The provisions of the Mesa Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings, and appurtenances thereto. Refer to Chapter 4-4 for the requirements of the Mesa Electrical Code. (4242)

EXCEPTION: Electrical work for R-5 occupancies and their accessory structures shall comply with the Mesa Residential Code, Chapter 4-3. (4242,4579)

4. Plumbing Code. The provisions of the Mesa Plumbing Code shall apply to the installation, alteration, repair, replacement, and maintenance of plumbing systems, including equipment, appliances, fixtures, fittings, and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. Refer to Chapter 4-5 for the requirements of the Mesa Plumbing Code. (4242)

EXCEPTION: Plumbing work for R-5 occupancies and their accessory structures shall comply with the Mesa Residential Code, Chapter 4-3. (4242,4579)

5. Mechanical Code. The provisions of the Mesa Mechanical Code shall apply to the installation, alterations, repairs, and replacement of mechanical systems, including equipment, appliances, fixtures, fittings, and/or appurtenances, including ventilating, heating, cooling, air-conditioning, and refrigeration systems, incinerators, and other energy-related systems. Refer to Chapter 4-6 for the requirements of the Mesa Mechanical Code. (4242)

EXCEPTION: Mechanical work for R-5 occupancies and their accessory structures shall comply with the Mesa Residential Code, Chapter 4-3. (4242,4579)

6. Fuel Gas Code. The provisions of the Mesa Fuel Gas Code shall apply to the installation of gas piping from the point of delivery, gas appliances, and related accessories as covered in Chapter 4-7. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories. Refer to Chapter 4-7 for the requirements of the Mesa Fuel Gas Code. (4242)

EXCEPTIONS: (4242,4579)

(a) Fuel gas work for R-5 occupancies and their accessory structures shall comply with the Mesa Residential Code, Chapter 4-3. (4242,4579)

(b) Portable LP-gas equipment of all types not connected to a fixed fuel piping system. (4242)

(c) Oxygen-fuel gas cutting and welding systems. (4242)

(d) Industrial gas applications using gases such as acetylene and acetylenic compounds, hydrogen, ammonia, carbon monoxide, oxygen, and nitrogen. (4242)

(e) Petroleum refineries, pipeline compressor or pumping stations, loading terminals, compounding plants, refinery tank farms, and natural gas processing plants. (4242)

(f) Integrated chemical plants or portions of such plants where flammable or combustible liquids or gases are produced by, or used in, chemical reactions. (4242)

(g) LP-gas installations at utility gas plants. (4242)

(h) Liquefied natural gas (LNG) installations. (4242)
(i) Fuel gas piping in power and atomic energy plants. (4242)

(j) Proprietary items of equipment, apparatus, or instruments such as gas-generating sets, compressors, and calorimeters. (4242)

(k) LP-gas equipment for vaporization, gas mixing, and gas manufacturing. (4242)

(l) Temporary LP-gas piping for buildings under construction or renovation not becoming part of the permanent piping system. (4242)

7. Existing Building Code. The provisions of the Mesa Existing Building Code shall apply to existing buildings undergoing repair, alteration, addition, relocation, and change of occupancy. Refer to Chapter 4-8 for the requirements of the Mesa Existing Building Code. (4242)

EXCEPTION: A building or portion of a building not previously occupied, used for its intended purpose, or for which a Certificate of Occupancy has not been issued shall comply with the Mesa Building Code, Chapter 4-2. (4242)

8. Fire Code. The provisions of the Mesa Fire Code shall apply to matters affecting or relating to structures, processes, and premises from the hazard of fire and explosion arising from the storage, handling, or use of structures, materials, or devices; from conditions hazardous to life, property, or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration, or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation. (4242)

9. Energy Code. The provisions of the Mesa Energy Code shall apply to the energy efficiency of building thermal envelopes and installation of energy efficient mechanical, lighting and power systems. Refer to Mesa Energy Code, Chapter 4-9 for the requirements. (5055)

10. Swimming Pool and Spa Code. The provisions of the Mesa Swimming Pool and Spa Code shall apply to the construction, alteration, movement, renovation, replacement, repair and maintenance of aquatic recreation facilities, pools and spas. (5481)

(D) Appendices. Provisions in the appendices of the technical codes shall not apply unless specifically adopted. (4242)

(E) Definitions. Unless otherwise expressly stated, the following words and terms shall have the meanings as shown in this Chapter. Definitions located in the technical codes are hereby incorporated into this Chapter. (4242)

BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy. (4242)

BUILDING, EXISTING: A building erected prior to the adoption of this Chapter or one for which a legal certificate of occupancy has been issued for at least one (1) year. (4242)

BUILDING SAFETY DIRECTOR: The officer or other designated authority charged with the administration and enforcement of this Chapter and the technical codes, or a regularly authorized deputy or other designee. The Building Safety Director shall be appointed by the City Manager or his designee. When the term or title administrative authority, Building Official, chief inspector, code enforcement officer, code official, gas official, plumbing official, mechanical official, responsible official, or other similar designation is used in this Chapter or in any of the technical codes, it shall be construed to mean the Building Safety Director. (4242)

BUILDING SERVICE EQUIPMENT: The plumbing, mechanical, electrical, and elevator equipment including piping, wiring, fixtures, and other accessories which provide sanitation, lighting, heating,
ventilation, cooling, refrigeration, firefighting, and transportation facilities essential to the occupancy of the building or structure for its designated use. (4242)

JURISDICTION: The City of Mesa, Arizona. (4242)

OWNER: The person, firm, corporation, company, partnership, joint venture, association, estate, trust, receiver, or other legal entity, with legal or equitable interest in a property. (4242, 5273)

PERMIT: The official document issued by the Building Safety Director authorizing performance of a specified, legal activity. (4242)

R-5 OCCUPANCIES: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures. (4579)

SHALL: As used in this Chapter and the technical codes is mandatory. (4242)

TENANT COMPLETION: The work performed by or on behalf of the initial tenant in a shell building, or space within a shell building, resulting in the completion and occupancy of the building or space. (4579)

TENANT IMPROVEMENT: Work performed by or on behalf of a tenant in a completed building, or space within a building, that has previously received a Certificate of Occupancy. (4579)

4-1-2: APPLICABILITY: (4242, 4579, 4634, 4807, 5055, 5481)

(A) Effective Date. This Chapter and the technical codes shall apply to, and shall govern, permit applications received and accepted by the Building Safety Director on or after February 10, 2019. Projects with applications submitted prior to February 10, 2019 shall be required to comply with all Mesa Building Codes in effect on February 9, 2019, except the owner, at its discretion, may request such project be subject to the requirements of this Chapter and the technical codes. (4242, 4579, 4634, 4807, 5481)

EXCEPTION: This paragraph shall not affect the Building Safety Director's ability to take action in conformity with the provisions of Subsections 4-1-4(O), 4-1-6(C) of this chapter, as they relate to account delinquencies owed to the City and to 4-1-7, regardless of the permit application date. (4579, 4634, 5481)

(B) Conflicting Provisions. When conflicting provisions or requirements occur between this Chapter, the technical codes, and other codes or laws, the most restrictive shall govern. When conflicts occur between the technical codes, those provisions providing the greater safety to life as determined by the Building Safety Director and the Fire Marshal shall govern. In other conflicts where sanitation, life safety, or fire safety are not involved, the most restrictive provisions shall govern. Where in a specific case different sections of the technical codes specify different materials, methods of construction, or other requirements, the most restrictive shall govern. When there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. (4242)

(C) Other Laws. The provisions of this Chapter and the technical codes shall not be deemed to nullify any provisions of the Mesa City Code, state, or federal laws. (4242)

(D) Application of References. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this Chapter or the technical codes. (4242)

(E) Referenced Codes and Standards. The codes and standards referenced in this Chapter or the technical codes shall be considered part of the requirements of this Chapter and the technical codes to the prescribed extent of each reference. Where differences occur between provisions of this Chapter or the technical codes and the referenced codes and standards, the provisions of this Chapter and the technical codes shall apply. (4242)

(F) International Codes References. Within the technical codes and referenced codes and standards therein,
specific references to the following International Family of Codes shall be deemed and interpreted to mean
the specific City of Mesa Codes as listed herein: (4242,5481)

1. International Building Code = Mesa Building Code. (4242,5481)


5. International Mechanical Code = Mesa Mechanical Code. (4242,5481)


(G) Partial Invalidity. In the event any part or provision of this Chapter or the technical codes is held to be invalid,
illegal, unconstitutional, or void, such ruling shall not affect the validity of the remaining portions of this
Chapter or the technical codes. (4242)

(H) Additions, Alterations, and Repairs. Additions, alterations, or repairs may be made to a building or its
building service equipment without requiring the existing building or its building service equipment to
comply with all the requirements of this Chapter and the technical codes, provided the addition, alteration, or
repair conforms to the requirements for a new building or building service equipment. Refer to Chapter 4-8
for additional options and requirements governing additions, alterations, and repairs. (4242)

EXCEPTION: Patio covers, as defined in the Mesa Residential Code, are exempted from the Mesa Energy
Code. (5055)

EXCEPTION: The following need not comply with the Mesa Energy Code provided the energy use of the
building is not increased: (5055)

1. Storm windows installed over existing fenestration. (5055)

2. Glass only replacements in an existing sash and frame. (5055)

3. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled
with insulation. (5055)

4. Construction where an existing roof, wall or floor cavity is not exposed. (5055)

5. Reroofing for roofs where neither the sheathing nor the insulation is exposed. Roofs without insulation in
the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either
above or below the sheathing. (5055)

6. Alternatives that replace less than 50 percent of the luminaires in a space provided that such alterations do
not increase the installed interior lighting power. (5055)

7. Alternatives that replace only the bulb and ballast within the existing luminaires in a space provided that
the alteration does not increase the installed interior lighting power. (5055)

(I) Existing Occupancy. The legal occupancy of any building or structure existing on the date of the adoption of this Chapter* shall be permitted to continue without change, provided such continued use is not dangerous to life, health, and safety as determined by the Building Safety Director. (4242)

EXCEPTIONS:

1. Change in occupancy or use. Spaces undergoing a change in occupancy that would result in an increase in demand for either fossil fuel or electrical energy shall comply with this code. Where the use in a space changes from one use in Mesa Energy Code Table 505.5.2 to another use in Table 505.5.2, the installed lighting wattage shall comply with Section 505.5. (5055)

2. Change in space conditioning. Any nonconditioned space that is altered to become conditioned space shall be required to be brought into full compliance with this code. (5055)

(J) Maintenance. Buildings, structures, and building service equipment, existing and new, and parts thereof shall be maintained in a safe and sanitary condition. Devices or safeguards, required by the technical codes, shall be maintained in conformance with the technical code under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of building structures and their building service equipment. To determine compliance with this Section, the Building Safety Director may cause a structure to be re-inspected. (4242)

(K) Moved Buildings. Buildings, structures, and their building service equipment moved into or within this jurisdiction shall comply with the provisions of the technical codes for new buildings or structures and their building service equipment. (4242)

(L) Temporary Structures. Temporary structures such as reviewing stands and other miscellaneous structures, sheds, canopies, or fences used for the protection of the public around and in conjunction with construction work may be erected by special permit from the Building Safety Director for a limited period of time not to exceed one hundred eighty (180) days. Buildings or structures erected under a special permit need not comply with the type of construction or fire-resistive time periods required by the Building Code or energy efficiency measures required by the Mesa Energy Code. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit. (4242,5055).

(M) Mixed Occupancies. Where a building contains both residential and commercial occupancies, each occupancy shall be separately considered and meet the applicable provisions of Chapter 4 of the Mesa Energy Code for residential occupancies and Chapter 5 of the Mesa Energy Code for commercial occupancies. (5055)

(N) Low Energy Use Buildings. The following buildings, or portions thereof, separated from the remainder of the building by building thermal envelope assemblies complying with the Mesa Energy Code shall be exempt from the thermal building envelope provisions of the Mesa Energy Code: (5055)

Provisions of the Mesa Energy Code: (5055)

1. Those with a peak design rate of energy usage less than 3.4 BTU/H-FT² (10.7 W/M²) or 1.0 WATT/FT² (10.7 W/M²) of floor area for space conditioning purposes. (5055)

2. Those that do not contain conditioned space. (5055)

(O) Historic Buildings. Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a building, structure, or its building service equipment may be made without conforming to the requirements of the technical codes when authorized by the Building Safety Director, provided: (4242,5055)

* Ordinance 4242 was adopted on August 14, 2004, with an effective date of September 18, 2004.
1. The building or structure has been designated by official action of the legally constituted authority of this jurisdiction as having special historical or architectural significance, and (4242,5055)

2. Unsafe conditions as described in this Chapter are corrected, and (4242,5055)

3. The restored building or structure and its building service equipment will be no more hazardous based on life safety, fire safety, and sanitation than the existing building as determined by the Building Safety Director. (4242,5055)

(P) Historic Buildings. The following is exempt from the Mesa Energy Code: any building or structure that is listed in the State or National Register of Historic Places; is designated as a historic property or under local or state designation law or survey; is certified as a contributing resource with a national register listed or locally designated historic district or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the keeper of the National Register of Historic Places. (5055)

(Q) Appeals. Orders, decisions, or determinations made by the Building Safety Director may, within thirty (30) days of the receipt of the notice of the decision, be appealed to the Building Board of Appeals, Section 2-11 of the Mesa City Code. The request for an appeal shall be in writing, shall set forth the specific objections to the decision of the Building Safety Director, and this shall form the basis of the appeal. A hearing shall be set as soon as practicable. The decision of the Building Board of Appeals shall be based on the evidence presented. (4242,5055)

4-1-3: BUILDING SAFETY: (4242)

(A) Creation of Enforcement Agency. There is hereby established a code enforcement agency of the Development Services Department of the City of Mesa known as the Building Safety Division under the administrative and operational charge of the Building Safety Director. (4242)

(B) Duties and Powers. The Building Safety Director is hereby authorized and directed to enforce the provisions of this Chapter and technical codes. The Building Safety Director shall have the authority to render interpretations of this Chapter and the technical codes and to adopt policies and procedures in order to clarify the application of their provisions. Such interpretations, policies, and procedures shall be in compliance with the intent and purpose of this Chapter and the technical codes. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Chapter or the technical codes. (4242)

(C) Deputies. In accordance with any applicable City procedures, and with the concurrence of the Development Services Manager, the Building Safety Director shall have the authority to appoint deputy building safety directors, technical officers, inspectors, plan examiners, and other employees. Such employees shall have powers as delegated by the Building Safety Director. (4242)

(D) Applications and Permits. The Building Safety Director shall receive applications, review construction documents, and issue permits for the erection, alteration, demolition, and moving of buildings and structures, inspect the premises where such permits have been issued, and enforce compliance with the provisions of this Chapter and the technical codes. The Building Safety Director shall issue all necessary notices or orders to ensure compliance with this Chapter and the technical codes. (4242)

(E) Inspections. The Building Safety Director shall make all of the required inspections, or the Building Safety Director shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Building Safety Director is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the Development Services Manager. (4242)

(F) Identification. The Building Safety Director shall carry proper identification when inspecting structures or premises or otherwise in the performance of duties under this Chapter or the technical codes. (4242)
(G) Right of Entry. Where it is necessary to make an inspection to enforce the provisions of this Chapter or the technical codes, or where the Building Safety Director has reasonable cause to believe there exists in a structure or upon a premises a condition contrary to or in violation of this Chapter or the technical codes making the structure or premises unsafe, dangerous, or hazardous, the Building Safety Director is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this Chapter or the technical codes, provided that if such structure or premises be occupied, that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the Building Safety Director shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the Building Safety Director shall have recourse to the remedies provided by law to secure entry. (4242)

(H) Department Records. The Building Safety Director shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention in the Division's approved retention schedule. (4242)

(I) Approved Materials and Equipment. Materials, equipment, and devices approved by the Building Safety Director shall be constructed and installed in accordance with such approval. The use of used materials meeting the requirements of this Chapter or the technical codes for new materials is permitted, subject to the approval of the Building Safety Director. (4242)

(J) Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this Chapter or the technical codes, the Building Safety Director shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the Building Safety Director shall first find that special individual reason makes the strict letter of the codes impractical and the modification is in compliance with the intent and purpose of this Chapter and the technical codes and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The basis for granting modifications shall be recorded and entered in the files of the Building Safety Division. (4242)

(K) Alternative Materials, Design, and Methods of Construction and Equipment. The provisions of this Chapter and the technical codes are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Chapter or the technical codes, provided any such alternative is approved by the Building Safety Director. An alternative material, design, or method of construction may be approved where the Building Safety Director finds the proposed design is satisfactory and complies with the intent of the provisions of this Chapter and the technical codes, and the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Chapter and the technical codes in quality, strength, effectiveness, fire resistance, durability, and safety. Records of alternative materials, design, and methods of construction approvals shall be recorded and entered in the files of the Building Safety Division. Appeals of such determinations shall be to the Building Board of Appeals, Chapter 2-11, of the Mesa City Code. (4242)

1. Research Reports. Supporting data, where deemed necessary to assist in the approval of materials or assemblies not specifically provided for in this Chapter or the technical codes shall be provided and shall consist of valid research reports from approved sources. (4242)

2. Tests. Whenever there is insufficient evidence of compliance with the provisions of this Chapter or the technical codes, or evidence of material or method does not conform to the requirements of this Chapter or the technical codes, or in order to substantiate claims for alternative materials or methods, the Building Safety Director shall have the authority to require tests as evidence of compliance to be made at no expense to the City. Test methods shall be as specified in this Chapter or the technical codes or by other recognized test standards. In the absence of recognized and accepted test methods, the Building Safety Director may approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the Building Safety Director for the period required in the Building Safety Division's approved record retention schedule. (4242)

(L) Stop Work Orders. Whenever the Building Safety Director finds any work regulated by this Chapter or the technical codes being performed in a manner either contrary to the provisions of this Chapter or the technical...
codes or dangerous or unsafe, the Building Safety Director is authorized to issue a stop work order. (4242)

1. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. (4242)

2. Unlawful Continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by this Chapter and law. (4242)

3. Appeals. Any person aggrieved by a stop work order issued by the Building Safety Director may appeal such stop work order to the Building Board of Appeals in accordance with the requirements of Chapter 2-11, Mesa City Code. (4242)

(M) Occupancy Violations. When a building or structure or building service equipment therein regulated by this Chapter and the technical codes is being used contrary to the provisions of such codes, the Building Safety Director may order such use discontinued by written notice served on any person causing such use to be continued. Such person shall, after receipt of notice, discontinue the use within the time prescribed by the Building Safety Director and make the building, structure, or portion thereof, comply with the requirements of such codes. (4242)

(N) Authority to disconnect utilities. The Building Safety Director or authorized representative shall have the authority to disconnect a utility service or energy supplied to the building, structure, or building service equipment therein regulated by this Chapter or the technical codes in case of emergency where necessary to eliminate an immediate hazard to life or property. The Building Safety Director shall whenever possible notify the serving utility, the owner, and occupant of the building, structure, or building service equipment of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner, and occupant of the building, structure, or building service equipment, in writing, of such disconnection, immediately thereafter. (4242)

(O) Authority to Condemn Building Service Equipment. When the Building Safety Director determines that building service equipment regulated in the technical codes has become hazardous to life, health, or property, or has become unsanitary, the Building Safety Director shall order in writing that such equipment either be removed or restored to a safe or sanitary condition, as appropriate. The written notice shall fix a time limit for compliance with such order. Defective building service equipment shall not be used, operated, or maintained after receiving such notice. (4242)

1. When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore shall be given within twenty-four (24) hours to the serving utility, the owner, and occupant of such building, structure, or premises. (4242)

2. When any building service equipment is used, operated, or maintained in violation of the technical codes and in violation of a notice issued pursuant to the provisions of this Section, the individual or individuals responsible for continued use, operation, or maintenance shall be subject to the penalties described in this Chapter and the Building Safety Director shall institute appropriate action to prevent, restrain, correct, or abate the violation. (4242)

(P) Connection After Order to Disconnect. Persons shall not make connections from an energy, fuel, or power supply nor supply energy or fuel to building service equipment that has been disconnected or ordered to be disconnected by the Building Safety Director or the use has been ordered to be discontinued by the Building Safety Director until the Building Safety Director authorizes the reconnection and use of such equipment. (4242)

4-1-4: PERMITS: (4242,4493,4579,4807)

(A) Permits Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove,
convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated
by this Chapter or the technical codes, or to cause such work to be done, shall first make application to the
Building Safety Director and obtain the required permit or permits. (4242)

EXCEPTIONS: The following entities are exempt from the requirement to obtain permits: (4242)

1. Mesa Unified School District #4. (4242,4579)
2. Gilbert Unified School District #41. (4242,4579)
3. Higley Unified School District #60 (4579)
4. Queen Creek School District #95 (4579)
5. East Valley Institute of Technology District #401 (4579)
6. Governmental entities that are, as a matter of law, immune from having to obtain a permit. (4242)
7. Annual Facilities Permit Holders. In lieu of an individual permit for each alteration to an already approved
electrical, gas, mechanical, or plumbing installation, the Building Safety Director is authorized to issue an
Annual Facilities Permit. Such Annual Facilities Permit shall exempt its holder from obtaining individual
permits for each project to be performed under the Annual Facilities Permit in accordance with Section 4-1-
4(F). (4242)

(B) Work Exempt from Permit. Exemptions from permit requirements of this Chapter shall not be deemed to
grant authorization for any work to be done in any manner in violation of the provisions of this Chapter or the
technical codes or any other laws or ordinances of the City. Permits shall not be required for the following:
(4242)

1. Building Permits. A building permit shall not be required for the following: (4242)

   (a) One- (1-) story detached accessory structures ancillary to R-3, R-4 and R-5 occupancies used as tool and
   storage sheds, playhouses, and similar uses, provided the floor area does not exceed two hundred (200)
square feet (18.60m²) and the property is not subject to the Desert Uplands Development Standards, is not
located in a Historic Preservation Overlay District or on a site designated as a historic landmark.
(4242,4579,4807)

   (b) Fences not more than six feet (6') (1,829 mm) high located on property zoned for single residence uses,
provided the fence is not located on a property subject to the Desert Uplands Development Standards, is
not located in a Historic Preservation Overlay District or on a site designated as a historic landmark and is
not located on a public easement. (4242,4579,4807)

   (c) Oil derricks. (4242)

   (d) Retaining walls which are not over four feet (4') (1,219 mm) in height measured from the bottom of the
footing to the top of the wall, provided the retaining wall is not supporting a surcharge, is not impounding
Class I, II, or III-A liquids, or is not located on property subject to the Desert Uplands Development
Standards, is not located in a Historic Preservation Overlay District or on a site designated as a historic
landmark, and is not located on a public easement. (4242,4807)

   (e) Water tanks supported directly on grade if the capacity does not exceed five thousand (5,000) gallons
(18,925 L) and the ratio of height to diameter or width does not exceed two to one (2:1). (4242)

   (f) Sidewalks and driveways not more than thirty inches (30") (762 mm) above grade, not over any basement
or story below, not part of an accessible route, is not located on property subject to the Desert Uplands
Development Standards, is not located in a Historic Preservation Overlay District or on a site designated
as a historic landmark, and is not located on a public easement. (4242,4807)
(g) Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work. (4242)
(h) Temporary motion picture, television, and theater stage sets and scenery. (4242)

(i) Prefabricated swimming pools accessory to detached one- (1-) and two- (2-) family dwellings, which are eighteen inches (18") (430 mm) or less deep, do not exceed five thousand (5,000) gallons (18,925 L), are installed entirely above ground, are not located on property subject to the Desert Uplands Development Standards, are not located in a Historic Preservation Overlay District or on a site designated as a historic landmark, and are not located on a public easement. (4242, 4579, 4807)

(j) Shade cloth structures constructed for nursery or agricultural purposes and not including service systems. (4242)

(k) Swings and other playground equipment accessory to detached one- (1-) and two- (2-) family dwellings that are not located on property subject to the Desert Uplands Development Standards. (4242, 4579)

(l) Window awnings supported by an exterior wall projecting not more than fifty-four inches (54") (1,372 mm) from the exterior wall and not requiring additional support in detached one- (1-) and two- (2-) family dwellings and Group U occupancies. (4242)

(m) Movable cases, counters, and partitions not over five feet nine inches (5'9") (1,753 mm) in height. (4242)

(n) Replacement roof coverings, provided the replacement roof covering classification is equal to or greater than the existing roofing classification. (4242)

(o) Verification of City records for the issuance of a new Certificate of Occupancy when only the name of the owner or the business is changing. (4242, 4807)

(p) Light-gauge, pre-manufactured metal patio covers and awnings, and light-weight pre-manufactured metal frame fabric covered shade structures as an accessory to R-3, R-5 and Group U occupancies that are not located within a recreational vehicle park, are not located on property subject to the Desert Uplands Development Standards, and are not located in a Historic Preservation Overlay District or on a site designated as a historic landmark. (4242, 4579, 4807)

(q) In addition to items (a) through (p), the Building Safety Director is authorized to waive the requirement to obtain a building permit for additional items where it is found the nature of the work to be performed does not require a permit to obtain compliance with this Chapter, the technical codes and other ordinances of the City. (4807)

2. Electrical Permits. An electrical permit shall not be required for the following: (4242)

(a) Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by the Mesa Electrical Code. (4242)

(b) Repair or replacement of fixed motors, transformers, or fixed approved appliances of the same type and rating in the same location. (4242)
(c) Temporary decorative lighting. (4242)

(d) Repair or replacement of current-carrying parts of any switch, contactor, or control device. (4242)

(e) Installation of attachment plug receptacles, but not the outlets therefore. (4242)

(f) Repair or replacement of any over-current device of the required capacity in the same location. (4242)

(g) Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems. (4242)

(h) Taping joints. (4242)

(i) Removal of electrical wiring. (4242)

(j) Temporary wiring for experimental purposes in suitable experimental laboratories. (4242)

(k) The wiring for temporary theater, motion picture, or television stage sets. (4242)

(l) Electrical wiring, devices, appliances, apparatus, or equipment operating at less than twenty-five (25) volts and not capable of supplying more than fifty (50) watts of energy. (4242)

(m) Low-energy power, control, and signal circuits of Class II and Class III as defined in the Electrical Code. (4242)

(n) Installation, alteration, or repair of electrical wiring, apparatus, or equipment or the generation, transmission, distribution, or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility. (4242)

(o) Installation of portable generators for temporary events subject to inspection by Fire Prevention. (4242)

(p) Re-energizing an electric service by the serving electric supplier after a period of zero usage. (4242)

(q) Outdoor lighting fixture installations by Utility Companies under duly approved contracts with the City of Mesa, provided such fixture installations comply with Section 4-4-2 of the Mesa City Code. (4242)

(r) Photovoltaic power systems installed under an incentive program sponsored by a serving utility or government entity. (4807)

(s) In addition to items (a) through (r), the Building Safety Director is authorized to waive the requirement to obtain an electrical permit for additional items where it is found the nature of the work to be performed does not require a permit to obtain compliance with this Chapter, the technical codes and other ordinances of the City. (4807)
3. Fuel Gas Permits. A fuel gas permit shall not be required for the following: (4242)

(a) Portable heating appliance. (4242)

(b) Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe. (4242)

(c) Replacement of gas water heating appliances of equal or less Btu/cfh rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R-1, R-2, R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized. (4242,4579)

(d) Replacement of gas pool and spa heating appliances of equal or less Btu/cfh rating, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R-1, R-2, R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the pool or spa serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized. (4242)

(e) Replacement of gas water heating appliances of equal or less Btu/cfh rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, provided the serving Gas Utility is notified prior to the appliance being energized. (4242,4579)

(f) Re-energizing a gas service by the serving gas supplier after a period of zero usage. (4242)

(g) Replacement of gas air-conditioning units, direct-vented appliances, furnaces, and log lighters, of equal or less Btu/cfh, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R-1, R-2, R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit, provided the serving Gas Utility is notified prior to the appliance being energized. (4242,4579)

(h) Replacement of gas unit heaters, overhead radiant heaters, vented freestanding heaters, vented overhead heaters, direct gas-fired make-up air heaters, industrial air heaters, and furnaces of equal or less Btu/cfh rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, provided the serving Gas Utility is notified prior to the appliance being energized and not including appliances or appurtenances equipped with required fire detection, fire notification, or fire suppression systems. (4242,4579)

(i) Replacement of gas air-conditioning units and heat pumps of equal or less Btu/cfh rating, same toxicity, and same flammability classification of refrigerants and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, provided the serving Gas Utility is notified prior to the appliance being energized and not including appliances or appurtenances equipped with required fire detection, fire notification, or fire suppression systems. (4242,4579)
(j) In addition to items (a) through (i), the Building Safety Director is authorized to waive the requirement to obtain a fuel-gas permit for additional items where it is found the nature of the work to be performed does not require a permit to obtain compliance with this Chapter, the technical codes and other ordinances of the City. (4807)

4. Mechanical Permits. A mechanical permit shall not be required for the following: (4242)

(a) Portable heating appliance. (4242)

(b) Portable ventilation equipment. (4242)

(c) Portable cooling unit. (4242)

(d) Steam, hot, or chilled water piping within any heating or cooling equipment regulated by Mesa Mechanical Code. (4242)

(e) Replacement of any part not altering its approval or making it unsafe. (4242)

(f) Portable evaporative cooler. (4242)

(g) Self-contained refrigeration system containing ten (10) pounds (4.54 kg) or less of refrigerant and actuated by motors of one (1) horsepower (746 W) or less. (4242)

(h) In addition to items (a) through (g), the Building Safety Director is authorized to waive the requirement to obtain a mechanical permit for additional items where it is found the nature of the work to be performed does not require a permit to obtain compliance with this Chapter, the technical codes and other ordinances of the City. (4807)

5. Plumbing Permits. A plumbing permit shall not be required for the following: (4242)

(a) Stopping of leaks in drains, water, soil, waste, or vent pipe, not including defective concealed trap, drainpipe, water, soil, waste, or vent pipe requiring removal and replacement. (4242)

(b) Clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, and the removal and reinstallation of water closets, not including the replacement or rearrangement of valves, pipes, or fixtures. (4242)

(c) Replacement of electric water heating appliances of equal or less amperage rating, and minor modification to electrical, plumbing, and mechanical connections to serve the appliance in R-1, R-2, R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit. (4242,4579)

(d) Replacement of electric water heating appliances of equal or less amperage rating, and minor modification to electrical, plumbing, and mechanical connections to serve the appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space. (4242,4579)

(e) Equal replacement of boilers and water heaters regulated by the State of Arizona, except not including work not in the scope of State regulation in industries, premises, or activities regulated by Mesa City Code, Title 8, Chapters 1 and 4. (4242)

(f) Replacement of electric air-handling units, unit heaters, overhead radiant heaters, freestanding heaters, overhead heaters, and furnaces of equal or less amperage rating and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, not including appliances or appurtenances equipped with required fire detection, fire notification, or fire suppression systems. (4242,4579)
(g) Replacement of electric air-conditioning units and heat pumps of equal or less Btu/cfu rating, same toxicity and same flammability classification of refrigerants, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, not including appliances or appurtenances equipped with required fire detection, fire notification, or fire suppression systems. (4242,4579)

(h) Replacement or new installation of potable water conditioning or treating appliances, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit. (4242,4579)

(i) Replacement or new installation of potable water conditioning or treating appliances, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, not including industries, premises, or activities regulated by Mesa City Code, Title 8, Chapters 1 and 4. (4242,4579)

(j) Replacement or new installation of solar domestic water heating appliances, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the appliance in R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit. (4242,4579)

(k) Replacement or new installation of solar pool and spa heating appliances and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the pool or spa serves an individual dwelling unit. (4242,4579)

(l) Equal replacement of exterior potable water supply line to a building, not including industries, premises, or activities regulated by Mesa City Code, Title 8, Chapters 1 and 4, and not including work in a PUE, PUFE, or City of Mesa right-of-way. (4242)

(m) Equal replacement of exterior sanitary drainage line from a building, not including industries, premises, or activities regulated by Mesa City Code, Title 8, Chapters 1 and 4 and not including work in PUE, PUFE, or City of Mesa right-of-way. (4242)

(n) Replacement of electric air-conditioning units, air-handling units, heating appliances, heat pumps, radiant heaters, and furnaces, of equal or less amperage, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R-1, R-2, R3, R4 and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit. (4242,4579)

(o) Replacement of evaporative coolers of equal or less cfm and amperage rating, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in R-3, R-4, and R-5 occupancies, manufactured homes, and recreational vehicles where the appliance serves an individual dwelling unit. (4242,4579)

(p) Replacement of evaporative coolers of equal or less cfm and amperage rating, and minor modification to electrical, plumbing, and mechanical connections necessary to serve the new appliance in A-2, A-3, A-4, B, E, F-2, M, S-2, and U occupancies where the appliance serves an individual tenant space, not including appliances or appurtenances equipped with fire detection, fire notification, or fire suppression systems. (4242,4579)

(q) Installation of a gray water system in compliance with Arizona Department of Environmental Quality Reclaimed Water Type 1 General Permit, and minor modifications to the plumbing system necessary to serve the gray water system in R-3, R-4 and R-5 occupancies, manufactured homes, and recreational vehicles where the system serves an individual dwelling unit. (4579)
(r) Installation of an automatic hot water circulating pump energized by means of a cord or cable having an
attachment plug end for connection to a 115-volt receptacle, and minor modification to the electrical and
plumbing system necessary to serve the pump in R-3, R-4 and R-5 occupancies, manufactured homes, and
recreational vehicles where the system serves an individual dwelling unit. (4579)

(s) Installation of private sub-meters on an existing master-metered potable water supply system. (4807)

(t) In addition to items (a) through (s), the Building Safety Director is authorized to waive the requirement to
obtain a plumbing permit for additional items where it is found the nature of the work to be performed
does not require a permit to obtain compliance with this Chapter, the technical codes and other ordinances
of the City. (4807)

(C) Emergency Repairs. Where equipment replacements and repairs requiring a permit must be performed in an
emergency situation, the permit application shall be submitted within the next working business day. (4242)

(D) Ordinary Repairs. Application or notice to the Building Safety Director is not required for ordinary repairs to
structures, replacement of lamps, or the connection of approved portable electrical equipment to approve
permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition, or
portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or
change of any required means of egress, or rearrangement of parts of a structure affecting the egress
requirements; nor shall ordinary repairs include addition to, alteration of, replacement, or relocation of any
standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent, or similar piping, electrical
wiring, or mechanical or other work affecting public health or general safety. (4242)

EXCEPTION: Work exempt from permits under Section 4-1-4(B) above. (4242)

(E) Public Service Agencies. A permit shall not be required for the installation, alteration, or repair of generation,
transmission, distribution, or metering or other related equipment under the ownership and control of public
service agencies by established right. (4242)

(F) Annual Facility Permits. (4242)

1. General. The Annual Facilities Permit is an administrative system intended to simplify the permitting and
inspection process for qualified facilities by allowing inspectors to review plans and maintaining inspectors
familiar with the construction history of such facilities. Qualified facilities electing to participate in this
program are exempt from the requirement to obtain individual permits for the work regulated by this Chapter
when such work does not increase the floor area, does not constitute a change of use or occupancy
classification, and is performed on existing buildings, structures, and utilities associated with that qualified
facility. This alternative permit process shall not exempt compliance with the technical requirements of this
Chapter, the technical codes, or with other City, County, State, or Federal laws. (4242,4579)

2. Definitions. For purposes of this Section, the following terms shall apply: (4242)

AGENT: A full-time or contract employee of a Qualified Facility, who is an architect or engineer registered
and residing in the State of Arizona and who is responsible for complying with the substantive provisions of
this Chapter. The agent, as authorized by rules established by the Arizona Board of Technical Registration,
shall assure work has been performed in accordance with this Chapter and the technical codes. (4242)

QUALIFIED FACILITY: A firm, corporation, or political entity engaged in manufacturing, processing,
service, or property management that occupies and controls specialized buildings and building service
equipment to the extent that full-time personnel are required to manage, operate, or maintain such buildings
and equipment in compliance with all the provisions of this Chapter and the technical codes. (4242)

3. Annual Facilities Permit Transferability. An Annual Facilities Permit is not transferable. (4242)

4. Annual Facilities Permit Renewal. An Annual Facilities Permit may be renewed every twelve (12) months by
payment of a renewal fee as set forth in the City of Mesa Schedule of Fees and Charges. Renewal fees shall
be due and payable prior to the permit expiration date, or a new initial application shall be required. Work performed after the permit expiration date shall be in violation of this Chapter and subject to penalty. (4242)

5. Annual Facilities Permit Operation. The agent shall notify the Building Safety Director prior to the start of any work involving alteration of the building structure system, alteration of any fire-resistive wall, floor, or ceiling assembly, alteration of any fire corridor system, or installation of any structural, mechanical, plumbing, or electrical work intended to be enclosed or concealed. The Building Safety Director shall determine the nature and extent of plan reviews and/or inspections required. The City of Mesa shall invoice the Qualified Facility and the Qualified Facility shall pay for the professional services rendered as set forth in the City of Mesa Schedule of Fees and Charges. (4242)

(G) Temporary Structures and Uses. The Building Safety Director is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than one hundred eighty (180) days. The Building Safety Director is authorized to grant extensions for demonstrated cause. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation, and sanitary requirements of this Chapter and the technical codes as determined by the Building Safety Director to ensure the public health, safety, and general welfare. The Building Safety Director is authorized to terminate such permit and to order the temporary structure or use to be discontinued. (4242)

(H) Application for Permit. (4242)

1. Requirements. To obtain a permit an applicant shall first file an application in writing on a form furnished by the Building Safety Division. Such application, at a minimum, shall contain the following: (4242)

(a) Identification and description of the work to be covered by the permit. (4242)

(b) Description of the land where the proposed work is to be done by legal description, street address, or similar description readily identifying and definitely locating the proposed building or work. (4242)

(c) Indication of the use and occupancy of the proposed work. (4242)

(d) Construction documents and other information as required in this Section. (4242)

(e) The valuation of the proposed work. (4242)

(f) Signature of the applicant, or the applicant's authorized agent. (4242)

(g) Certification of the applicant that the documents submitted for permit are in accordance with Mesa City Code requirements, including Titles 4, 7, and 11, and all Planning and Zoning and Design Review Board stipulations, except that the Development Services Manager, after conferring with the Building Safety Director and the Planning Director, may accept applications prior to the completion of all planning processes where the applicant acknowledges they are proceeding "At Risk." In proceeding "At-Risk," the applicant may be required to modify previously approved documents, may incur additional review submittals and fees, and permits shall not be issued until completion of the planning process and the submittal documents adequately demonstrate compliance with all codes, standards, stipulations and requirements. (4242,4604)

(h) Proof of valid contractor's license and bond. When the issuance of a permit is required, as part of the application procedures, each applicant for a building permit shall affirm by affidavit compliance with ARS Title 32, Chapter 10, and ARS 42-5005. If the applicant claims an exemption from licensing requirements, the affidavit shall contain the basis of the exemption and the name and license number of contractors performing the work. These named contractors shall then affirm compliance with ARS 42-5005. (4579)

(i) Other data and information as required by the Building Safety Director. (4242)
2. Annual Facilities Permit Application. Every applicant for an Annual Facilities Permit shall submit an application on a form provided by the Building Safety Director and shall pay an application fee as set forth in the City of Mesa Schedule of Fees and Charges. Such application, at a minimum, shall contain the following:

(a) The name of the person authorized to act on behalf of the Qualified Facility owner(s). (4242)

(b) The name of the agent who will be responsible for code compliance of the work performed under the Annual Facilities Permit. When the agent is employed by contract, the agent and the person authorized to act on behalf of the Qualified Facility owner(s) cannot be the same individual. (4242)

(c) The location and total square footage of the entire facility at the site(s) intended to be included in the program. (4242)

3. Airport Approval. Permit applications for projects located on Williams Gateway Airport property or Falcon Field Airport property shall provide written documentation of appropriate airport authority approval of the work proposed in the application for permit prior to submission. (4242)

4. Action on Application. The Building Safety Director shall examine or cause to be examined applications for permits and related amendments within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the Building Safety Director shall reject such application in writing, identifying the reasons for rejection. In the event that the applicant or the applicant's contractor is delinquent in the payment of privilege and excise taxes levied pursuant to the provisions of Title 5, Chapter 10, of the Mesa City Code or is delinquent in the payment of any other accounts owed to the City of Mesa, the Building Safety Director is authorized, upon notification by the Tax Collector or other City official, to withhold the issuance of permits until such delinquencies have been satisfactorily resolved. (4579)

If the Building Safety Director is satisfied that the proposed work conforms to the requirements of this Chapter, the technical codes and applicable laws and ordinances, the Building Safety Director shall issue a permit as soon as practicable, subject only to the payment of appropriate fees. Before issuing a permit, the Building Safety Director is authorized to examine or cause to be examined buildings, structures, and sites where an application has been filed. If the application is rejected, the applicant may appeal the decision in accordance with Chapter 2-11 of the Mesa City Code. (4242,4579)

5. Time Limitation of Application. An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except the Building Safety Director is authorized to grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each. Such extension shall be requested in writing with justifiable cause demonstrated. (4242)

(I) Submittal Documents. Plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs, and other data as required by the Building Safety Director shall be submitted with each application for a permit. The construction documents shall be prepared by a registered design professional as required by State law and Section 4-1-4(J). Where special conditions exist, the Building Safety Director is authorized to require additional construction documents to be prepared by a registered design professional. (4242)

1. Information on Construction Documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the Building Safety Director. Construction documents shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this Chapter, the technical codes, and relevant laws and ordinances. (4242)

2. Title Sheet Information. The construction documents shall contain a title sheet or title sheets indicating the name, address, and phone numbers of project owner(s), design professionals, and contractors (if known). The title sheet shall also contain information regarding the Code review as performed by the design professional, including the size of the building, type of construction, and type(s) of occupancy, area, and height.
modifications (if any), fire sprinklers (if any), deferred items (if any), and other information as directed by the Building Safety Director. (4242,4807)

3. Screening. Submittal documents shall be subject to screening by the Building Safety Director for completeness and code compliance prior to being accepted for permit review, as determined by the Building Safety Director. Incomplete submittals or submittals containing readily apparent code violations shall be returned to the applicant without being accepted unless otherwise directed by the Building Safety Director. (4242,4807)

4. Outdoor Lighting Compliance. Submittal documents for projects proposing outdoor lighting fixtures shall contain, but not be limited to, the following information: (4242)

(a) Plans indicating the type of illuminating devices, fixtures, lamps, supports, other devices, etc. and their location on the premises. (4242)

(b) Description of the illuminating devices, fixtures, lamps, supports, and other devices, etc., including manufacturers' catalog cuts. (4242)

(c) Photometric study, including a plan of the premises showing fixture locations; calculated light levels at various points inside the parking lot, along walkways, or other occupied outdoor areas; expected light levels at the property lines; and maximum, minimum, and average light levels. (4242)

(d) Certification that the design of the outdoor lighting system complies with Section 4-4-2 of the Mesa City Code. (4242)

5. Deferred Submittals. For the purposes of this Section, deferred submittals are defined as those portions of the design not submitted at the time of the application but are to be submitted to the Building Safety Director within a specified period. The deferral of submittal items shall have the prior approval of the Building Safety Director. The registered design professional of record shall list the deferred submittal on the construction documents for review by the Building Safety Director. All deferred submittals shall be subject to the same plan review and approval process as the original permit application and such approval shall be completed prior to the installation of or request for the inspection of the deferred item for the project. The approved documents shall be incorporated into the permit documents. (4242,4493,4807)

Deferred submittals may include: commercial fire sprinkler systems, residential fire sprinkler systems, commercial fire notification systems, commercial fire detection systems, fire standpipes, alternative fire suppression systems, commercial kitchen hoods, rack storage plans, elevators, elevator recall systems, refrigerant vapor alarm systems, prefabricated metal stairs, prefabricated metal storage systems, overhead cranes, industrial equipment, truss designs, and other deferred submittal items not listed herein, with the prior approval of the Building Safety Director. Items that shall not be deferred include: structural design of elements not included in the list above, building plumbing systems, building mechanical systems, building electrical systems, outdoor lighting systems and landscaping designs. (4807)

Deferred submittals are a special service of the Building Safety Division requiring additional processing and plan review time beyond that required for projects in which all of the required documents are submitted with the initial submission. This special service requires payment of an additional premium fee as established in the latest edition of the Schedule of Fees and Charges, except deferred truss designs shall not be subject to a premium fee. (4493,4807)

Deferred submittals do not constitute the phasing of construction permits and may constitute an addendum to the original permit or application if the deferred submittal involves changes in the design or work meeting the definition of an addendum. (4242)

6. Review by Design Professional. Documents for deferred submittal items shall be submitted to the registered design professional of record who shall review them and forward them to the Building Safety Director with a notation indicating the deferred submittal documents have been reviewed and been found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the design and submittal documents have been approved by the Building Safety Director. (4242)
7. Standard plans. Standard plans are building construction drawings that are designed and intended for use on more than one site. These drawings are plan reviewed in advance of the regular submission for permits. Corrections are made until the standard plans have met all code requirements, except those related to a specific site. Standard plans are retained in Building Safety until needed. The applicant then submits the site drawings, application, and other documents as required for permits to construct the building in accordance with this code and the technical codes. (4493)

The Building Safety Director is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this Chapter, the technical codes, and other ordinances of the City. (4242)

(J) Design Professional of Record. When it is required that permit submittal documents be prepared by a registered design professional, the Building Safety Director shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional of record. If the circumstances require, the owner shall designate a substitute registered design professional of record who shall perform the duties required of the original registered design professional of record. The Building Safety Director shall be notified in writing by the owner if the registered design professional of record is changed or is unable to continue to perform the duties. (4242)

The registered design professional of record shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items and equipment lists, for compatibility with the design of the building. Where structural observation is required by Title 4, Chapter 2, the Mesa Building Code, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction where the structural observation is to occur. (4242, 4807)

In accordance with the Code of the State Board of Technical Registration, permit documents shall be prepared by a qualified Arizona Registrant for the following: (4242)

1. New buildings or structures that: (4242)

   (a) Exceed two (2) stories in height (including basements); or (4242)

   (b) Exceed three thousand (3,000) square feet of floor area, measured as described in Section 4-1-8(E); or (4242)

   (c) Have structural elements with a span exceeding twenty feet (20'), not including wood or steel trusses or lintels designed by a registered engineer. (4242)

2. Additions or alterations to existing buildings or structures that: (4242)

   (a) Meet or exceed the requirements for new buildings or structures as listed in Section 4-1-4(J)1 above. (4242)

   (b) Exceed the three thousand- (3,000-) square-foot limitation for a one- (1-) time addition for the purpose of storage where the addition does not exceed fifteen hundred (1,500) square feet. (4242)

3. Buildings of any occupancy type resulting in an occupant load greater than twenty (20) persons, as required in Title 4, Chapter 2, Mesa Building Code, that have not been designed by a qualified Arizona registrant. (4242)

4. When deemed necessary by the Building Safety Director to ensure compliance with this Chapter and the technical codes. (4242)

   EXCEPTIONS: The following are exempted from the above requirements and do not require preparation by an Arizona registrant: (4242)
(a) Landscaping planting plans, and (4242)

(b) Detached single-family dwellings constructed in accordance with the Mesa Residential Code. (4242)

(K) Examination of Documents. The Building Safety Director shall examine or cause to be examined the permit application and accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this Chapter, the technical codes, and other pertinent laws or ordinances. (4242)

1. Approval of Construction Documents. When the Building Safety Director issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One (1) set of construction documents so reviewed shall be retained by the Building Safety Division as required by the approved Building Safety Division retention schedule. Other sets shall be returned to the applicant with one (1) to be kept at the site of work and open to inspection by the Building Safety Director. When the submittal documents include site and floor plan drawings produced electronically, the applicant shall provide an electronic copy of all site plan and floor plan drawings on compact disk or other approved media to the Building Safety Director. (4242)

2. Previous Approvals. This Chapter and the technical codes shall not require changes in the construction documents, construction, or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith and has not been abandoned. (4242)

3. Addenda and Revisions to Submittal Documents. The project owner may submit modifications of the application or the attached submittal documents at any time prior to the final completion of the work. Revisions (changes made prior to the issuance of the permit) and addenda (changes made after permit issuance) shall be subject to the same plan review and approval process as the original permit application. Upon approval, revised/modified documents shall supercede and shall be incorporated into the original submission or permit documents. The approved revisions and addenda shall not constitute a new permit request. The review and approval of revisions and addenda constitutes an additional service and is subject to the payment of a premium fee as established in the latest Schedule of Fees and Charges. Projects with revisions or addenda that increase the scope of work, as determined by the Building Safety Director, may be subject to a complete recalculation of fees or to obtaining an entirely new permit. (4242,4493,4579,4807)

When addenda to the design drawings, construction documents or other data are submitted by applicants seeking to change the approved permit documents such that the scope of the original permit is not expanded, an additional fee shall be paid by the applicant in accordance with the latest Schedule of Fees and Charges established by the City. (4493,4579,4807)

4. Staged Approval. The project owner shall determine if the project is to be constructed under one permit for the entire project or under a series of permits (stages) for the project. The Building Safety Director is authorized to issue any number of separate permits for the construction of the site work, underground utilities, buildings and structures needed to complete the whole project in accordance with pertinent requirements of this chapter and the technical codes. The holder of a permit for the construction of any portion of a project shall proceed with the construction operation at the permit holder's own risk and without assurance that additional permits will be granted. Choosing to build in more than one stage will not result in a fee premium. (4493)
5. Phased Approval. The project owner shall determine if the building or structure is to be constructed under one (1) permit for the entire project or under a series of permits (phases) of the building. The Building Safety Director is authorized to issue separate permits for the construction of the building's shell and any number of tenant completion permits needed to complete the whole building in accordance with pertinent requirements of this chapter and the technical codes. The holder of a permit for the shell or other parts of a building or structure shall proceed with the construction operation at the permit holder's own risk and without assurance that additional permits will be granted. Refer to paragraph 6 for foundation permits. (4242, 4493, 4807)

Choosing to build in more than one phase will result in an increase in the fees charged as established in the latest edition of the Schedule of Fees and Charges. A building constructed under a phased approach is not permitted to be occupied until all of the phases for the building, or portion thereof, have been successfully completed. A shell is an incomplete building and cannot be safely occupied. (4493)

Separating a construction project in multiple permits (staging) for the construction of a project shall not be considered phasing and shall not trigger the assessment of a phasing fee premium. Refer to Section 4-1-8 (L) for information on fee calculations for phased projects. (4493, 4807)

6. Foundation Permits. The Building Safety Director is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with pertinent requirements of this Chapter, the technical codes and the Mesa Zoning Code. The holder of a permit for the foundation or other parts of a building or structure shall proceed with the construction operation at the holder's own risk and without assurance that a permit for the entire structure will be granted. The granting of foundation permits is a special service that will result in an increase in the fees charged as established in the latest Schedule of Fees and Charges. (4493, 4579, 4807)

7. Expedited Plan Review. For projects on which the owner requests "expedited" or "super-expedited" plan review services (faster than normal turnaround times), and the Building Safety Director agrees to provide such services either in-house or through the use of an outside plan review contractor, the building permit shall be subjected to an additional premium fee as established in the latest Schedule of Fees and Charges. At the time of application, the owner shall request the expedited services and shall pay an additional expedited permit application deposit equal to 100% of the permit application deposit. The Building Safety Director will provide the plan review services needed for the initial review and up to two subsequent reviews within the City's stated plan review turnaround times for expedited projects, or as otherwise agreed. The balance of the expedited premium shall be paid prior to the issuance of the permits. If for any reason the permit is not issued, the entire deposit is forfeited. In the event that the City fails to provide the requested expedited or super-expedited services within the City's stated plan review turnaround times, the expedited or super expedited premium is waived and the premium portion of the deposit will be refunded in accordance with Section 4-1-8(W). (4493, 4579, 4807)

The total expedited or super-expedited premium shall not be prorated even in the event that some of the plan review submissions for a project are not requested to be expedited. If only one submission is requested to be expedited or super-expedited for that project, the total premium fee shall be charged. (4493, 4807)

(L) Annual Facilities Permit Plan Reviews. Plans, drawings, diagrams, and/or other data describing the work to be performed shall be provided for review at the Qualified Facility. When such plans are required to be prepared by a registered architect or engineer or are of a nature that is too complex for on-site review, the Building Safety Director may choose to perform the plan review at a Building Safety Service Center. (4242)

(M) Validity of Permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Chapter, the technical codes, or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this Chapter, the technical codes, or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the Building Safety Director from requiring the correction of errors in the permit documents or in the construction. The Building Safety Director is also authorized to prevent occupancy or use of a structure where in violation of this Chapter, the technical codes, or of any other ordinances of this jurisdiction. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the
approved construction documents shall be resubmitted for approval as an amended set of construction documents. (4242)

In addition, an Annual Facilities Permit shall be valid only for the time period the named agent remains in the employ of the Qualified Facility in an active capacity. If the named agent should leave the employ, the Qualified Facility shall notify the Building Safety Director within seven (7) calendar days. The Qualified Facility shall obtain a replacement agent within forty-five (45) days of such notification. If, within the prescribed period, the Building Safety Director is not provided with information that a new agent has been obtained, the Annual Facilities Permit will be deemed suspended until such agent is obtained. The acceptance of the new agent shall be subject to the approval of the Building Safety Director. (4242)

(N) Expiration of Permit. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one hundred eighty (180) days after its issuance, or if the work authorized on the site by such permit is declared suspended or abandoned by the owner for a period of one hundred eighty (180) days after the date the work is commenced, or if the Building Safety Director declares the permit suspended or abandoned after the expiration of one hundred eighty (180) days from the date of permit issuance. When requested by the permit holder within one hundred eighty (180) days after the expiration of the permit, the Building Safety Director is authorized to grant one (1) or more extensions of time, for periods not more than one hundred eighty (180) days each. The extension shall be requested in writing and justifiable cause demonstrated. Such extension, when granted, shall be in writing. (4242)

Refunds, if applicable, shall be in accordance with section 4-1-4(G). The fee for extending an expired permit shall be as established in the latest Schedule of Fees and Charges. (4493, 4579)

(O) Suspension or Revocation. The Building Safety Director is authorized to suspend or revoke a permit issued under the provisions of this Chapter wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this Chapter, the technical codes, or of any other ordinances of this jurisdiction, including, upon notification by the Tax Collector or other City official, delinquencies in the payment of privilege and excise taxes levied pursuant to the provisions of Title 5, Chapter 10, of the Mesa City Code or delinquencies in the payment of any other accounts owed to the City of Mesa. (4242, 4579)

(P) Suspension or Revocation of Annual Facilities Permit. The Building Safety Director may suspend or revoke an Annual Facilities Permit when the Qualified Facility fails to comply with any of the Annual Facilities Permit responsibilities or there exists a willful violation of any provisions of this Chapter. Violations that may result in annual permit revocation include, but are not limited to, one (1) or more of the following: (4242)

1. Performing construction work without an agent as required. (4242)
2. Performing construction work without the agent's knowledge or consent. (4242)
3. Concealing work without inspection approval or authorization. (4242)
4. Refusal to uncover concealed work. (4242)
5. Construction or installing work contrary to inspection orders. (4242)
6. Failure to report all work done under authority of the annual permit. (4242)
7. Refusal to eliminate unsafe hazards as required in this Chapter. (4242)

If the violation involves work performed, a separate permit as required under Section 4-1-4(A) shall be required. Such permit is subject to regular permit fees and an investigation fee as prescribed in Section 4-1-8. (4242)

An Annual Facilities Permit may be reinstated after all violations have been remedied to the satisfaction of the Building Safety Director. Reinstatement of an annual permit having been revoked requires payment of a
new Annual Facilities Permit fee. (4242)

When the Building Safety Director suspends or revokes the Annual Facilities Permit, the Qualified Facility may appeal the decision in accordance with Chapter 2-11 of the Mesa City Code. (4242)

(Q) Placement of Permit. The building permit or copy thereof shall be kept on the site of the work until the completion of the project. (4242)

(R) Responsibility. It shall be the duty of every person who performs work for the installation or repair of building, structure, electrical, gas, mechanical, or plumbing systems, for which this Chapter or the technical codes are applicable, to comply with this Chapter and the technical codes. (4242)

(S) Digital / Electronic Drawing Submission. It shall be the responsibility of every permit holder to provide a digital file copy of the permit drawings as required in Section 7-2-3 to the Fire Department through the Building Safety Division prior to the issuance of the permit by the Building Safety Director. Such digital files shall be in accordance with the requirements of Section 7-2-3 as determined by the Fire Marshal, except drawings for permits related to R-3, R-4, and R-5 occupancies, and accessory structures located on the same lot as an R-3, R-4 or R-5 occupancy. (4579, 4807)

(T) Required Operational Permits. The Fire Code Official is authorized to issue operational permits as set forth in Title 7, Chapter 2, Mesa Fire Code. (4634)

(U) Permit-by-Inspection Program. The permit-by-inspection program (PBI) is a voluntary alternative to the standard Building Safety plan review and permit issuance processes for simple projects of certain occupancies and degree of complexity. P-B-I is intended to provide a simplified approach to permit review and issuance in which Building Safety Inspectors review permit applications and attached submittals and approve the issuance of the permit. The owner can choose to utilize this program or the standard approach, subject to acceptance of the Building Safety Director. The inspector then performs the required inspections as the work progresses on that permit. (4807)

1. Eligible projects. Projects eligible for consideration under the P-B-I shall comply with all of the following limitations:

   A. Tenant improvement or tenant completion permits involving Group B (Business), Group M (Mercantile), or Group S (Storage) occupancies; (4807)

   B. Not involving a change of occupancy, except changes between Group B and Group M occupancies; (4807)

   C. Not more than 10,000 square feet in floor area; (4807)

   D. Not involving high piled storage or hazardous materials; and (4807)

   E. Not requiring additional zoning approvals. (4807)

2. Exceptions. The Building Safety Director may accept projects for P-B-I consideration that do not comply with all of the eligible requirements under Subparagraph (T)1 above including remodeling or addition permits for Group R-5 occupancies. (4807)

3. Projects shall comply with all other requirements of Section 4-1-4. (4807)

**4-1-5: INSPECTIONS: (4242, 4579, 4807, 5055)**

(A) General. Construction or work for which a permit is required shall be subject to inspection by the Building Safety Director and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Chapter, the technical codes, or of other ordinances of the jurisdiction. Inspections
presuming to give authority to violate or cancel the provisions of this Chapter or the technical codes or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Building Safety Director nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection. (4242)

It shall be the duty of the permit holder to provide an approved property address, including number and street name, at all construction sites. Such temporary premises identification shall be clearly visible from the street or roadway fronting the property, shall be installed prior to the first inspection, and shall be maintained until the permanent premises identification is installed and approved. (4242)

(B) Required Inspections. The Building Safety Director, upon notification, shall make the inspections set forth in this Section. (4242)

1. Footing and Foundation Inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, required forms shall be in place prior to inspection. Inspection shall be made prior to the placement of concrete. Materials for the foundation shall be on the site, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the site. (4242)

2. Concrete Slab and Under-Floor Inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor. (4242,4579)

3. Plumbing, Mechanical, Gas, and Electrical Systems Inspection. Rough inspection of these systems shall be made prior to covering or concealment, before fixtures or appliances have been set or installed, and prior to the framing inspection. (4242)

4. Lowest Floor Elevation. In flood hazard areas, upon placement of the lowest floor and prior to further vertical construction, a copy of the elevation certification required and approved by the Maricopa Flood Control District shall be submitted to the Building Safety Director. (4242,4579)

5. Frame and Masonry Inspection. Framing inspections shall be made after the roof deck or sheathing, masonry, all framing, fireblocking, draftstopping, and bracing are in place and pipes, chimney, and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes, and ducts are approved, and after the roof is loaded with roof covering material. (4242)

6. Lath and Gypsum Board Inspection. Lath and gypsum board inspections are required when a part of a fire-resistance-rated assembly or a shear assembly and shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished. (4242)

7. Fire-Resistant Penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved. (4242)

8. Other Inspections. In addition to the inspections specified above, the Building Safety Director is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Chapter or the technical codes and other laws enforced by the Building Safety Division. (4242)

9. Special Inspections. Special inspections and structural observations shall be as required in Title 4, Chapter 2, Mesa Building Code. (4242)

10. Energy Efficiency Inspections. Inspections shall be made to determine compliance with the Mesa Energy Code. (5055)

11. Final Inspection. The final inspection shall be made after all work required by the building permit is
completed. (4242, 5055)

(C) Building Service Equipment Inspections. The Building Safety Director shall inspect building service equipment for which a permit is required by this Chapter or the technical codes. Building service equipment intended to be concealed by a permanent portion of the building shall not be concealed until inspected and approved. When the installation of building service equipment is complete, an additional and final inspection shall be made. Building service equipment regulated by the technical codes shall not be connected to the water, fuel, or power supply, or sewer system until authorized by the Building Safety Director. The requirements of this Chapter shall not be considered as prohibiting the operation of building service equipment installed to replace existing building service equipment serving an occupied portion of the building provided an inspection of such building service equipment has been completed and approved. (4242)

(D) Inspection Agencies. The Building Safety Director is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability. (4242)

(E) Inspections Requests. It shall be the duty of the holder of the building permit or their duly authorized agent to notify the Building Safety Director when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work as required by this Chapter. (4242)

(F) Approval Required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Safety Director. The Building Safety Director, upon notification, shall make the requested inspections and shall either indicate the portion of the construction is satisfactory as completed, or notify the permit holder or authorized representative wherein the same fails to comply with this Chapter or the technical codes. Portions not complying shall be corrected and shall not be covered or concealed until authorized by the Building Safety Director. Projects with failed inspections may be subjected to additional fees in accordance with the City's latest Schedule of Fees and Charges. There shall be final inspection and approval of all construction when the work is completed and prior to any occupancy or use. (4242,4807)

(G) Gas Certificates. If, upon final gas piping inspection, the installation is found to comply with the provisions of this Chapter and the technical codes, a certificate of inspection shall be issued by the Building Safety Director. A copy of such certificate shall be issued to the serving gas supplier supplying gas to the premises. It shall be unlawful for any serving gas supplier, or person furnishing gas, to turn on, or cause to be turned on, any fuel gas or any gas meter or meters, until such certificate of final inspection, as herein provided, has been issued. (4242)

(H) Tests. Whenever insufficient evidence of compliance with the provisions of this Chapter or the technical codes or evidence that materials or construction do not conform to the requirements of the technical codes, the Building Safety Director may require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified by the technical codes or by other recognized test standards. In the absence of recognized and accepted test methods, the Building Safety Director shall determine test procedures. Said tests shall be made by an approved agency. Reports of test results shall be submitted to the Building Safety Director for approval and shall be retained by the Building Safety Division as required in the approved records retention schedule. (4242,4579)
(I) Connection to Utilities. Persons shall not make connections from a source of energy, fuel, or power to building service equipment, regulated by the technical codes and for which a permit is required by this Chapter, until approved by the Building Safety Director. The Building Safety Director may authorize the temporary connection of the building service equipment to the source of energy, fuel, or power for testing building service equipment or for use under a temporary certificate of occupancy. The Building Safety Director may also authorize the connection of the building electrical service equipment to supply construction power. Such authorizations shall be conditioned upon the owner or permit holder prohibiting the use of gas-fired generators on the site once the permanent power is operational, except as approved by the Building Safety Director. The use and safe maintenance of the building electrical service equipment during construction shall comply with all applicable local, state and federal regulations. The Building Safety Director may order the disconnection of any service not used or maintained safely, or operated in violation of Section 4-1-6(A). An unauthorized construction fee as established in the latest Schedule of Fees and Charges shall be assessed in the case of a violation of Section 4-1-6(A). (4242,4807)

(J) Annual Facilities Permit Inspections. All structural, architectural, plumbing, mechanical, and electrical installations or constructions shall be inspected by the Building Safety Director prior to covering any such work. Work performed under the Annual Facilities Permit that is exposed and not required to be tested while witnessed by the Building Safety Director, shall be subject to inspection by the Building Safety Director at regular intervals not exceeding six (6) months. (4242)

For all work requiring specific inspections by the Building Safety Director, the Qualified Facility shall make plans available for inspections on-site. A brief outline of all work done under the Annual Facilities Permit shall be prepared by the named agent and shall be made available to the Building Safety Director during periodic inspections. At a minimum, the provided information shall include the location, date, and scope of work. (4242)

The agent and Qualified Facility owner(s) are jointly responsible for assuring all work performed at the Qualified Facility complies with this Chapter and the technical Codes, whether or not the work is specifically inspected by the Building Safety Director. (4242)

4-1-6: CERTIFICATES: (4242,4493,4579,4807)

(A) Use and Occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Building Safety Director has issued a Certificate of Occupancy or other form of authorization therefore as provided herein. Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of this Chapter, the technical codes, or other ordinances of the jurisdiction. (4242)

(B) Certificate of Occupancy. After the Building Safety Director or designee inspects the building or structure and finds no violations of the provisions of this Chapter, the technical, or other laws that are enforced by the Building Safety Division, including, upon notification by the Tax Collector or other City official, compliance with Section 4-1-4(S), the payment of privilege and excise taxes levied pursuant to the provisions of Title 5, Chapter 10 of the Mesa City Code, and the payment of any other accounts owed to the City of Mesa, the Building Safety Director is authorized to issue a Certificate of Occupancy that contains the following: (4242,4579)

1. The building permit number. (4242)

2. The address of the structure. (4242)

3. The name and address of the owner. (4242)

4. A description of the portion of the structure for which the certificate is issued. (4242)

5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this Chapter and the technical codes for the occupancy and division of occupancy and the use for which the proposed occupancy is classified. (4242)
6. The name and signature of the Building Safety Director or designee. (4242)

7. The edition of the code under which the permit was issued. (4242)

8. The occupancy, in accordance with the provisions of Title 4, Chapter 2. (4242)

9. The type of construction as defined in Title 4, Chapter 2. (4242)

10. The design occupant load. (4242)

11. If an automatic sprinkler system is provided, whether the sprinkler system is required. (4242)

12. Any special stipulations and conditions of the building permit. (4242)

EXCEPTION: Group R-3, R-5 and Group U occupancies, unless specifically requested by the permit holder. For such occupancies, occupancy and use is authorized upon the satisfactory completion of the final building inspection. (4242, 4579)

An original of the Certificate of Occupancy shall be provided to the permit holder at no added charge. Additional duplicate copies shall be provided for a fee as established in the latest Schedule of Fees and Charges. The Building Safety Director may require an inspection of an existing building prior to issuing a duplicate certificate of occupancy for any building more than one year after the issuance of the original certificate of occupancy. (4493, 4579, 4807)

A Certificate of Occupancy shall be provided for a partial occupancy approval by the Building Safety Director when requested by the permit holder. Such certificate shall clearly identify the portion or portions of the building that are approved for final occupancy. There shall be no premium fee for a partial Certificate of Occupancy for the occupancy of a tenant space in a shell building issued at the completion of the tenant completion permit. (4493)

(C) Certificate of Completion. After the Building Safety Director or designee inspects the building, structure, electrical, fire protection, plumbing, mechanical, gas, or similar system or structure that cannot be occupied, and finds no violations of the provisions of this Chapter, the technical codes, or other laws that are enforced by the Building Safety Division, including, upon notification by the Tax Collector or other City official, compliance with Section 4-1-4(S), the payment of privilege and excise taxes levied pursuant to the provisions of Title 5, Chapter 10 of the Mesa City Code, and the payment of any other accounts owed to the City of Mesa, the Building Safety Director is authorized to issue a Certificate of Completion. Such Certificate of Completion certifies that the work to be performed under the permit has been satisfactorily completed. The Certificate of Completion does not authorize the occupancy of an incomplete shell, building or structure. The Certificate of Completion shall contain the following: (4242, 4579)

1. The building permit number. (4242)

2. The address of the structure. (4242)

3. The name and address of the owner. (4242)

4. A description of the permitted work for which the certificate is issued. (4242)

5. A statement that the permitted work has been inspected for compliance with the requirements of this Chapter and the technical codes. (4242)

6. The name and signature of the Building Safety Director or designee. (4242)

7. The edition of the code under which the permit was issued. (4242)
8. Any special stipulations and conditions of the permit. (4242)

(D) Temporary Certificate of Occupancy. The Building Safety Director is authorized to issue a Temporary Certificate of Occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The Building Safety Director shall set the time period during which the Temporary Certificate of Occupancy is valid and the conditions, if any, for such temporary occupancy. Any use of a partially constructed building or structure, except for construction purposes, shall constitute occupancy that requires prior approval of the Building Safety Director. Each such subsequent use shall require separate approvals. (4242,4493)

(E) Revocation. The Building Safety Director is authorized to suspend or revoke, in writing, a Certificate of Occupancy, Certificate of Completion, or Temporary Certificate of Occupancy issued under the provisions of this Chapter wherever such certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this Chapter or the technical codes. (4242)

4-1-7: UNSAFE STRUCTURES AND EQUIPMENT: (4242,4579)

(A) Conditions. Structures or existing equipment that are or hereafter become unsafe, unsanitary, or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. A vacant or abandoned structure that is not secured against entry shall be deemed an unsafe condition. Unsafe conditions and structures shall be taken down and removed or made safe, as the Building Safety Director deems necessary and as provided in this Chapter. (4242,4579)

For the purpose of this Chapter, a building or structure having any or all of the conditions or defects hereinafter described shall be deemed to be an unsafe building, provided such conditions or defects exist to the extent the life, health, property, or safety of the public or its occupants are endangered: (4242)

1. Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size or is arranged so as to not provide safe and adequate means of exit in case of fire or panic. (4242)

2. Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic. (4242)

3. Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half (1-1/2) times the working stress or stresses allowed in Title 4, Chapter 2 or 3, as appropriate, for new buildings of similar structure, purpose, or location. (4242)

4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause to such an extent the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of Title 4, Chapter 2 or 3, as appropriate, for new buildings of similar structure, purpose, or location. (4242)

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage properties. (4242)

6. Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half (1/2) of that specified in Title 4, Chapter 2 or 3, as appropriate, for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in Title 4, Chapter 2 or 3, as appropriate, for such buildings. (4242)

7. Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of
similar new construction. (4242)

8. Whenever the building or structure, or any portion thereof, because of: (4242)

(a) Dilapidation, deterioration, or decay; (4242)

(b) Faulty construction; (4242)

(c) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (4242)

(d) The deterioration, decay, or inadequacy of its foundation; or (4242)

(e) Any other cause, (4242)

is likely to partially or completely collapse. (4242)

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used. (4242)

10. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passed through the center of gravity does not fall inside the middle one-third (1/3) of the base. (4242)

11. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its nonsupporting members, enclosing, or outside walls or coverings. (4242)

12. Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become: (4242)

(a) An attractive nuisance to children; (4242)

(b) A harbor for vagrants, criminals, or immoral persons; or as to (4242)

(c) Enable persons to resort thereto for the purpose of committing unlawful or immoral acts. (4242)

13. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in Title 4, Chapter 2 or 3, as appropriate, or of any law or ordinance of this State or jurisdiction relating to the condition, location, or structure of buildings. (4242)

14. Whenever any building or structure, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than fifty percent (50%), or in any supporting part, member, or portion less than sixty-six percent (66%) of the: (4242)

(a) Strength, (4242)

(b) Fire-resisting qualities or characteristics, or (4242)

(c) Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of the like area, height, and occupancy in the same location. (4242)

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human
habituation, or in such a condition that is likely to cause sickness or disease. (4242)

16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connection or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard. (4242)

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence. (4242)

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public. (4242)

(B) Notice. If an unsafe condition, as described herein, is found, the Building Safety Director shall serve on the owner, agent, or person in control of the structure, a written notice describing the condition deemed unsafe and specifying the required repairs or improvements to be made to abate the unsafe condition, or requiring the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare as soon as possible but not later than seven (7) business days to the Building Safety Director the acceptance or rejection of the terms of the order. (4242)

(C) Method of Service. Such notice shall be deemed properly served if a copy thereof is: (4242)

1. Delivered to the owner or agent personally, (4242)

2. Sent by certified or registered mail addressed to the owner at the last known address with return receipt requested, or (4242)

3. Served in any manner permitted by state statute or by the Arizona Rules of Civil Procedure for service of process. (4242,4579)

Service shall first be attempted through personal service. If the City is unable to personally serve the notice, other methods of service may be utilized and the notice shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner. (4242,4579)

(D) Procedures. The Building Safety Director shall establish the necessary procedures to be utilized in the enforcement of this Section. Such procedures shall be consistent with the requirements of this Section and, if necessary, shall be enacted by resolution of the Mesa City Council. (4242)

(E) Hazard Marking System. The Building Safety Director, with the approval of the Fire Chief, is authorized to establish a hazard identification marking system to provide firefighters responding to a fire or other emergency with a visual identification marking that the property is vacant, abandoned, or contains hazards to firefighters. (4579)

(F) Restoration. The structure or equipment determined to be unsafe shall be permitted to be restored to a safe condition. To the extent repairs, alterations, or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions, or change of occupancy shall comply with the requirements of this Chapter and the technical codes, or the structure shall be demolished and the site cleaned. (4242,4579)

(G) Emergency Repairs. In the event the property owner fails to take needed corrective action in the manner and time as acceptable to the Building Safety Director, the Building Safety Director is authorized to employ the necessary labor and materials to perform the required work as expeditiously as possible. Costs incurred in the performance of the emergency work shall be paid by the City of Mesa and the City may file an action to recover all fees and costs related to the emergency repairs. (4242,4579)
Demolition. The Building Safety Director shall order the owner of any premises upon which is located any structure that in the Building Safety Director's judgment is so old, dilapidated, or has become so out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two (2) years, to demolish and remove such structure. (4242,4579)

If the owner of a premises fails to comply with a demolition order within the time prescribed, the Building Safety Director shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate. (4242)

Record. The Building Safety Director shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition. (4242,4579)

Fees: (4242,4493,4579,4807)

Purpose. The purpose of the permit fees for the construction of buildings and structures in the City of Mesa is to ensure that the costs for providing enforcement and administration services are borne entirely by the construction activity prompting the need for such services. (4493)

Schedule of Fees and Charges. The fee for each permit and other services provided by the Building Safety Division and other City departments and divisions shall be as set forth in the most recently adopted City schedule of fees and charges. Such fees shall be periodically reviewed and adjusted by the City Council to generate sufficient total revenue to offset the current estimated City costs for providing permit processing, plan review, field inspection, and other development related services, including necessary capital expenditures. The effective date for revisions to the schedule of fees and charges shall be as stated in the resolution adopted by the City Council. (4493)

Permit Fees. Where the development of land and construction of buildings, structures, systems or other improvements require a building permit from the City of Mesa, fees for each building permit shall be paid as required and in accordance with the Schedule of Fees and Charges established by the City. (4493,4579)

Exceptions: The following entities are exempt from paying permit fees:

1. Governmental entities that are, as a matter of law, immune from having to submit to permit fees. (4493)

2. Utility companies and other entities whose permit fees have been waived by agreement or resolution of the Mesa City Council. (4493)

A building permit shall not be issued nor considered valid until all applicable fees established by the City have been paid, nor shall an amendment to a permit be released until the additional fee(s), if any, has been paid. (4493)

Permit Application Deposits. When permits are required, a deposit fee shall be paid at the time of initial submittal of plans and documents for review. The deposit fee shall be calculated on the construction valuation according to the latest Schedule of Fees and Charges. Permit application deposit fees are a part of the building permit fee and the civil engineering fee and shall be credited against the total permit fees at permit issuance. (4493,4579,4807)

Permit application deposit fees pay for the initial plan review and two (2) subsequent re-submittals for the same project made within the prescribed time limitations. If more than three (3) plan reviews are required, or if the permit application shall expire by time limitation, additional fees may be assessed as determined appropriate by the Building Safety Director. At the time of permit issuance, additional fees for any increase in evaluation shall be assessed as a condition of permit issuance. (4493)
Exceptions. The following project types are exempted from the payment of permit deposit fees:

1. Recreational vehicle and manufactured housing; including awnings, storage sheds, etc. (4493)
2. Residential swimming pools and spas. (4493)
3. Master plans for single family residences. (4493)
4. Master site plans for single family residences. (4493)
5. Residential additions and remodels less than $25,000 in total valuation. (4493)
6. Stand alone residential plumbing, mechanical and electrical permits. (4493)

Only the advance payment of the deposit is waived for the exceptions listed above. The total permit fee shall be assessed and collected at permit issuance, including applicable expedited, phasing and other premium fees. (4493)

(E) Building Permits. Permits for new construction, both residential and commercial, shall be a single combined permit covering all construction trade work for the project, including plumbing, mechanical, electrical, fire protection, and applicable civil engineering. (4493)

(F) Building Permit Fee Calculations - new commercial permits. The calculation of the required building permit fees for new commercial construction projects shall be as follows:

1. Occupancy type and construction type are applied to the most recent ICC table to obtain the construction cost per sq foot [from ICC table] multiplied by the building area [in square feet] equals construction valuation [in dollars]. (4493)
2. Construction valuation is then applied to the commercial rate schedule [as established in the schedule of fees and charges] to obtain the building permit fee. (4493)

(G) Occupancy and Construction Types. The specific occupancy type and construction type for the project shall be as established in the Mesa Building Code. (4493)

(H) Construction Cost. The cost of construction per square foot of building shall be determined by applying the project specific occupancy type and construction type to the current square foot construction costs table as published by International Code Council (ICC). (4493)

Exceptions:

1. Non-livable areas of one and two family dwelling units shall be valued using 50% of the tabular amount for the project specific occupancy type and construction type. (4493)
2. Covered canopies fabricated entirely of metal or membrane-covered shall be valued at 50% of the tabular amount for construction type V-B and utility occupancy. (4493,4807)

Regional modifiers shall not be utilized in the calculation of valuation. Updated publications of the square foot construction cost table by the ICC shall be effective on the first Saturday of the second month following the month of publication. (4493)

(I) Building Area. For fee calculation purposes, the building area in square feet shall be the total area of all floors under roof and enclosed within the outer surfaces of the exterior surrounding walls or columns. Building area includes membrane-covered or metal-covered or other roofed patios, roofed porches, bay windows, basements, mezzanines, penthouses and other mechanical spaces. Building area does not include roof eaves not exceeding 3 feet in horizontal projection, overhangs not exceeding 3 feet in horizontal projection, courts
Building areas for new residential projects shall be comprised of two components - livable areas and non-livable areas. Livable areas shall be those spaces that are the total area of all floors under roof and enclosed within the outer surfaces of the exterior surrounding walls or columns, minus non-livable areas. Non-livable areas include, but are not limited to, garages, carports, roofed patios, roofed porches, mechanical spaces accessed from the exterior, and similar areas. (4493)

(J) Construction Valuation. The valuation of construction for building permit fee calculation purposes shall be the product of the building area in square feet multiplied by the construction cost per square foot. Valuations include all design and construction work, including materials, labor and overhead, for which the permit is being issued, such as finish work, painting, roofing, electrical, gas, mechanical, plumbing equipment, heating, air-conditioning, elevators, fire extinguishing systems, other permanent systems/equipment, grading, landscaping, and other site related improvements. Construction valuation shall be rounded to the nearest whole dollar before calculating the building permit fee (i.e. 8.50 rounds up to 9; 8.49 rounds down to 8). The City Manager or designee is authorized to adjust the resultant valuation amount when deemed necessary for establishing an equitable permit fee. (4493)

(K) Rate Schedules. The City of Mesa shall adopt appropriate rate tables for residential and commercial projects. Refer to the latest Mesa schedule of fees and charges to obtain the required rate for calculating the building permit and civil engineering permit fees. (4493)

(L) Phased Projects. When the applicant determines that a building is to be constructed under multiple permits (phases) as described in Section 4-1-4(K)5, the Building Safety Director shall utilize the following for calculating the shell permit and tenant completion permit fees:

1. Shell permit fee [in dollars] equals 100% of the building permit fee [in dollars] as calculated in 4-1-8(F). (4493,4807)

2. Tenant completion permit fee [in dollars] equals 100% of the building permit fee [in dollars] as calculated in 4-1-8(O). (4493,4807)

The occupancy type for shells, or portions thereof, that are not specifically identified by the owner at the time of permitting shall be deemed to be group M (Mercantile) occupancy for the computation of the building permit fee. Any adjustment in the building permit fee required by a change in the occupancy, a change in the valuation of the construction of the building, or in the scope of the project after the issuance of the shell permit shall be assessed and paid in conjunction with the issuance of the tenant completion permit. (4493,4807)

(M) Building Permit Fee Calculations - new residential permits. The calculation of the building permit fees for new residential projects shall be the same as for new commercial projects, with the following exceptions:

Exceptions:

1. The construction cost per square foot for non-livable building areas shall be determined by multiplying the construction cost per square foot as determined from the ICC table by fifty percent (50%). (4493)

2. The sum of the calculated valuation for livable and non-livable areas shall be applied to the residential rate schedule to obtain the building permit fee. (4493)

The calculation of the required building permit fees for new residential construction projects shall be as follows:
1. Occupancy type and construction type are applied to the most recent ICC table to obtain the construction cost per sq foot [from ICC table] . 

2. Construction cost per sq foot [from ICC table] is multiplied by the livable building area [in square feet] to obtain the livable construction valuation [in dollars]. 

3. Fifty percent of the construction cost per sq foot [from ICC table] is multiplied by the non-livable building area [in square feet] to obtain the non-livable construction valuation [in dollars]. 

4. Livable construction valuation is added to the non-livable construction valuation to obtain the total construction valuation. 

5. Total construction valuation is then applied to the residential rate schedule [as established in the schedule of fees and charges] to obtain the building permit fee. 

(N) Building Permit Fee Calculations - additions permits. The calculation of the building permit and civil engineering permit fee for an addition to an existing building shall be the same as described in this section for commercial and residential projects, as appropriate. 

(O) Building Permit Fee Calculations - renovations/remodeling permits. The calculation of the building permit fee for the renovation or remodeling of an existing building shall be the same as described in this code for commercial and residential projects, as appropriate, except as follows: 

EXCEPTIONS: 

The applicant for a permit shall provide an estimated construction valuation amount at the time of the initial permit application. The submitted valuation shall include the estimated costs of all of the items listed in construction valuation in Section 4-1-8(J). The submitted valuation shall be reviewed by the Plans Examiner for reasonableness and adequacy. The Plans Examiner may use published construction cost estimating guides to assist in the acceptance or adjustment of the submitted valuation. The valuation as approved or modified by the Plans Examiner shall be applied to the appropriate rate schedule to determine the building permit fee. 

(P) Building Permit Fee Calculations - stand alone permits. The calculation of the building permit fee for plumbing, mechanical, electrical, and fire protection permits for work that does not also require a building permit (stand alone), and for shell upgrade permits not resulting in occupiable spaces or buildings, shall be the same as described in this section for commercial and residential projects, as appropriate, except as follows: 

Exceptions: 

The applicant for a permit shall provide an estimated construction valuation amount at the time of the initial permit application. The submitted valuation shall include the estimated costs of all of the items listed in the construction valuation in Section 4-1-8(J). The submitted valuation shall be reviewed by the Plans Examiner for reasonableness and adequacy. The Plans Examiner may use published construction cost estimating guides to assist in the acceptance or adjustment of the submitted valuation. The valuation as approved or modified by the Plans Examiner shall be applied to the appropriate rate schedule to determine the building permit fee.
Q) Civil Engineering Fees. The fees for the civil engineering work related to new construction shall be based upon the number of sheets of drawings related to the civil engineering and landscaping work, for both on-site and off-site, needed to accurately and completely depict the work. The amount of the fee to be applied to the number of sheets involved shall also be dependent upon the size of the sheets and the information depicted upon the sheets. Civil engineering fees for on-site work only or off-site work only or for other portions of a project shall also be based upon the number, information shown, and size of sheets of the drawings needed to depict the work. The applicant shall pay all of the civil engineering fees established in the latest Schedule of Fees and Charges, and the subordinate permits for various engineering and landscaping trades, if any, shall be issued without additional fees. (4493,4579)

Number of civil engineering and landscaping sheets is multiplied by the civil engineering rate schedule [in dollars/sheet; as published in the Schedule of Fees and Charges] to obtain the civil engineering permit fee [in dollars]. (4493)

For civil engineering work not requiring drawings, the civil engineering fee shall be the minimum civil engineering fee as shown in the latest Schedule of Fees and Charges. (4493,4579)

(R) Total Permit Fee. The total permit fee shall be the sum of the Civil engineering fee to the building permit fee, plus applicable expedited, phasing or other premium fees. (4493)

(S) Miscellaneous Engineering Fees. Permits for the following engineering related work shall be required in addition to the civil engineering portion of the total permit fees:

1. "Onsite" grading permit shall be obtained prior to beginning any grading on private property at a proposed development site within the boundaries of Mesa's "Desert Uplands" area where native plant preservation is required, or located in a Historic Preservation Overlay District, or on a site designated as a historic landmark, or located in a flood plain as designated by Maricopa County Flood Control, or any areas required to comply with federal regulations regarding storm water pollution prevention. (4493,4807)

2. Subdivision "at risk" grading permit shall be obtained prior to beginning any grading work/activities for a subdivision. This permit is intended to provide notice to the City and adjacent property owners of the start of grading operations. Approved plans are not required as a condition of permit issuance. (4493)

3. Right-of-way encroachment permit shall be obtained in accordance with Section 9-2 of the Mesa City Code for all requests for encroachments into the public right-of-way or easements. (4493)

(T) Unauthorized Construction Fee. Any person who commences work within a City of Mesa ROW, PUE, PUFE; or on a building, structure, electrical, gas, mechanical, fire protection, plumbing system or grubbing, grading or any other disturbance of the site before obtaining the necessary building permits shall be subject to an unauthorized construction fee as established in the schedule of fees and charges that shall be in addition to the required permit fees. An unauthorized construction fee shall be collected whether or not a permit is then or subsequently issued. The payment of an unauthorized construction fee shall not exempt an applicant from compliance with all other provisions of this chapter and the technical codes or the penalties prescribed by Section 4-1-9. (4493,4807)

The Building Safety Director may reduce the unauthorized construction fee percentage in the case of a cooperative homeowner that acts to resolve the violation within 30 days after receiving notice of the violation. (4493)
(U) Reduction of Fees. Notwithstanding any other section of the Mesa City Code, the City Manager or designee may, in accordance with established procedures, waive or reduce fees that are set forth in the most recent schedule of fees and charges. In so doing, the City Manager or designee shall make such waiver or reduction of fees in writing, identifying the project, owner and location, stating the amount of fees affected and describing the circumstances warranting the departure from requiring the standard fees. (4493)

(V) Refunds. The Building Safety Director or designee may authorize, in accordance with established procedures, refunding of a fee, or portion thereof, paid hereunder that was erroneously assessed and/or collected. The Building Safety Director may authorize refunding of thirty-five percent (35%) of the total permit fee paid for a permit issued in accordance with this code when no work has been started on that permit. The Building Safety Director shall only authorize the refunding of a permit fee paid upon receipt of a written request filed by the payer of the permit fee within one-hundred-eighty (180) days after the date of the payment. (4493)

(W) Refunds for Failure to Meet Plan Review Turnaround Times. The Building Safety Director or designee may authorize, in accordance with established procedures, a permit fee refund or credit against the total permit charges due at the time of issuance of the permit in the event that the City's stated plan review turn-around time performance goals are not achieved for the initial and two (2) subsequent re-submittals for that specific project. Such fee refund or credit shall be calculated as a percentage of the total permit fee (not including impact fees) in accordance with the following:

<table>
<thead>
<tr>
<th>Time in Excess of Stated Goals</th>
<th>Refund/Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 Working Days</td>
<td>1.0%</td>
</tr>
<tr>
<td>6-10 Working Days</td>
<td>2.0%</td>
</tr>
<tr>
<td>11+ Working Days</td>
<td>3.0%</td>
</tr>
</tbody>
</table>

The failure to meet the City's stated turnaround time for any one of the technical areas on any permit submission shall cause the authorization of the fee refund/credit. In the event of multiple plan review submissions, the failure to meet the City's stated turnaround time for any one of the technical areas on any one of the plan review submissions shall cause the authorization of the fee refund/credit. In the event of multiple failures to meet the stated turnaround times on any project, only one refund or credit shall be authorized and such refund/credit shall be calculated on the total of all of the days in excess of the stated goals as applied to the above schedule. (4493)

The City Manager may suspend refunds for failures to meet stated turnaround times following the occurrence of a catastrophic event. (4579)

The Building Safety Director may authorize refunding or not charging the expedited premium when BSD fails to provide the requested service within the stated expedited timelines. (4493)

The Building Safety Director or designee shall not authorize a refund or credit when the actions or inactions of the permit applicant result in delays causing the City's failure to meet the City's stated plan review turnaround times. (4493)
(X) Adjustments. The Building Safety Director is authorized to make corrections, refunds or other adjustments to fee assessments or collections that were erroneously assessed or collected within twenty-four (24) months of the date of permit issuance. (4579,4807)

Exception: The Building Safety Director may extend the adjustment time limit beyond twenty-four (24) months when warranted by the size or complexity of the project. (4579)

(Y) Building Permit Fee Calculations - Permit-By-Inspection Projects. The calculation of the building permit fee for a project under the permit-by-inspection (P-B-I) program shall be the same as described in this code for commercial and residential projects, as appropriate, except as follows:

1. The applicant for a permit shall provide an estimated construction valuation amount at the time of the initial permit application. The submitted valuation shall include the estimated costs of all of the items listed in construction valuation in Section 4-1-8(J). The submitted valuation shall be reviewed by the Building Inspector for reasonableness and adequacy. The Building Inspector may use published construction cost estimating guides to assist in the acceptance or adjustment of the submitted valuation. The valuation as approved or modified by the Building Inspector shall be applied to the appropriate rate schedule to determine the building permit fee. (4807)

2. P-B-I projects shall be subject to a premium fee in addition to the building permit fee, as established in the latest Schedule of Fees and Charges of the City. (4807)

4-1-9: PENALTIES: (4242,5273)

(A) Unlawful Acts. It shall be unlawful: (4242,5273)

1. For any owner, person, firm, or corporation to erect, construct, alter, extend, repair, move, remove, demolish, or operate, any building, structure, or equipment regulated by this Chapter, or cause same to be done, in conflict with or in violation of any of the provisions of this Chapter and the technical codes. (5273)

2. For any owner, person, firm, or corporation to occupy, or for any owner to allow occupancy or fail to prevent occupancy of, any building or structure regulated by this Chapter, or cause same to be done, in conflict with or in violation of any of the provisions of this Chapter and the technical codes. (5273)

3. For an owner, person, firm, or corporation to fail to comply with a lawful written notice of violation or order to discontinue and abate a violation of any of the provisions of this Chapter and the technical codes. (5273)

(B) Notice of Violation. The Building Safety Director is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this Chapter, the technical codes, or in violation of a permit or certificate issued under the provisions of this Chapter. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation. (4242)
(C) Prosecution of Violation. If the notice of violation is not complied with in the time frame specified in the notice, the City may institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this Chapter or of the technical codes or of the order or direction made pursuant thereto. (4242)

(D) Remedies Not Exclusive. Violations of this Chapter or the technical codes are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures that may be taken by the City or other persons under the laws, ordinances, or rules. (4242)

(E) Penalty Clause. Any owner, person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be guilty of a Class One misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment, and each day of violation continued shall be a separate offense, punishable as described above. (4242, 5273)
CHAPTER 2

MESA BUILDING CODE
(1154,1297,2190,2510,3003,3073,3694,4635,4790,5055,5482)

SECTION:

4-2-1: INTERNATIONAL BUILDING CODE ADOPTED (4243,4635,4790,5055,5482)

4-2-2: PENALTY CLAUSE (4243,4635,5482)

4-2-1: INTERNATIONAL BUILDING CODE ADOPTED: (4243,4635,5482)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4243,4635,5482)

Appendix C - Group U - Agricultural Buildings; (4243,5482)

Appendix E - Supplementary Accessibility Requirements Amended; (4243,4635,5482)

Appendix I - Patio Covers; (4243,5482)

Appendix J - Grading Amended; (4243,4635,5482)

(A) Chapter 1 Scope and Administration is amended as follows: (5482)

(1) Section 101.1 of the 2018 International Building Code is amended to read, in its entirety, as follows: (4243,5482)

101.1 Title. These regulations shall be known as the "Mesa Building Code," hereinafter referred to as "this Code." (4243,5482)

(2) Sections 101.2 through 116.5 inclusive are deleted in their entirety. (4243,4635,4790,5482)

(B) Chapter 2 Definitions is amended as follows: (5482)

DIRECTED CARE SERVICE: the care of residents who are incapable of recognizing danger, summoning assistance, expressing need, or making basic care decisions. Directed care services includes providing life sustaining programs and services and may include personal care or supervisory care services. (5482)

EXISTING BUILDING: A building erected prior to the date of adoption of the appropriate code, or one for which a Certificate of Occupancy has been issued for at least one year. (5482)

NURSING HOME: A facility that provides nursing services to residents. Nursing services include the curative, restorative, and preventive aspects of nursing care that are performed at the direction of a physician by or under the supervision of a registered nurse licensed by the state. (5482)

PERSONAL CARE SERVICE: The care of residents who do not require chronic or convalescent medical or nursing care. Personal care service includes assisting with activities of daily living that can be performed by persons without professional skills or professional training and may include the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed by the State. (5482)

RESIDENTIAL CARE / ASSISTED LIVING FACILITIES: A building or part thereof housing persons on a twenty-four- (24-) hour basis, who because of age, mental disability, or other reasons, live in a supervised residential environment that provides personal care, supervisory care, or directed care services.
This classification shall include, but not be limited to, the following: assisted living facilities, residential board and care facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers, and convalescent facilities. (5482)

**SUPERVISORY CARE SERVICE:** The care of residents who require general supervision, including providing daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis, and assistance in the self-administration of prescribed medications. Provision of any of the following services shall constitute supervisory care: cooking or meal service, laundry service, linen or maid service. (5482)

(C) Chapter 3 Occupancy Classification and Use is amended to read as follows: (5482)

(1) Section 308.2 Institutional Group I-1 is amended to read as follows: (5482)

308.2 Institutional Group I-1. This occupancy shall include buildings, structures, or portions thereof housing for more than sixteen (16) persons, on a twenty-four- (24-) hour basis, who because of age, mental disability, or other reasons, live in a supervised residential environment that provides supervisory or personal care services. The occupants are capable of self-preservation and of responding to an emergency without physical assistance from staff. This group shall include, but not be limited to, the following: (5482)

1. Assisted living facilities licensed by the State of Arizona Department of Health Services with more than sixteen (16) residents; (5482)
2. Residential board and care facilities; (5482)
3. Halfway houses; (5482)
4. Group homes; (5482)
5. Congregate care facilities; (5482)
6. Social rehabilitation facilities; (5482)
7. Alcohol and drug centers; (5482)
8. Convalescent facilities. (5482)

A facility such as the above with five (5) or fewer persons shall be classified as a Group R-3 or R-5 as applicable or shall comply with the Mesa Residential Code. A facility such as above, housing at least six (6) and not more than sixteen (16) persons, shall be classified as Group R-4. (5482)

(2) Section 308.3 Institutional Group I-2 is amended to read as follows: (5482)

308.3 Institutional Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing, custodial care, or directed care services on a twenty-four- (24-) hour basis of more than five (5) persons who because of age, mental, or physical disability are not capable of self-preservation or responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following: (5482)

1. Assisted living homes licensed by the State of Arizona Department of Health Services with five (5) or fewer residents that are not classified as R-3 or R-5;
2. Foster care facilities;
3. Hospitals;
4. Nursing homes (both intermediate-care facilities and skilled nursing facilities);
5. Psychiatric hospitals;
6. Detoxification facilities.

A facility such as above with five (5) or fewer persons shall be classified as a Group R-3 or R-5 as applicable. (5482)
(3) Section 308.5 Institutional Group I-4 is amended to read as follows: (5482)

308.5 Institutional Group I-4, day care facilities. Institutional Group I-4 shall include buildings and structures occupied by more than ten persons, including not more than 5 infants 2 ½ years of age or less, who receive custodial care for less than 24 hours by persons other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following: (5482)

   Adult day care
   Child day care

308.5.1 Classification as Group E. A child day care facility that provides care for more than ten but not more than 100 children 2 ½ years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E. (5482)

308.5.2 Within a place of religious worship. Rooms and spaces within places of religious worship providing such care during religious functions shall be classified as part of the primary occupancy. (5482)

308.5.3 Ten or fewer occupants receiving care. A facility having ten or fewer persons receiving custodial care shall be classified as part of the primary occupancy. (5482)

308.5.4 Ten or fewer persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having ten or fewer persons receiving custodial care shall be classified as a Group R-3 or R-5 occupancy as applicable. (5482)

(4) Section 310.1 Residential Group R is amended to read as follows: (5482)

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I. (5482)

(5) Section 310.4 Residential Group R-3 is amended to read as follows: (5482)

310.4 Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4, R-5 or I, including: (5482)

Buildings that do not contain more than two (2) dwelling units
Care facilities that provide accommodations for five or fewer persons receiving care
Congregate living facilities (nontransient) with 16 or fewer occupants
   Boarding houses (nontransient)
   Convents
   Dormitories
   Fraternities and sororities
   Monasteries
Congregate living facilities (transient) with 10 or fewer occupants
   Boarding houses (transient)
Lodging houses (transient) with five or fewer guest rooms and 10 or fewer occupants or one (1) of the following:

(a) Adult care facilities that provide accommodations for ten (10) or fewer persons of any age, for less than twenty-four (24) hours. Such adult care facilities that are within a single residence are permitted to comply as R-5. (5482)

(b) Child care facilities that provide accommodations for ten (10) or fewer persons of any age, for less than twenty-four (24) hours. Such childcare facilities that are within a single residence are permitted to comply as R-5. (5482)
(6) Section 310.5 Residential Group R-4 is amended to read as follows: (5482)

Section 310.5 Residential Group R-4. Residential Group R-4 shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive custodial care. Building of Group R-4 shall be classified as one of the occupancy conditions indicated below. This group shall include, but not be limited to, the following: (5482)

- Alcohol and drug center
- Assisted living facilities
- Congregate care facilities
- Group Home
- Halfway Houses
- Residential board and care facilities
- Social rehabilitations

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 or R-5, except as otherwise provided for in the Mesa Building Code. (5482)

Assisted living homes located in residentially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health Services with more than 5 but not more than 10 residents. (5482)

Assisted living centers located in commercially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health with more than 5 but not more than 16 residents. (5482)

(7) Adding a new section, Section 310.6 Residential Group R-5 to read as follows: (5482)

Section 310.6 Residential Group R-5. Residential Group R-5 occupancies where the occupants are primarily permanent as detached one- and two-family dwellings and multiple single-family dwellings (townhouses) and their accessory structures conforming with the Mesa Residential Code. R-5 occupancies may include: (5482)

- Adult care facilities providing accommodations for ten or fewer persons of any age for less than 24 hours within a single residence. (5482)
- Childcare facilities providing accommodations for ten or fewer persons of any age for less than 24 hours within a single residence. (5482)
- Assisted living homes with 5 or fewer residents capable of self-preservation or responding to an emergency situation without physical assistance from staff. (5482)
- Assisted living homes including facilities providing directed care services, with 5 or fewer residents that are not capable of self-preservation or responding to an emergency situation without physical assistance from staff. Such assisted living homes shall be protected with automatic sprinkler systems in accordance with section 903.3 and a smoke alarm system in accordance with section 907.2.10.1.3. (5482)
- Congregate living facilities with 16 or fewer occupants. (5482)

(8) Adding a new section, Section 310.7 Security Standards to read as follows: (5482)

Section 310.7 Security Standards. (5482)

310.7.1 Requirements. All dwelling units shall conform to the following minimum-security requirements: (5482)

1. All main or front-entry doors shall be arranged so that the occupant has a view of the area immediately outside the door without opening the door. Such view may be provided by a door viewer having a field of view of not less than one hundred eighty (180) degrees or through windows. (5482)
2. All exterior swinging doors shall be of solid core or metal skin construction, including the nonglazed portion of exterior glass insert doors. (5482)

3. Open spaces between trimmers and wood exterior doorjambs shall be solid shimmed, extending not less than six inches (6") above and below the deadbolt strike plate. Deadbolt strike plates for exterior door locks shall be attached to wood jambs with not less than two (2) No. 8 by two-inch (2") screws or when attached to metal jambs, shall be attached with not less than two (2) No. 8 machine screws. (5482)

4. Exterior doors with hinge pins exposed on the outside shall use nonremovable pin hinges or standard pin hinges with the pins modified to prevent the removal of the door from the exterior. (5482)

5. All exterior sliding doors shall be constructed and installed to prohibit the raising, sliding, or removal of the sliding section from the track while in the closed and locked position. The stationary section shall not be removable from the outside. Such sliding doors shall be provided with an auxiliary or additional locking device operable from the inside without the use of a key or special knowledge or effort. (5482)

6. All exterior swinging doors and doors from a dwelling to an attached garage shall be equipped with a deadbolt lock. Such deadbolt locks shall: (5482)

   (a) Have a minimum one-inch (1") bolt throw and receiving strike-plate hole one-quarter inch (1/4") deeper than the projected bolt throw, and

   (b) Have a wrench-resistant collar, and

   (c) Have fasteners which thread into the cylinder body.

Deadbolt locks installed on the front or main-entry door shall be key operated from the exterior and operable from the inside without the use of a key. (5482)

Exterior windows shall be constructed and installed to prohibit raising, sliding, or removal of the moving section while in the closed and locked position. A passive window panel shall have weather-stripped molding or glazing bead which is not easily removed from the outside to prevent removal of the window glass. (5482)

7. All garage doors not equipped with a power-operated mechanism shall be equipped with at least two (2) locking devices of the following types: (5482)

   (a) Throw bolt or flush bolt;

   (b) Cylinder-type lock;

   (c) Padlock and hasp;

   (d) Electrical-power-operated mechanism with automatic locking device.

   (e) All garage doors shall be capable of being unlocked and operable from inside the garage without the use of electrical power.

   (f) Access doors to attic space shall be located in the interior of the dwelling unit or within a secured enclosed room or garage, provided that if no interior location is available, a metal access door secured with a steel hasp and a heavy-duty lock may be located on the exterior.

310.7.2. The requirements of this Section are not intended to prevent the use of any device, hardware, or method of construction not specifically prescribed when such alternate device, hardware, or method of construction provides equivalent security, subject to the approval of the Building Safety Director. (5482)
310.7.3. The requirements of this Section are not intended to prevent egress, and devices shall not be installed in a manner to prevent proper egress through doors or bedroom windows as required. (5482)_{2}

(D) Chapter 4 Special Detailed Requirements Based on Occupancy and Use is amended as follows:

(1) Section 402.5 Automatic Sprinkler System is amended by deleting the exception: (5482)

402.5 Automatic Sprinkler System. Covered and open mall buildings and buildings connected shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, which shall comply with all of the following: (5482)

1. The automatic sprinkler system shall be complete and operative throughout occupied space in the mall building prior to occupancy of any of the tenant spaces. Unoccupied tenant spaces shall be similarly protected unless provided with approved alternative protection.

2. Sprinkler protection for the mall of a covered mall building shall be independent from that provided for tenant spaces or anchor buildings.

3. Sprinkler protection for the tenant spaces of an open mall building shall be independent from that provided for anchor buildings.

4. Sprinkler protection shall be provided beneath exterior circulation balconies located adjacent to an open mall.

5. Where tenant spaces are supplied by the same system, they shall be independently controlled.

(2) Section 403.3 Automatic Sprinkler System is amended by deleting number 1 of the Exception. (5482)

403.3 Buildings and structures shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 and a secondary water supply where required by Section 403.3.3. (5482)

Exception: An automatic sprinkler system shall not be required in spaces or areas of: (5482)

1. Telecommunications equipment buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries and standby engines, provided that those spaces or areas are equipped throughout with an automatic fire detection system in accordance with Section 907.2 and are separated from the remainder of the building by not less than 1-hour fire barriers constructed in accordance with Section 707 or not less than 2-hour horizontal assemblies constructed in accordance with Section 711, or both.

(3) Section 404.3 Automatic sprinkler protection is amended by deleting Exception 1. (5482)

404.3 Automatic sprinkler protection. An approved automatic sprinkler system shall be installed throughout the entire building. (5482)

Exceptions:

1. Where the ceiling of the atrium is more than 55 feet (16,764 mm) above the floor, sprinkler protection at the ceiling of the atrium is not required.

(4) 410.6 Automatic sprinkler system is amended by deleting exception #2: (5482)
410.6 Automatic sprinkler system. Stages shall be equipped with an automatic sprinkler system in accordance with Section 903.3.1.1. Sprinklers shall be installed under the roof and gridiron and under all catwalks and galleries over the stage. Sprinklers shall be installed in dressing rooms, performer lounges, shops and storerooms accessory to such stages. (5482)

Exceptions:

1. Sprinklers are not required under stage areas less than 4 feet (1219 mm) in clear height that are utilized exclusively for storage of tables and chairs, provided that the concealed space is separated from the adjacent spaces by Type X gypsum board not less than 5/8-inch (15.9 mm) in thickness.
2. Sprinklers are not required within portable orchestra enclosures on stages.

(E) Chapter 10 Means of Egress is amended as follows: (5482)

(1) Section 1004.5 Areas without fixed seating is amended as follows: (5482)

1004.5 Areas without fixed seating. The number of occupants shall be computed at the rate of one occupant per unit of area as prescribed in Table 1004.5. For areas without fixed seating, the occupant load shall not be less than that number determined by dividing the floor area under consideration by the occupant per unit of area factor assigned to the occupancy as set forth in Table 1004.5. Where an intended use is not listed in Table 1004.5, the Building Official shall establish a use based on a listed use that most nearly resembles the intended use. (5482)

Exception: Where approved by the Building Official, through the Code Modification Process, the actual number of occupants for whom each occupied space, floor or building is designed, although less than those determined by calculation, shall be permitted to be used in the determination of the design occupant load. (5482)

(2) Section 1010.1.2 Door swing is amended by revising exception 4 to read as follows: (5482)

1010.1.2 Door swing. Egress doors shall be of the pivoted or side-hinged swinging type. (5482)

Exceptions:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2, R-3 and R-5, as applicable in the Mesa Administrative Code, Chapter 1.
5. In other than Group H occupancies, revolving doors complying with Section 1010.1.4.1.
6. In other than Group H occupancies, special purpose horizontal sliding, accordion or folding door assemblies complying with Section 1010.1.4.3.
7. Power-operated doors in accordance with Section 1010.1.4.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

(F) Chapter 11 Accessibility is amended as follows: (5482)

(1) Section 1101 GENERAL is amended by adding the following Exceptions and subsections: (5482)

1101.1 Scope. The provisions of this chapter and Arizona Revised statutes, ARS sections 41-1492 through 41-1492.12 shall control the design and construction of facilities for accessibility for individuals with disabilities. (5482)
Exceptions:

1. This Chapter shall not apply to private clubs or establishments exempted from coverage under Title II of the Civil Rights Act of 1964 (42 United States Code Section 2000[a][e]).

2. This Chapter shall not apply to religious functional areas of religious facilities owned, operated, and maintained by religious organizations or entities controlled by religious organizations, including altar areas, baptismal fonts and areas, choir lofts, etc., but not including main assembly areas such as naves and sanctuaries.

1101.2 Where the requirements of this Chapter or the ICC/ANSI A117.1 are at variance from the requirements set forth in Title 41, Chapter 9, Article 8, Arizona Revised Statutes and its implementing rules, the State Statute and implementing rules shall govern. (5482)

1101.3 Provisions for Children. Facilities and areas of facilities intended primarily for occupancy by children ages three through twelve (3-12) shall be permitted to be designed and constructed as an equivalent facilitation in accordance with ADA guidelines for accessible design for children as promulgated in the Federal Register, Vol. 63, No. 8, Tuesday, January 13, 1998. Such equivalent facilitation shall be permitted without requiring approval of a modification. (5482)

1101.4 Copy of Laws and Standards. A copy of all laws, rules, guidelines, and standards cited by this Chapter shall be available in the office of the City Clerk in order to allow persons an adequate opportunity to be informed of the applicable requirements. (5482)

(2) Section 1102.1 Design is amended by adding the following: (5482)

1102.1 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC A117.1 and in accordance with provisions State of Arizona Attorney General Administrative Rules R10-3-401 through R-10-3-404 (2010 ADA Standards for Accessible Design, referred to as “2010 Standards”, adopted by the U.S. Department of Justice), whichever standard provides the greatest degree of accessibility. (5482)

(3) Section 1103.2.5 Construction sites is amended and reads as follows: (5482)

Section 1103.2.5 Construction sites. Structures, sites and equipment directly associated with the actual processes of construction including, but not limited to, scaffolding, bridging, materials hoists, materials storage or construction trailers are not required to comply with this chapter. The public portions of temporary sales offices/trailers are required to be accessible. There shall be accessible parking and an accessible route from the accessible parking aisle to the sales office/trailer and throughout the public portion of the sales office/trailer, including the design center. Accessible toilet rooms shall be provided according to this code. (5482)

(G) Chapter 16 Structural Design is amended as follows: (5482)

Section 1609.3 Basic design wind speed is amended to read as follows: (5482)

1609.3 Basic design wind speed. The basic design wind speed, V, in mph, for the determination of the wind loads shall be determined by Figures 1609.3(1) through (8) or by using the following wind speeds: Risk Category I – 100 mph; Risk Category II – 105 mph; Risk Category III – 110 mph; and Risk Category IV – 115 mph. The basic design wind speed, V, for use in the design of Risk Category II buildings and structures shall be obtained from Figures 1609.3(1) and 1609.3(5) or 105 mph. The basic design wind speed, V, for use in the design of Risk Category III building and structures shall be obtained from Figures 1609.3(2) and 1609.3(6) or 110 mph. The basic design wind speed, V, for use in the design of Risk Category IV buildings and structures shall be obtained from Figures 1609.3(3) and 1609.3(7) or 115 mph. The basic design wind speed, V, for use in the design of Risk Category I buildings and structures shall be obtained from Figures 1609.3(4) and 1609.3(8) or 100 mph. The basic design wind speed, V, for the special wind regions indicated near mountainous terrain and near gorges shall be in accordance with local jurisdiction requirements. The
basic design wind speeds, \( V \), determined by the local jurisdiction shall be in accordance with Chapter 26 of ASCE 7. (5482)

(H) Chapter 17 Special Inspections and Tests is amended as follows: (5482)

(1) Section 1704.6.1 Structural observations for structures is amended by adding additional conditions. (5482)

1704.6.1 Structural observations for structures. Structural observations shall be provided for those structures where one or more of the following conditions exist: (5482)

1. The structure is classified as Risk Category IV.
2. The structure is a high-rise building.
3. Such observation is required by the registered design professional responsible for the structural design.
4. Such observation is specifically required by the building official.
5. The height of the structure is greater than 75 feet (22.860mm) above the grade plane.
6. The structure has more than three stories above the grade plane.
8. Prefabricated deferred units and their connections when such units are utilized structurally in the lateral force-resisting systems of a structure.

(2) A new section, 1705.19 Plumbing special inspections, is added at the end of section 1705 and reads as follows: (5482)

Section 1705.19 Plumbing special inspections. The types of equipment or installations noted below shall be tested or inspected by a special inspector. (5482)

2. Special cases – Work which, in the opinion of the building official, involves unusual hazards or conditions.

Exception: The building official may waive the requirement for special inspection if the construction is of a minor nature. (5482)

(I) Chapter 18 Soils and Foundations is amended as follows: (5482)

(1) A new section, 1803.5.13 Post-tensioned slabs on ground, is added at the end of section 1803.5 and reads as follows: (5482)

Section 1803.5.13 Post-tensioned slabs on ground. A geotechnical investigation is required for the design of all post-tensioned slabs on ground. The investigation report shall include all soil parameters as outlined in PTI DC-10.5. Information required on the drawings includes, but is not limited to, slab type, soil parameters, bearing value and depth, coefficient of subgrade friction, soil subgrade modulus, \( e_m \) and \( y_m \) for expansive soils and all special inspection requirements. (5482)

(J) Chapter 19 Concrete is amended as follows: (5482)

(1) A new section, 1907.2 Post-tensioned slabs on ground, is added at the end of section 1907 and reads as follows: (5482)
Section 1907.2 Post-tensioned slabs on ground. All post-tensioned slabs on ground shall be permanently stamped, marked or otherwise identified in a conspicuous location indicating the slab is a post-tensioned slab. Conspicuous locations include, but are not limited to, entrance porches, slabs at garage doors or patio slabs. (5482)

(K) Chapter 21 Masonry is amended as follows: (5482)

(1) Section 2111 Masonry Fireplaces is amended by adding a new subsection, 2111.15, at the end to read as follows: (5482)

Section 2111.15 Fireplace Restrictions. Refer to the Mesa Mechanical Code, Section 930 for additional restrictions on masonry and factory-built fireplaces. (5482)

(2) A new section, 2115 Solid Waste Bin and Barrel Enclosure, is added at the end of the chapter to read as follows: (5482)

2115 Solid Waste Bin and Barrel Enclosure. (5482)

2115.1 General. Enclosures shall be designed and installed in compliance with Mesa Standard Details M62.1-M62.5. (5482)

(L) CHAPTER 29 PLUMBING SYSTEMS is amended to read as follows: (5482)

(1) Table 2902.1 Minimum Number of Required Plumbing Fixtures is amended by deleting “1 Service Sink” from the “Other” column for use groups B and M. (5482)

<table>
<thead>
<tr>
<th>NO.</th>
<th>CLASSIFICATION</th>
<th>DESCRIPTION</th>
<th>WATER CLOSETS</th>
<th>LAVATORIES</th>
<th>BATHTUBS/SHOWERS</th>
<th>DRINKING FOUNTAIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Business</td>
<td>Buildings for the transaction of business, professional services, other services involving merchandise, office buildings banks light industrial and similar uses</td>
<td>1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50</td>
<td>1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80</td>
<td>____</td>
<td>1 per 100</td>
</tr>
<tr>
<td>6</td>
<td>Mercantile</td>
<td>Retail stores, service stations, shops, salesrooms, markets and shopping centers</td>
<td>1 per 500</td>
<td>1 per 750</td>
<td>____</td>
<td>1 per 1,000</td>
</tr>
</tbody>
</table>

(2) Section 2902.2 Separate Facilities is amended to read as follows: (5482)

2902.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex. (5482)
Exceptions: (5482)

1. Separate facilities shall not be required for dwelling units and sleeping units.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 20 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 50 or less.
4. Separate facilities shall not be required in F and S occupancies with 20 or less identified work stations.

(3) Section 2902.6 Small occupancies is amended to read as follows: (5482)

2902.6 Small occupancies. Drinking fountains shall not be required for an occupant load of 50 or fewer. (5482)

(M) Chapter 31 Special Construction is amended to read as follows: (5482)

1. Section 3109 Swimming Pools, Spas and Hot Tubs is amended to read as follows: (5482)

3109 Swimming Pools, Spas and Hot Tubs. The design and construction of swimming pools, spas and hot tubs shall comply with the Mesa Swimming Pool and Spa Code. (5482)

(N) Chapter 32 Encroachments into the public right-of-way is amended as follows: (5482)

1. Section 3201 General is amended to read as follows: (5482)

3201.1 Scope. The provisions of the City of Mesa Code, Chapter 9-2 shall govern -encroachments into the public right-of-way. (5482)

(2) Sections 3201.2 through 3202.4 are deleted in their entirety. (5482)

(O) Chapter 35 Referenced Standards has been amended as follows: (5482)

- NFPA 11 – 19 Low Medium- and High-Expansion Foam
- NFPA 13 – 19 Installation of Sprinkler Systems
- NFPA 13D – 19 Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes
- NFPA 13R – 19 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height
- NFPA 14 – 19 Installation of Standpipe, Private Hydrants and Hose Systems
- NFPA 20 – 19 Installation of Stationary Pumps for Fire Protection
- NFPA 72 – 19 National Fire Alarm Code
- NFPA 110 – 19 Emergency and Standby Power Systems
- NFPA 111 – 19 Standard on Storage Electrical Energy Emergency and Standby Power Systems
- NFPA 211 – 19 Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances
- NFPA 409 – 19 Aircraft Hangars

SECTION 4-2-2. PENALTY CLAUSE: Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (5482)
CHAPTER 3

MESA RESIDENTIAL CODE
(2505,2184,3074,3075,3457,4579,4636,4790,5055,5483)

4-3-1: INTERNATIONAL RESIDENTIAL CODE ADOPTED (4244,4636,4790,5055,5483)
4-3-2: PENALTY CLAUSE (4244,4636,5483)

4-3-1: INTERNATIONAL RESIDENTIAL CODE ADOPTED: (4244,4636,5483)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4244,4636,5483)

Appendix H
Patio Covers. (4636,5483)

are hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said Code: (4244,4636,5483)

(A) Chapter 1 Administration (5483)

(1) Section 101.1 of the 2018 International Residential Code is amended to read, in its entirety, as follows: (4244,5483)

101.1 Title. These regulations shall be known as the Mesa Residential Code, hereinafter referred to as “this code”. (4244,5483)

Section 101.2 through 114.2 of the 2018 International Residential Code is deleted in its entirety. (4244,5483)

(B) Chapter 2 Definitions (5483)

(1) Section 202 Definitions shall be amended by revising definitions and adding new definitions to read as follows: (5483)

Fire Separation Distance: The distance measured from the face of the wall framing to one of the following: (5483)

1. To the closest interior lot line.
2. To the center line of a street, an alley or public way.
3. To an imaginary line between two buildings on the lot. The distance shall be measured at the right angle form the face of the framing.

R-5 Occupancies. Detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures. (5483)

(C) Chapter 3 Building Planning is amended as follows: (5483)

(1) Section R301.2 Climatic and geographic design criteria. Climatic and geographic design criteria is amended by replacing Table R301.2(1) with the completed table and adding two new footnotes to read as follows: (5483)
(All footnotes to the original Table are to remain unchanged)

P. 3S is the 3-second gust wind speed (m.p.h.)
Q. fm is the fastest mile wind speed (m.p.h.)

(2) Section R301.5 Live Load is amended by Revising Table R301.5 as follows: Change live load for “Sleeping rooms” from 30 psf to 40 psf, and the live load for Habitable attics and attics with fixed stairs from 30 psf to 40 psf. (5483)

MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)

<table>
<thead>
<tr>
<th>USE</th>
<th>LIVE LOAD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uninhabitable attics without storage(^b)</td>
<td>10</td>
</tr>
<tr>
<td>Uninhabitable attics with limited storage(^b),(^g)</td>
<td>20</td>
</tr>
<tr>
<td>Habitable attics and attics served with fixed stairs</td>
<td>40</td>
</tr>
<tr>
<td>Balconies (exterior) and decks(^e)</td>
<td>40</td>
</tr>
<tr>
<td>Fire escapes</td>
<td>40</td>
</tr>
<tr>
<td>Guards and handrails(^d)</td>
<td>200(^h)</td>
</tr>
<tr>
<td>Guard in-fill components(^f)</td>
<td>50(^h)</td>
</tr>
<tr>
<td>Passenger vehicle garages(^a)</td>
<td>50(^h)</td>
</tr>
<tr>
<td>Rooms other than sleeping rooms</td>
<td>40</td>
</tr>
<tr>
<td>Sleeping rooms</td>
<td>40</td>
</tr>
<tr>
<td>Stairs</td>
<td>40(^c)</td>
</tr>
</tbody>
</table>

(3) Section R311.7.8.4 Continuity is amended by adding an exception #3 at the end to read as follows: (5483)

3. Handrails for stairways within a dwelling unit shall be permitted to be discontinuous between the top and bottom of a flight of stairs where the ends of the discontinued rail are returned to a wall or post and the maximum distance between the ends of discontinued rails is not greater than four inches (4”). (5483)
(4) Section R311.7 Grip size is amended by adding a new paragraph at the end of Section R311.7.8.5 to read as follows: (5483)

3. Handrail shapes complying with Figure 311.7 (1), (A) through (F), shall be approved as providing equivalent grasp ability meeting the requirements of this Section. Other shapes complying with this Section shall also permissible. (5483)

(5) Section R313 Automatic Fire Sprinkler Systems is amended by deleting R313.2 and R313.2.1. (5483)

(6) Section R320 Accessibility is amended by adding two new Sections R320.2 and R320.3 to read as follows: (5483)

R320.2 No-Step Entrance. At least one (1) model home dwelling unit in every model home complex, as defined in the City of Mesa Zoning Ordinance, shall have a no-step entrance to serve as a demonstration of the builder’s method of providing a no-step entry as an option for new home construction. Model dwellings selected to demonstrate this option, and all dwelling units providing this option, shall be served by a route of travel meeting the following requirements: (5483)

1. A continuous no-step path connecting each subdivision sales office or public way to an entrance of the unit.
2. A route of travel that consists of a firm stable, and slip-resistant surface with a minimum continuous width of thirty-six inches (36”) and a minimum clear height of seven feet (7’) above the route.
3. The running slope of such route shall not exceed one to twelve (1:12).
4. A minimum forty-eight inches by forty-eight inches (48” X 48”) maneuvering space on the exterior side of the door constructed with less than two percent (2%) slope in any direction.
5. A minimum thirty-two inch (32”) clear-opening door with a threshold not exceeding one-half inch (½”).
6. Identification by readily viewable signage.

R320.3 Model Home Sales Office Restrooms. If public restrooms are provided for residential development models, such restroom facilities shall be accessible and shall be provided by either of the following methods: (5483)

1. Converting one (1) ground-floor model home restroom into an ADA-accessible unisex facility; or
2. Providing one (1) ADA-accessible unisex portable toilet and hand-washing unit located on an accessible route. The accessible portable toilet facility shall be removed when the Sales Office is permanently closed.

(7) Section R322 Flood Resistant Construction is amended by revising R322.1 to read as follows: (5483)

R322.1 General. Buildings, structures, appliances, equipment and system installations located in flood hazard areas shall comply with all Maricopa County Planning and Development Department regulations. No reference to flood hazard requirements in this chapter, or the technical codes, shall be construed as allowing installations in violation of Maricopa County Planning and Development Department regulations. Where conflicts exist between the requirements of this chapter and the Maricopa County Planning and Development Department regulations, the Maricopa County Planning and Development regulations shall govern. (5483)

(8) Adding two (2) new Sections; Section R328 Security Standards and Section R329 Fire Department Access and Water Supply. (5483)

Section R328 Security Standards. (5483)

R328.1 Requirements. All dwelling units shall conform to the following minimum-security requirements: (5483)

1. All main or front-entry doors shall be arranged so that the occupant has a view of the area immediately outside the door without opening the door. Such view may be provided by a door viewer having a field of view of not less than one hundred eighty (180) degrees or through windows.
2. All exterior swinging doors shall be of solid core, fiberglass or metal skin construction, including the nonglazed portion of exterior glass insert doors.
3. Open spaces between trimmers and wood exterior doorjambs shall be solid shimmed, extending not less than six inches (6") above and below the deadbolt strike plate. Deadbolt strike plates for exterior door locks shall be attached to wood jambs with not less than two (2) No. 8 by two-inch (2") screws or when attached to metal jambs, shall be attached with not less than two (2) No. 8 machine screws.
4. Exterior doors with hinge pins exposed on the outside shall use nonremovable pin hinges or standard pin hinges with the pins modified to prevent the removal of the door from the exterior.
5. All exterior sliding doors shall be constructed and installed so as to prohibit the raising, sliding or removal of the sliding section from the track while in the closed and locked position. The stationary section shall not be removable from the outside. Such sliding doors shall be provided with an auxiliary or additional locking device operable from the inside without the use of a key or special knowledge or effort.
6. All exterior swinging doors and doors from a dwelling to an attached garage shall be equipped with a deadbolt lock. Such deadbolt locks shall:
   (a) Have a minimum one-inch (1") bolt throw and receiving strike-plate hole one-quarter inch (¼") deeper than the projected bolt throw, and
   (b) Have a wrench-resistant collar, and
   (c) Have fasteners which thread into the cylinder body,
7. Deadbolt locks installed on the front or main-entry door shall be key operated from the exterior and operable from the inside without the use of a key.
8. Exterior windows shall be constructed and installed so as to prohibit raising, sliding, or removal of the moving section while in the closed and locked position. A passive window panel shall have weather-strip molding or glazing bead which is not easily removed from the outside to prevent removal of the window glass.
9. All garage doors not equipped with a power-operated mechanism shall be equipped with at least two (2) locking devices of the following types:
   (a) Throw bolt of flush bolt;
   (b) Cylinder-type lock;
   (c) Padlock and hasp;
   (d) Electrical-power-operated mechanism with automatic locking device;
10. All garage doors shall be capable of being unlocked and operable from inside the garage without the use of electrical power.
11. Access doors to attic space shall be located in the interior of the dwelling unit or within a secured enclosed room or garage, provided that if no interior location is available, a metal access door secured with a steel hasp and a heavy-duty lock may be located on the exterior.

Section R329 Fire Department Access and Water Supply. (5483)

R329.1 General. Buildings and structures shall have fire department access in accordance with the Mesa Fire Code Section 503 and fire protection water supplies in accordance with the Mesa Fire Code Section 508. (5483)

(D) Chapter 4 Foundations is amended as follows: (5483)

(1) Table 401.4.1 is amended as follows: (5483)

<table>
<thead>
<tr>
<th>Class of Material</th>
<th>Load-Bearing Pressure (Pounds per Square Foot)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crystalline Bedrock</td>
<td>12,000</td>
</tr>
<tr>
<td>Sedimentary and Foliated Rock</td>
<td>4,000</td>
</tr>
<tr>
<td>Sandy Gravel and/or Gravel (GW and GP)</td>
<td>3,000</td>
</tr>
<tr>
<td>Sand, Silty Sand, Clayey Sand, Silty Gravel and Clayey Gravel (SW, SP, SM, SC, GM and GC)</td>
<td>1,500b</td>
</tr>
<tr>
<td>Clay, Sandy Clay, Silty Clay, Clayey Silt, Silt and Sandy Silt (CL, ML, MH and CH)</td>
<td>1,500b</td>
</tr>
</tbody>
</table>

For SI: 1 pound per square foot = 0.0479 kPa

a. Where soil tests are required by Section R401.4, the allowable bearing capacities of the soil shall be part of the recommendations.
b. Where the building official determines that in-place soils with an allowable bearing capacity of less than 1,500 psf are likely to be present at the site, the allowable bearing capacity shall be determined by a soils investigation.

(2) Section R403 Footings has been amended by adding an exception to read as follows: (5483)

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, crushed stone footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill. Concrete footings shall be designed and constructed in accordance with the provisions of Section R403 or in accordance with ACI 332. (5483)

Exception: (5483)

Existing patio and carports, 400 square feet or less, that are enclosed and occupied as livable and/or non-livable areas are not required to provide a continuous exterior footing when the existing load bearing post and beam construction remains in place.

(E) Chapter 10 Chimneys and Fireplaces is amended as follows: (5483)

(1) Section R1001 Masonry Fireplaces is amended by adding a new subsection at the end of the section as follows: (5483)
R1001.13 Fireplace Restrictions. Refer to the Mesa Mechanical Code Section 930 for additional restrictions on masonry fireplaces. (5483)

(2) R1004 Factory-Built Fireplaces is amended by adding a new subsection at the end of the section to read as follows: (5483)

R1004.6 Fireplace Restrictions. Refer to the Mesa Mechanical Code Section 930 for additional restrictions on masonry fireplaces. (5483)

(F) Chapter 11 Energy Efficiency is amended as follows: (5483)

(1) A new Section N1101.4.1 has been added at the end of Section N1101. (5483)

N1101.4.1 RESNET Testing and Inspection Protocol. The Residential Energy Services Network (RESNET) Mortgage Industry National Home Energy Rating System Standards Protocol for third party testing and inspections, shall be deemed to meet the requirements of sections R402.4.1.1, R402.4.1.2 and R403.2.2, and shall meet the following conditions: (5483)

1. Third Party Testing and Inspections shall be completed by RESNET certified Raters or Rating Field Inspectors and shall be subject to RESNET Quality Assurance Field Review procedures. (5483)

2. Sampling in accordance with Chapter 6 of the RESNET Standards shall be performed by Raters or Rating Field Inspectors working under a RESNET Accredited Sampling Provider. (5483)

3. Third Party Testing is required for the following items: (5483)

   a. N1102.4.1.1 – Building Envelope – Thermal and Air Barrier Checklist

   b. N1102.4.1.2 – Testing – Air Leakage Rate

   c. N1103.3.2 – Sealing – Duct Tightness

4. The other requirements identified as “mandatory” in Chapter 11 shall be met. (5483)

5. Alternate testing and inspection programs and protocols shall be allowed when approved by the Code Official. (5483)

(2) Section N1103.3 Ducts has been amended to read as follows: (5483)

N1103.3 Ducts. Ducts and air handlers shall be installed in accordance with Sections R403.3.1 through R403.3.7. (5483)

N1103.3.1 Insulation (Prescriptive) the Exception has been amended to read as follows: (5483)

Supply and return ducts in attics shall be insulated to an R-value of not less than R-8 for ducts 3 inches (76 mm) in diameter and larger and not less than R-6 for ducts smaller than 3 inches (76 mm) in diameter. Supply and return ducts in other portions of the building shall be insulated to not less than R-6 for ducts 3 inches (76 mm) in diameter and not less than R-4.2 for ducts smaller than 3 inches (76 mm) in diameter. (5483)

Exception:

1. Ducts or portions thereof located completely inside the building thermal envelope.

2. Supply ducts may be insulated to a minimum of R-6 when one or more of the following conditions
are met;

(a) Minimum SEER rating of space heating/cooling system is increased to 15;

(b) Maximum U-Factor is decreased to 0.35 and maximum SHGC is decreased to 0.22 for all fenestration products;

(c) Wall cavity insulation minimum R-value is increased to R-19;

(d) Residential buildings that meet the requirements of sections R102.1.1 or R405;

(e) Residential buildings with attic radiant barriers in accordance with ASTM C1313, installed in accordance with ASTM C1743.

(3) Table N1106.4 is amended to read as follows: (5483)

<table>
<thead>
<tr>
<th>Climate Zone</th>
<th>Energy Rating Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>57</td>
</tr>
<tr>
<td>2</td>
<td>64</td>
</tr>
<tr>
<td>3</td>
<td>57</td>
</tr>
<tr>
<td>4</td>
<td>62</td>
</tr>
<tr>
<td>5</td>
<td>61</td>
</tr>
<tr>
<td>6</td>
<td>61</td>
</tr>
<tr>
<td>7</td>
<td>58</td>
</tr>
<tr>
<td>8</td>
<td>58</td>
</tr>
</tbody>
</table>

*Where on-site renewable energy is included for compliance using the ERI analysis of Section N1106.4, the building shall meet the mandatory requirements of Section N1106.2, and the building thermal envelope shall be greater than or equal to the levels of efficiency and SHGC in Table N1102.1.2 or Table N1102.1.4.

(G) Chapter 24 Fuel Gas is amended as follows: (5483)

Section G2404.7 Flood hazard is amended by adding the following at the end of the section. (5483)

G2404.7 Flood hazard. For structures located in flood hazard areas, the appliance, equipment and system installations regulated by this code shall be located at or above the elevation required by Section R322 for utilities and attendant equipment. Buildings, structures, appliances, equipment and system installations located in flood hazard areas shall comply with the Maricopa County Planning and Development Regulations. No reference to flood hazard requirements in this Chapter or the technical codes shall be construed as allowing installations in violation of Maricopa County Planning and Development Regulations. Where conflicts exist between the requirements of this Chapter and the Maricopa County Planning and Development Regulations, the Maricopa County Planning and Development Regulations shall govern. (5483)
(H) Chapter 26 General Plumbing Requirements is amended as follows: (5483)

Section P2603 Structural and Piping Protection is amended by adding a new Subsection P2603.6 to read as follows: (5483)

P2603.6 Underground nonmetallic water piping. Underground nonmetallic water piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial. (5483)

(I) Chapter 29 Water Supply and Distribution (5483)

Section P2910 Nonpotable water systems is amended by adding a subsection P2910.4.1 to read as follows: (5483)

P2910.4.1 Conflicts. No reference to requirements for gray water recycling systems in this appendix or the technical codes shall be construed as allowing installations in violation of Arizona Department of Environmental Quality requirements. Where conflicts exist between the requirements of this appendix and the Arizona Department of Environmental Quality requirements, the Arizona Department of Environmental Quality requirements shall govern. (5483)

(J) Chapter 30 Sanitary Drainage (5483)

Section P3001 General is amended by adding a new Subsection P3001.4 to read as follows: (5483)

P3001.4 Tracer Wire. Underground nonmetallic sanitary drainage piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial. (5483)

(K) Chapter 36 Services (5483)

Section E3601.2 Number of services is amended to read as follows: (5483)

E3601.2 Number of services. One-family dwelling units shall be supplied by only one service. Two-family dwellings units shall be supplied by a single service or two separate services. When more than one service is installed, a permanent plaque or directory shall be installed at each service-equipment location denoting the other service on the structure and the area served by each service. (5483)

(L) Chapter 45 Fire Protection is a new chapter (5483)

FP4501.1 One and Two-Family Dwelling Sprinkler Options. All contractors of one and two-family dwellings shall provide an option for residential fire sprinklers. The contractor or their agent shall provide an informational packet containing educational materials approved by the Mesa Fire Department, including a form explaining the option for residential sprinklers, to all prospective buyers and shall obtain a signed receipt for the educational materials from the prospective buyer. Upon the request and execution of a purchase agreement by the homebuyer, the contractor shall install the residential fire sprinklers. Such fire sprinkler systems shall comply with the requirements of NFPA 13D. (5483)

(M) Chapter 44 Referenced Standards is amended to read as follows: (5483)

NFPA 13 – 19 Installation of Sprinkler Systems

NFPA 13D – 19 Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Homes
NFPA 13R – 19 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height

NFPA 72 – 19 National Fire Alarm Code

NFPA 211 – 19 Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances

SECTION 4-3-2. PENALTY CLAUSE: Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (5483)
CHAPTER 4

MESA LIGHTING AND ELECTRICAL CODE

(1685,1736,3571,4637,4790,5484)

4-4-1: LIGHTING CONTROL ORDINANCE (4245,4637,4790)
4-4-2: NATIONAL ELECTRICAL CODE ADOPTED (4245,4637,5484)
4-4-3: PENALTY CLAUSE (4245,5484)

4-4-1: LIGHTING CONTROL ORDINANCE: (4245,4637)

(A) Purpose. This Section is intended to restrict the permitted use of outdoor artificial illuminating devices emitting undesirable rays into the night sky which have a detrimental effect on astronomical observations. (4245)

(B) Conformance with Applicable Regulations. All outdoor artificial illuminating devices shall be designed and installed in conformance with the provisions of this Section and all other Sections of Chapter 4-4. Where provisions of the Arizona State Statutes, or of the Federal laws, or other regulation of the City conflicts with the requirements of this Section, the most restrictive shall govern. (4245)

(C) Conformance with Applicable Standards. All outdoor artificial illuminating devices shall be installed in conformance with recognized standards as approved by the American National Standards Institute (ANSI) and the Illumination Engineering Society of North America (IES). Public street lighting shall be in conformance with the City of Mesa engineering and design standards. (4245,4637)

(D) Definitions. The following definitions shall apply to this chapter. (4245,4637)

OUTDOOR LIGHT FIXTURES: Outdoor artificial illuminating devices, outdoor fixtures, lamps, and other devices, permanent or portable, used for illumination or advertisement. Such devices shall include, but are not limited to, lighting for buildings and structures, recreational areas, parking lots, landscape areas, billboards and other signage, and street lighting. (4245)

FULLY SHIELDED: Those fixtures designed and erected in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are only projected below a horizontal plane running through the lowest point on the fixture where light is emitted. (4245)

PARTIALLY SHIELDED: Those fixtures designed and erected in such a manner that the bottom edge of the shield is below the plane of the centerline of the light source (lamp), minimizing the light emitted above the horizontal. (4245)

FILTERED: Outdoor light fixtures whose transmission is less than five percent (5%) total emergent flux at wavelengths less than three thousand nine hundred (3,900) angstroms. Total emergent flux is defined as that between wavelengths of three thousand (3,000) and seven thousand (7,000)-angstrom units. (4245)

AMBIENT LIGHT LEVEL: The measured light level at night when all the lights associated with a facility are off. (4245)
INSTALLED: The initial installation of outdoor light fixtures defined herein, provided the date of such installation is on or after September 18, 2004. (4245)

(E) Where Required. All exterior walkways, parks, parking lots, sales areas, or similar facilities which are intended to be occupied by the public during hours of darkness shall be provided with illumination to the minimum level recommended by IES standards for the use intended, during hours of normal occupation. (4245)

(F) Shielding and Filtering. All exterior illuminating devices, except those exempt from this Section, shall be fully or partially shielded and filtered as required in the following table: (4245)

<table>
<thead>
<tr>
<th>FIXTURE LAMP TYPE</th>
<th>SHIELDED</th>
<th>FILTERED (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low-Pressure Sodium (1)</td>
<td>Partially</td>
<td>None</td>
</tr>
<tr>
<td>High-Pressure Sodium</td>
<td>Partially</td>
<td>None</td>
</tr>
<tr>
<td>Metal Halide</td>
<td>Fully</td>
<td>Yes</td>
</tr>
<tr>
<td>Fluorescent</td>
<td>Partially(3)</td>
<td>Yes (5)</td>
</tr>
<tr>
<td>Quartz (2)</td>
<td>Partially</td>
<td>None</td>
</tr>
<tr>
<td>Incandescent Greater than 150W</td>
<td>Partially</td>
<td>None</td>
</tr>
<tr>
<td>Incandescent 150W or Less</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Fossil Fuel</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Glass Tubes Filled with Neon, Argon, Krypton</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Other Lamp Types</td>
<td>AS APPROVED BY THE BUILDING SAFETY DIRECTOR</td>
<td></td>
</tr>
</tbody>
</table>

Footnotes:
(1) This is the preferred lamp type to minimize undesirable light into the night sky, negatively affecting astronomical observations.
(2) For the purposes of this Section, quartz lamps shall not be considered as an incandescent light source.
(3) Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding.
(4) Glass, acrylic, or translucent enclosures shall be deemed to satisfy filter requirements.
(5) Warm White and Natural Lamps are recommended to minimize detrimental effects.

(G) Visibility. No fixture, with a lamp size greater than 150W incandescent, shall be designed or erected where the lamp is directly visible to a person standing at the property line. (4245)

(H) Light Spillage. The light level at any property line, measured thirty-six inches (36") above ground level, shall be not more than 0.5 footcandles (5 Lux) above ambient light level, except for property lines adjacent to residential use property, the light level shall be not more than 0.3 footcandles (3 Lux) above ambient light level. Where the property is adjacent to a public street, the property line may be considered to be the centerline of the street. (4245)
(I) Prohibitions. The following fixture types shall not be used within the City of Mesa: (4245)

1. Searchlights. The operation of searchlights for advertising purposes is prohibited between the hours of eleven (11:00) P.M. and sunrise. (4245)

2. Mercury Vapor. The installation of mercury vapor fixtures is prohibited. (4245)

3. Maximum lamp wattage shall be limited in relation to mounting height as set forth in the following table, except for special use as approved. (4245)

<table>
<thead>
<tr>
<th>Wattage</th>
<th>Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>40 ft.</td>
</tr>
<tr>
<td>400</td>
<td>25 ft.</td>
</tr>
<tr>
<td>250</td>
<td>20 ft.</td>
</tr>
<tr>
<td>150</td>
<td>15 ft.</td>
</tr>
</tbody>
</table>

Fixtures with lamps less than 150 watts shall be permitted to be installed at any height, subject to conformance with other adopted codes. Lamp wattages in this table are for HID arc lamps; other lamp types shall be limited to equivalent lumen output. (4245,4637)

(J) Nonconforming Fixtures. Outdoor light fixtures existing and fully installed prior to September 18, 2004 that complied with all applicable codes at installation may remain as "nonconforming," provided, however, that no change in use, replacement, structural alteration, or restoration after abandonment of the outdoor light fixtures shall be made unless it thereafter conforms to the provisions of these regulations. (4245,4637)

EXCEPTION: No outdoor recreational facility, public or private, shall be illuminated by nonconforming means after eleven (11:00) P.M., except that a specific recreational or sporting event or other similar activity conducted at a ballpark, outdoor amphitheater, arena, or similar facility in progress prior to eleven (11:00) P.M. may continue until concluded. (4245)

(K) Fossil Fuel Lights (Gas). Lighting produced by the combustion of natural gas or other utility-type fossil fuels shall be exempt from the requirements of this Section, except lighting produced indirectly from combustion of natural gas or other utility-type fossil fuels, such as through the use of electricity to produce lighting shall not be exempted from compliance. (4245)
Federal and State Facilities. Facilities and lands owned, operated, or protected by the U.S. Federal Government or the State of Arizona are exempted by law from all requirements of this Section. Voluntary compliance with the intent of this Section at such facilities is encouraged. (4245)

Special Exemption. The Building Safety Director may grant a special exemption to the requirements of this Section only upon finding, in writing, that there are extreme geographic or geometric conditions warranting such exemption and that there are no conforming fixtures that can comply. (4245)

Outdoor Advertising Lighting. Upward-emitting lighting located upon existing outdoor advertising shall be exempt from compliance with this Section, provided that such lighting is equipped with a permanent automatic shutoff device and will not be operated between the hours of eleven (11:00) P.M. and six (6:00) A.M. (4245)

Automatic Shutoff Device. In addition to the specific exemptions provided in this Section, outdoor light fixtures not meeting the provisions of this Section shall be allowed to remain, provided such fixtures are extinguished between the hours of eleven (11:00) P.M. and sunrise by an automatic shutoff device. (4245)

Temporary Exemptions. The Building Safety Director may grant a temporary exemption to the requirements of this Section, for a period of up to thirty (30) days, renewable at the discretion of the Building Safety Director. (4245)

The request for temporary exemption shall be submitted by the property owner and shall contain the following information, at a minimum: (4245)

1. Specific exemptions requested. (4245)
2. Type and use of exterior lighting involved. (4245)
3. Type of shielding and filtering of fixtures, if any. (4245)
4. Duration of time for the requested exemption. (4245)
5. Type of lamp and calculated lumens for all fixtures involved. (4245)
6. Total wattage of lamps for all fixtures involved. (4245)
7. Proposed location of exterior lighting. (4245)
8. Previous temporary exemptions, if any. (4245)
9. Other data and information as required by the Building Safety Director. (4245)

Within five (5) working days from the receipt of a properly completed request for temporary exemption, the Building Safety Director shall approve or reject the request. Such action shall be in writing. If rejected, the applicant shall have the right of appeal to the Building Board of Appeals, pursuant to Title 2 Chapter 11 of the Mesa City Code. (4245,4637)
Flagpole Lighting. Upward emitting lighting whose purpose is to illuminate a flag on a flagpole at night shall be exempt from compliance with this section provided all of the following provisions are met:

1. The flag flown on the flagpole shall be permitted under Title 11, Mesa Zoning Ordinance. (4790)

2. The fixtures used to illuminate the flag shall be of a light source permitted by this chapter with lamps rated at not more than 75 watts. (4790)

3. The fixture used to illuminate the flag shall be limited to not more than three fixtures, ground or building mounted, aimed upwards, with no fixture exceeding the light level or lamp visibility requirements shown in Subparagraphs (G) or (H) above. (4790)

4-4-2: NATIONAL ELECTRICAL CODE ADOPTED: (4245,4637,5484)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4245,4637,5484)

(A) Article 80 Title and Administration is amended to read as follows: (4245,4637,5484)

Article 80 Title and Administration. (4245,4637,5484)

80.1 Title. These regulations shall be known as the "Mesa Electrical Code," may be cited as such, and will be referred to herein as "this Code." For administration of this Code, refer to Title 4, Chapter 1, Mesa Administrative Code. (4245,5484)

(B) Article 100 Definitions is amended by revising the definition for Authority Having Jurisdiction (AHJ)" to read as follows: (5484)

Authority Having Jurisdiction (AHJ). The Authority Having Jurisdiction shall be construed to be the Building Safety Director or designee who is responsible for administering and enforcing the Mesa Electrical Code. (4637,5484)

(C) Article 230.70(B) Marking is amended to read as follows: (4245,4637,5484)

230.70(B) Marking. Each service disconnect shall be permanently marked to identify it as a service disconnect. Markings shall be of sufficient durability to withstand the environment involved. Identifying labels required for disconnecting means shall have engraved or raised letters and be secured by screws or rivets (plastic tape shall not be considered durable material). (4245,5484)

(D) Article 250.118 Types of Equipment Grounding Conductors is amended to read as follows: (4245,4637,5484)

250.118 Types Of Equipment Grounding Conductors. The equipment grounding conductor run with or enclosing the circuit conductors shall be one (1) or more of a combination of the following: (4245,5484)

1. Rigid metal conduit.

2. Intermediate metal conduit.

3. Electrical metallic tubing with an additional equipment grounding conductor.

4. Listed flexible metal conduit meeting all the following conditions:
   a. The conduit is terminated in listed fittings.
   b. The circuit conductors contained in the conduit are protected by overcurrent devices rated at 20 amperes or less.
   c. The size of the conduit does not exceed metric designator 35 (trade size 1 ¼).
d. The combined length of flexible metal conduit and flexible metallic tubing and liquidtight flexible metal conduit in the same ground-fault current path does not exceed 1.8 m (6 ft).

e. If used to connect equipment where flexibility is necessary to minimize the transmission of vibration from equipment or to provide flexibility for equipment that required movement after installation, an equipment grounding conductor shall be installed.

5. Listed liquidtight flexible metal conduit meeting all the following conditions:
   a. The conduit is terminated in listed fittings.
   b. For metric designators 12 through 16 (trade sizes 3/8 through ½), the circuit conductors contained in the conduit are protected by overcurrent devices rated at 29 amperes or less.
   c. For metric designators 21 through 35 (trade sizes ¾ through 1 ¼), the circuit conductors contained in the conduit are protected by overcurrent devices rated not more than 60 amperes and there is no flexible metal conduit, flexible metallic tubing, or liquidtight flexible metal conduit in trade sizes metric designators 12 through 16 (trade sizes 3/8 through ½) in the ground-fault path.
   d. The combined length of flexible metal conduit and flexible metallic tubing and liquidtight flexible metal conduit in the same ground-fault current path does not exceed 1.8 m (6ft).
   e. If used to connect equipment where flexibility is necessary to minimize the transmission of vibration from equipment or to provide flexibility for equipment that requires movement after installation, an equipment grounding conductor shall be installed.

6. Flexible metallic tubing where the tubing is terminated in listed fittings and meeting the following conditions:
   a. The circuit conductors contained in the tubing are protected by overcurrent devices rated at 20 amperes or less.
   b. The combined length of flexible metal conduit and flexible metallic tubing and liquidtight flexible metal conduit in the same ground-fault current path does not exceed 1.8 m (6 ft).

7. Surface metal raceways listed for grounding.

4-4-3: PENALTY CLAUSE: (4245,4637,5484)
Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (4245,4637,5484)
CHAPTER 5

MESA PLUMBING CODE

(2119,2185,2466,2506,3072,3766,4579,4638,4790,5055,5485)

4-5-1: MESA PLUMBING CODE ADOPTED (4246, 4638, 4790, 5055,5485)
4-5-2: POTABLE WATER USE RESTRICTIONS (4246,4638,5485)
4-5-3: PENALTY CLAUSE (4246,4638,5485)

4-5-1: INTERNATIONAL PLUMBING CODE ADOPTED: (4246, 4638, 5055,5485)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection:

(4246,4638,5485)

Appendix C – Structural Safety (5485)
Appendix E - Sizing of Water Piping System; (4246,5485)

(A) Chapter 1 Administration. (5485)

(1) Section 101.1 of the 2018 International Plumbing Code is amended to read, in its entirety, as follows: (4246,5485)

101.1 Title. These regulations shall be known as the Mesa Plumbing Code, hereinafter referred to as “this code”. (4246,5485)

(2) Sections 101.3 through 110.4 inclusive are deleted in their entirety. (4246,5485)

(B) Chapter 2 Definitions. (4638,5485)

(1) Section 202, General Definitions is amended by adding a new definition as follows: (5485)

Service Sink: A general purpose sink intended to be used for facilitating the cleaning of a building and used solely for janitorial purposes (not a kitchen sink or lavatory). (4638,5485)

(C) Chapter 3 General Regulations.

(1) Section 305 Protection of Pipes and Plumbing System Components is amended by adding a new subsection. (4579,4638, 4579,5485)

305.8 Detectible Underground Locator Device. Underground nonmetallic water and irrigation system piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall not be less than 18 AWG and the insulation type shall be suitable for direct burial. (4579,5485)
(D) Chapter 4 Fixtures, Faucets and Fixture Fittings is amended as follows: (5485)

(1) Table 403.1 minimum number of required plumbing fixtures is amended by deleting “1 Service Sink” from the “Other” column for use B and M. (4579,4638,5485)

**TABLE 403.1**

**MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES**

(See Sections 403.1.1 and 403.2)

<table>
<thead>
<tr>
<th>NO.</th>
<th>CLASSIFICATION</th>
<th>DESCRIPTION</th>
<th>WATER CLOSETS</th>
<th>LAVATORIES</th>
<th>BATHTUBS / SHOWERS</th>
<th>DRINKING FOUNTAIN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>MALE</td>
<td>FEMALE</td>
<td>MALE</td>
<td>FEMALE</td>
</tr>
<tr>
<td>2</td>
<td>Business</td>
<td>Buildings for the transaction of business, professional services, other</td>
<td>1 per 25 for</td>
<td>1 per 40</td>
<td>1 per 100</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>services involving merchandising, office buildings, banks light industrial and</td>
<td>the first 50 and 1 per 50 for the remainder exceeding 50</td>
<td>for the first 80 and 1 per 80 for the remainder exceeding 80</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>similar uses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mercantile</td>
<td>Retail stores, service stations, shops, salesrooms, markets and shopping</td>
<td>1 per 500</td>
<td>1 per 750</td>
<td></td>
<td>1 per 100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>centers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(portions of table not shown do not change)

(2) Section 410.2 Small Occupancies. Drinking fountains shall not be required for an occupant load of 20 or fewer. (5485)

(E) Chapter 6 Water Supply and Distribution is amended to read as follows and Table 604.4 has been deleted. (5485)

(1) Section 604.4 Maximum Flow and Water Consumption. The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall be in accordance with Arizona Revised Statutes, Title 45, Chapter 1, Article 12. (4246,5485)

Table 608.1 Application of Backflow Preventers is amended to read as follows. (4246,4638,5485)

**Table 608.1**

**APPLICATION OF BACKFLOW PREVENTERS**

<table>
<thead>
<tr>
<th>DEVICE</th>
<th>DEGREE OF HAZARD*</th>
<th>APPLICATION</th>
<th>APPLICABLE STANDARDS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Backflow prevention assemblies:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Double check backflow</td>
<td>Low Hazard</td>
<td>Backpressure or backsiphonage</td>
<td>ASSE 1015, AWWA C510, CSA B64.5, CSA B64.5.1</td>
</tr>
<tr>
<td>prevention assembly</td>
<td></td>
<td>Sizes 3/8” - 16”</td>
<td></td>
</tr>
<tr>
<td>Pressure vacuum breaker</td>
<td>High or low hazard</td>
<td>Backsiphonage only sizes ½” – 2”</td>
<td>ASSE 1020, CSA B64.1.2</td>
</tr>
<tr>
<td>assembly</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduced pressure principle</td>
<td>High or low hazard</td>
<td>Backpressure or backsiphonage</td>
<td>ASSE 1013, AWWA C511, CSA B64.4, CSA B64.4.1</td>
</tr>
<tr>
<td>backflow prevention assembly</td>
<td></td>
<td>Sizes 3/8” - 16”</td>
<td></td>
</tr>
<tr>
<td>Spill-resistant vacuum</td>
<td>High or low hazard</td>
<td>Backsiphonage only sizes ¾” – 2”</td>
<td>ASSE 1056 CSA B64.1.3</td>
</tr>
<tr>
<td>breaker</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Backflow preventer plumbing devices:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Backflow Preventer Types

<table>
<thead>
<tr>
<th>Description</th>
<th>Hazard Type</th>
<th>Prevention Type</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antisiphon-type fill valves for gravity water closet flush tanks</td>
<td>High hazard</td>
<td>Backsiphonage only</td>
<td>ASSE 1002/ASME A112.1002/CBSA B125.12, CSA B125.3</td>
</tr>
<tr>
<td>Backflow preventer for carbonated beverage machines</td>
<td>Low hazard</td>
<td>Backpressure or backsiphonage Sizes ¾” – 3/8”</td>
<td>ASSE 1022</td>
</tr>
<tr>
<td>Backflow preventer with intermediate atmospheric vents</td>
<td>Low hazard</td>
<td>Backpressure or backsiphonage Sizes ¾” – ¾”</td>
<td>ASSE 1012, CSA B64.3</td>
</tr>
<tr>
<td>Dual-check-valve-type backflow preventer</td>
<td>Low hazard</td>
<td>Backpressure or backsiphonage</td>
<td>ASSE 1024, CSA B64.3</td>
</tr>
<tr>
<td>Hose connection backflow preventer</td>
<td>High or low hazard</td>
<td>Low head backpressure rated working pressure, backpressure or backsiphonage Sizes ½” – 1”</td>
<td>ASME A112.21.3, ASSE 1052, CSA B64.2.1.1</td>
</tr>
<tr>
<td>Hose connection vacuum breaker</td>
<td>High or low hazard</td>
<td>Low head backpressure or backsiphonage Sizes ½”, ¾”, 1”</td>
<td>ASME A112.21.3, ASSE 1011, CSA B64.2, CSA B64.2.1</td>
</tr>
<tr>
<td>Laboratory faucet backflow preventer</td>
<td>High or low hazard</td>
<td>Low head backpressure and backsiphonage</td>
<td>ASSE 1035, CSA B64.7</td>
</tr>
<tr>
<td>Pipe-applied atmospheric-type vacuum breaker</td>
<td>High or low hazard</td>
<td>Backsiphonage only Sizes ¾” – 4”</td>
<td>ASSE 1001, CSA B64.1.1</td>
</tr>
<tr>
<td>Vacuum breaker wall hydrants, frost-resistant, automatic-draining-type</td>
<td>High or low hazard</td>
<td>Low head backpressure or backsiphonage Sizes ¾”, 1”</td>
<td>ASME A112.21.3, ASSE 1019, CSA B64.2.2</td>
</tr>
</tbody>
</table>

### Other Means or Methods:

<table>
<thead>
<tr>
<th>Description</th>
<th>Hazard Type</th>
<th>Prevention Type</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air gap</td>
<td>High or low hazard</td>
<td>Backsiphonage or backpressure</td>
<td>ASME A112.1.2</td>
</tr>
<tr>
<td>Air gap fittings for use with plumbing fixtures, appliances and appurtenances</td>
<td>High or low hazard</td>
<td>Backsiphonage or backpressure</td>
<td>ASME A112.1.3</td>
</tr>
<tr>
<td>Barometric loop</td>
<td>High or low hazard</td>
<td>Backsiphonage only</td>
<td>(See Section 608.14.4)</td>
</tr>
</tbody>
</table>

For SI: 1 inch = 25.4 mm.

- Low hazard – See Pollution (Section 202).
- High hazard – See Contamination (Section 202).
- See Backpressure (Section 202).
- See Backsiphonage (Section 202).

(2) Section 608.17 Connections to the potable water system is amended to read: (5485)

Connections to the potable water system shall conform to Sections 608.17.1 through 608.17.11. And a new subsection, 608.17.11 and 608.17.11.1 has been added. (5485)

(3) Section 608.17.4 Connections to automatic fire sprinkler systems and standpipe systems is amended to read as follows: (5485)

The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow, in accordance with City of Mesa Standard Details. (5485)
Exceptions: (5485)

1. Where systems are installed as a portion of the water distribution system in accordance with the requirements of this code and are not provided with a fire department connection, isolation of the water supply system shall not be required. (5485)

2. Isolation of the water distribution system is not required for deluge, preaction or dry pipe systems. (5485)

(4) 608.17.11 Pure Water Process Systems. Pure water process systems, the water supply to a pure water process system, such as dialysis water systems, semiconductor washing systems and similar process piping systems, shall be protected from back-pressure and back-siphonage by a reduced-pressure principle backflow preventer. (5485)

(5) 608.17.11.1 Dialysis Water Systems. The individual connections of the dialysis related equipment to the dialysis pure water system shall not require additional backflow protection where, backflow or back-siphonage protection is integral with the dialysis equipment. (5485)

(F) Chapter 7 Sanitary Drainage is amended by adding new verbiage at the end of 701.2 and adding a new subsection, 701.8 Detectable Underground Locator Device to read as follows: (4579,4638,5485)

1. Section 701.2 Connection to Sewer Required. Sanitary drainage piping from plumbing fixtures in buildings and sanitary drainage piping systems from premises shall be connected to a public sewer. Where a public sewer is not available, the sanitary drainage piping and systems shall be connected to a private sewage disposal system in compliance with state or local requirements. Where state or local requirements do not exist for private sewage disposal systems, the sanitary drainage piping and systems shall be connected to an approved private sewage disposal system that is in accordance with the International Private Sewage Disposal Code. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer. The public sewer may be considered as not being available only when so determined by the Maricopa County Environmental Services Department (MCESD), by authority granted by delegation from the Arizona Department of Environmental Quality (ADEQ) as stated in the Arizona Administrative Code r18-9-a309. (4246,4638,5485)

Exception: Sanitary drainage piping and systems that convey only the discharge from bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to connect to a public sewer or to a private sewage disposal system provided that the piping or systems are connected to a system in accordance with Chapter 13 or 14. (5485)

2. Section 701.8 Detectable Underground Locator Device. Underground nonmetallic sanitary drainage piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access will be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall not be less than 18 awg and the insulation type shall be suitable for direct burial. (5485)

(G) Chapter 10 Traps, Interceptors and Separators is amended as follows: (4638,5485)

1. Section 1002.4 Trap Seals. Each fixture trap shall have a liquid seal of not less than 2 inches (51 mm) and not more than 4 inches (102 mm), or deeper for special designs relating to accessible fixtures. Where a trap seal is subject to loss by evaporation, a trap seal primer valve shall be installed. A trap seal primer valve shall conform to ASSE 1018 or ASSE 1044 and shall be provided with an air gap per Section 608.16.1. (4638,5485)

4-5-2: POTABLE WATER USE RESTRICTIONS: (4246,5485)

(A) Purpose and Intent. The City Council of the City of Mesa has determined that it is in the best interests of the City to promote water conservation and the City has adopted a policy of water conservation. In furtherance of this policy, the City Council has determined that the further filling of artificial lakes with potable water within the water service area of the City is contrary to the water conservation policy and hinders water conservation.
The City Council has also determined that further landscape watering with potable water at turf-related facilities within the water service area of the City is contrary to the City policy and hinders water conservation. For these reasons the City Council has determined that the immediate imposition of certain restrictions on the filling of artificial lakes and on landscape watering at turf-related facilities within the water service area of the City is a matter of public need and necessity. (4246,5485)

(B) Definitions. For purposes of this Section: (4246,5485)

**ARTIFICIAL LAKE**: A man-made lake, pond, lagoon, or other body of water that has a surface area greater than twelve thousand three hundred twenty (12,320) square feet and that is used wholly or partly for landscape, scenic, or recreational purposes. Artificial lake does not include a man-made lake used for groundwater recharge pursuant to Title 45, Chapter 2, Article 13, Arizona Revised Statutes. For purposes of this Section, two (2) or more lakes that are connected or that are designed to function as a unit shall be considered to be one (1) lake. (4246,5485)

**TURF-RELATED FACILITY**: A facility that applies water to ten (10) or more acres of landscaping. Turf-related facility includes, but is not limited to, golf courses, parks and recreational facilities, school grounds, and cemeteries. (4246,5485)

(C) Permit Required. It shall be unlawful for any person or entity to fill an artificial lake or to apply water for landscaping watering purposes on a turf-related facility without first obtaining a permit from the City Council required by this Section. (4246,5485)

1. Application. Any person or entity desiring to fill an artificial lake and any person or entity desiring to apply water for landscape watering purposes on a turf-related facility within the water service area of the City as defined in Arizona Revised Statutes 45-402(26) shall, before filling the lake or before applying the water, make application to the City Council through its Development Services Administration for a permit. (4246)

2. Issuance of Permit. The City Council may schedule a hearing on the application for a permit for filling of an artificial lake or for applying water for landscape watering purposes on a turf-related facility at any regular or special meeting of the City Council. The City Council may issue a permit for the filling of an artificial lake or for applying water for landscape watering purposes on a turf-related facility if it is satisfied that all of the following conditions are met: (4246,5485)

(a) The lake or turf-related facility is to be filled exclusively with any one (1) or a combination of the following: (4246,5485)

(i) Effluent; (4246,5485)

(ii) Storm water runoff that is not subject to appropriation under 45-131, Arizona Revised Statutes; (4246,5485)

(iii) Water withdrawn pursuant to a poor quality permit issued pursuant to 45-516, Arizona Revised Statutes; (4246,5485)

(iv) Groundwater withdrawn pursuant to a Type 1 or Type 2 Non-Irrigation Certificate of Grandfathered Right issued by the Arizona Department of Water Resources; (4246,5485)

(v) Interim C.A.P. subcontract water. (4246,5485)

(b) Measures will be taken to minimize evaporation loss of water from the lake by minimizing the surface area or from a turf-related facility by utilizing low-water-consuming turf and plants. (4246,5485)

(c) The lake, when full, shall contain no less than five (5) acre feet of water per acre of surface area with an average depth of five feet (5'). (4246,5485)

(d) The development or facility in which the lake or the turf-related facility is located will implement an effective indoor and outdoor water conservation program. (4246,5485)
3. Temporary Permit. The City Council may issue a permit to fill an artificial lake with any water described in subparagraph 4-5-2(C)2(a)(iv) of this Section or allow the application of water described in subparagraphs 4-5-2(C)2(a)(iv) and (v) of this Section, for the period of no longer than three (3) years, and only if it is satisfied that sufficient water described in subparagraphs 4-5-2(C)2(1), (2), or (3) above is not available to fill the lake or to apply at a turf-related facility, but will be available no later than three (3) years from the date the permit is issued. The City Council shall determine the duration of the permit on the basis of the estimated time until sufficient water described in subparagraphs 4-5-2 (C) 2 (1), (2) or (3) above will be available. (4246,4638,5485)

4. Monitoring Use of Water. The Development Services Administration shall monitor the use of water by appropriate metering, pursuant to any permit issued under this Section, and the City Council shall terminate the permit upon making a finding that any of the conditions for issuance of the permit no longer applies. (4246,5485)

5. Exceptions. This Section shall not apply to a lake that has been filled or a turf-related facility in existence prior to the effective date of this Section* or to a lake or turf-related facility on which the physical on-site construction has begun prior to the effective date of this Section* or when extensive irrigation designs or plans have been prepared prior to the effective date of this Section*. (4246,5485)

(D) Use of Effluent. Where an existing artificial lake is filled with water from the Municipal water supply or an existing turf-related facility is supplied with water from the Municipal water supply or other water source, the City may supply effluent. The quality of the effluent must meet current health standards for full-body contact from the City wastewater treatment plant by a special contract for filling said lake or for use on said turf-related facility. The City shall not charge more for the effluent than the current cost of the present water source, with credit or payment for the value of the source exchanged with the City. (4246,5485)

(E) Variance. The City Council may, in its discretion, grant a variance from the permit requirements of this Section whenever, in its judgment, compliance with such requirement or regulation for a permit is not in the best interest of the City. (4246,5485)

4-5-3: PENALTY CLAUSE: (4246,4638,5485)
Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (4246,4638,5485)

* Ordinance 4246 was adopted on August 16, 2004, with an effective date of September 18, 2004.
CHAPTER 6

MESA MECHANICAL CODE

4-6-1: INTERNATIONAL MECHANICAL CODE ADOPTED (4247,4639,5055,5486)

4-6-2: PENALTY CLAUSE (4247,4639,5486)

4-6-1: INTERNATIONAL MECHANICAL CODE ADOPTED: (4247,4639,5486)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4247,4639,5486)

The 2018 International Mechanical Code: (5486)

are hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said Code: (4247,5486)

(A) Chapter 1 Administration (5486)

(1) Section 101.1 of the 2018 International Mechanical Code is amended to read, in its entirety, as follows: (4247,5486)

101.1 Title. These regulations shall be known as the Mesa Mechanical Code, hereinafter referred to as “this code”. (4247,5486)

(B) Chapter 2 Definitions (5486)

(1) Section 202. The definition of "unusually tight construction" has been added and reads as follows: (4247,5486)

UNUSUALLY TIGHT CONSTRUCTION: Construction meeting the following requirements: (4247,5486)

1. Walls exposed to the outside atmosphere having a continuous water vapor retarder with a rating of 1 perm (57 ng/s · m² · Pa) or less with openings gasketed or sealed; (4247,5486)

2. Openable windows and doors meeting the air leakage requirements of the Mesa Energy Code, Section 402.4.2; and (4247,5055,5486)

3. Caulking or sealants are applied to areas, such as joints around window and door frames, between sole plates and floors, between wall-ceiling joints, between wall panels, at penetrations for plumbing, electrical, and gas lines, and at other openings. (4247,5486)

(C) Chapter 5 Exhaust Systems (5486)

(1) Section 509.1 Where Required is amended by adding the following exception: (5486)

EXCEPTION: Type I hoods serving an individual electric or gas conveyor pizza oven unit or stack of units, unless the oven manufacturer requires a fire suppression system. (4639,5055,5486)

(D) Chapter 9 Specific Appliances, Fireplaces, and Solid-Fuel-Burning Equipment is amended by adding a new Section. Section 930 Fireplace Restrictions. (4247,4639,5055,5486)

(1) 927 Fireplace Restrictions. (4247,4639,5486)

927.1 Definitions. For purposes of this Section, the following words and terms shall have the meaning
FIREPLACE: Means a built-in-place masonry hearth and fire chamber or a factory-built appliance, designed to burn solid fuel or to accommodate gas or electric log insert or similar device, and which is intended for occasional recreational or aesthetic use, not for cooking, heating, or industrial processes. (4247,5486)

SOLID FUEL: Means and includes, but is not limited to, wood, coal, or other nongaseous or nonliquid fuels, including those fuels defined by the Maricopa County Air Pollution Control Officer as “inappropriate fuel” to burn in residential wood-burning devices. (4247,5486)

WOOD STOVE: Means a solid-fuel-burning heating appliance including a pellet stove, which is either freestanding or designed to be inserted into a fireplace. (4247,5486)

(2) 927.2 General. On or after December 31, 1998, no person, firm, or corporation shall construct or install a fireplace or a woodstove, and the City shall not approve or issue a permit to construct or install a fireplace or a woodstove, unless the fireplace or woodstove complies with one (1) of the following: (4247,4639,5486)

1. A fireplace which has permanently installed gas or electric log insert; (4247,5486)

2. A fireplace, woodstove, or other solid-fuel-burning appliance which has been certified by the United States Environmental Protection Agency as conforming to 40 Code of Federal Regulations Part 60, Subpart AAA; (4247,5486)

3. A fireplace, woodstove, or other solid-fuel-burning appliance that has been tested and listed by a nationally recognized testing agency to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA; or (4247,5486)

4. A fireplace, woodstove, or other solid-fuel-burning appliance that has been determined by the Maricopa County Air Pollution Control Officer to meet performance standards equivalent to those adopted by 40 Code of Federal Regulations Part 60, Subpart AAA; or (4247,5486)

5. A fireplace that has a permanently installed woodstove insert that complies with paragraphs 2, 3, or 4 above. (4247,5486)

EXCEPTIONS: The following installations are not regulated and are not prohibited by this Section: (4247,5486)

1. Furnaces, boilers, incinerators, kilns, and other similar space-heating or industrial process equipment; (4247,5486)

2. Cook stoves, barbecue grills, and similar appliances designed primarily for cooking; and (4247,5486)

3. Fire pits, barbecue grills, and other outdoor fireplaces. (4247,5486)

(3) 930.2.1 Fireplaces constructed or installed on or after December 31, 1998, that contain a gas or electric log inset or a woodstove inset, shall not be altered to directly burn wood or any other solid fuel. On or after December 31, 1998, no person, firm, or corporation shall alter a fireplace, woodstove, or other solid-fuel-burning appliance in any manner that would void its certification or operational compliance with the provisions of this Section. (4247,5486)

(4) 930.2.2 Fireplaces constructed or installed on or after December 31, 1998, shall not be altered without first obtaining a permit from the Building Safety Director to insure compliance with this Section. (4247,4639,5486)

(E) Chapter 10, Boilers, Water Heaters, and Pressure Vessels is deleted entirely. (4247,4639,5055,5486)
Chapter 15 Reference Standards is amended to read as follows: (5486)

NFPA 72-19 National Fire Alarm Code (5486)

NFPA 211 – 19 Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances (5486)

4-6-2: PENALTY CLAUSE: (4247, 4639, 5486)

Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (4247, 4639, 5486)
CHAPTER 7

MESAS FUEL GAS CODE
(4248, 4640, 5055, 5487)

4-7-1: INTERNATIONAL FUEL GAS CODE ADOPTED (4248, 4640, 5055, 5487)
4-7-2: PENALTY CLAUSE (4248, 4640, 5487)

4-7-1: INTERNATIONAL FUEL GAS CODE ADOPTED: (4248, 4640, 5487)
That following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4248, 4640, 5487)

The 2018 International Fuel Gas Code, including: (5487)

Appendix A - Sizing and Capacities of Gas Piping; (4248, 5487)

Appendix B - Sizing of Venting Systems Serving Appliances Equipped with Draft Hoods, Category 1 Appliances, and Appliances Listed for Use with Type B Vents (4248, 5487);

Appendix C - Exit Terminals of Mechanical Draft and Direct-Vent Venting Systems; (4248, 4640, 5487)

are hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said Code: (4248, 4640, 5487)

(A) Chapter 1 Administration. (5487)

(1) Section 101.1 of the 2018 International Mechanical Code is amended to read, in its entirety, as follows: (4248, 5487)

101.1 Title. These regulations shall be known as the Mesa Fuel Gas Code, hereinafter refereed to as “this code”. (4248, 5487)

(2) Section 101.2.1 through 110.4 of the 2018 International Fuel Gas Code is deleted in its entirety. (4248, 5487)

(B) Chapter 4 Gas Piping Installations. (5487)

Section 406.4 and 406.4.1 are amended to read as follows: (4248, 4640, 5487)

406.4 Test Pressure Measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. (4248, 5487)

406.4.1 Test Pressure. The test pressure to be used shall be not less than ten (10) pounds per square inch (68.9 kPa) gauge pressure, or where approved by the building official, the piping and valves may be tested at a pressure of at least six inches (6") (152.4 mm) of mercury, measured with a manometer or slope gauge. For welded piping, and for piping carrying gas at pressures in excess of fourteen inches (14") (0.4 m) water column pressure, the test pressure shall not be less than sixty (60) pounds per square inch (413.4 kPa). Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than fifty percent (50%) of the specified minimum yield strength of the pipe. (4248, 5487)
406.4.3 Test Gauges. Tests required by this Code that are performed utilizing dial gauges shall be limited to gauges having the following pressure graduations or incrementations: (4248,4640,5487)

406.4.3.1. Required pressure tests of ten (10) pounds (69 kPa) or less shall be performed with gauges of one-tenth (1/10) pound (0.7 kPa) incrementation or less. (4248,5487)

406.4.3.2. Required pressure tests exceeding ten (10) pounds (69 kPa) but less than one hundred (100) pounds (689 kPa) shall be performed with gauges of one (1) pound (6.9 kPa) incrementation or less. (4248,5487)

406.4.3.3. Required pressure tests exceeding one hundred (100) pounds (689 kPa) shall be performed with gauges incremented for two percent (2%) or less of the required test pressure. (4248,5487)

406.4.3.4. Test gauges shall have a pressure range not greater than twice the test pressure applied. (4248,5487)

406.8 Connection of service utilities. A person shall not make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required until authorized by the code official. (4248,5487)

(C) Chapter 8 Referenced Standards. (5055,5487)

NFPA Standards have been amended to read as follows: (5487)
NFPA 211 – 19 Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances (5487)
NFPA 409 – 19 Aircraft Hangars (5487)

4-7-2: PENALTY CLAUSE: (4248,4640,5487)

Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (4248,4640,5487)
CHAPTER 8
MESA EXISTING BUILDING CODE
(4112,4641,5488)

4-8-1: GENERAL (4249,4641,5488)
That Title 4, Chapter 8, Section 1 of the Mesa City Code shall now read as follows: (5488)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (4249, 5488)

The 2018 International Existing Building Code. (5488)

(A) Compliance Options. (5488)

The owner or agent shall select one (1) option and the entire project shall comply with the requirements of the selected option. In addition, the owner shall comply with Title 4, Chapter 1, Mesa Administrative Code and Title 7, Chapter 2, Mesa Fire Code. (4249,5488)

4-8-2: OPTION A – INTERNATIONAL BUILDING CODE: (4249,4641,5488)
Option A requires compliance with Title 4, Chapter 2, Mesa Building Code. (4249,4641,5488)

4-8-3: OPTION B – INTERNATIONAL EXISTING BUILDING CODE: (4249,4641,5488)
Option B requires compliance with that certain document known as the International Existing Building Code, which has been published as a Code in book form by the International Code Council and entitled International Existing Building Code, 2018 Edition, is hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said Code: (4249,4641,5488)

(A) Chapter 1 Scope and Administration. (5488)

(1) Sections 101.1 of the 2018 International Existing Building Code is amended to read, in its entirety, as follows: (4249,4641,5488)

101.1 Title. These regulations shall be known as the Mesa Existing Building Code, hereinafter referred to as “this code.” For administration of this Section, refer to Title 4, Chapter 1, Mesa Administrative Code. (5488)

(2) Section 101.2 Scope is deleted in its entirety. (5488)

(3) Sections 101.4 through 101.7 are deleted in their entirety. (5488)

(4) A new section 101.8, Existing Occupancy, has been added. (5488)

101.8 Existing Occupancy. The legal occupancy of any building or structure existing on the date of the adoption of this Chapter shall be permitted to continue without change, provided such continued use is not dangerous to life, health, and safety as determined by the Building Safety Director. (5488)

(5) A new section 101.9, Maintenance, has been added. (5488)
101.9 Maintenance. Buildings, structures, and building service equipment, existing and new, and parts thereof shall be maintained in a safe and sanitary condition. Devices or safeguards, which are required by the technical codes, shall be maintained in conformance with the technical code under which installed. The owner or the owner’s designated agent shall be responsible for the maintenance of building structures and their building service equipment. To determine compliance with this Section, the Building Safety Director may cause a structure to be re-inspected. (5488)

(6) Sections 102.1 through 117.4 have been deleted in their entirety. (5488)

(B) Chapter 2 Definitions is amended to read as follows: (5488)

(1) Section 202 General Definitions is amended to read as follows: (4249,5488)

EXISTING BUILDING: A building erected prior to the date adoption of the appropriate code, or one for which a Certificate of Occupancy has been issued for at least one year. (4249, 4641, 5488)

(C) Chapter 8 Alterations – Level 2 is amended to read as follows: (5488)

(1) Section 803 Fire Protection is amended to read as follows: (5488)

803.2.2 Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-2. In buildings with occupancies in Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-2, work areas that have exits or corridors shared by more than one tenant or that have exits or corridors serving an occupant load greater than 30 shall be provided with automatic sprinkler protection where both of the following conditions occur: (5488)

1. The work area is required to be provided with automatic sprinkler protection in accordance with the Mesa Building Code as applicable to new construction. (5488)

2. The work area exceeds 50 percent of the floor area. (5488)

803.2.3 Windowless stories. Work located in a windowless story, as determined in accordance with the Mesa Building Code, shall be sprinkled where the work area is required to be sprinkled under the provisions of the Mesa Building Code for newly constructed buildings. (5488)

(D) Chapter 10 Change of Occupancy is amended by adding table 1001.1: (5488)

The following Occupancy Comparison Table is added as guidance for determining the appropriate change of occupancy or use classification for an existing building that has a legal certificate of occupancy based on city adopted codes. (5488)

1. **TABLE 1001.1 OCCUPANCY COMPARISON** (5488)

   *(BUILDING CODE YEAR AND OCCUPANCIES)*

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<td>B1 (SERVICE STATIONS), B3 &amp; H5 (AIRCRAFT HANGARS) H4 (REPAIR GARAGES) B2 STORAGE</td>
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* THE OCCUPANCY CLASSIFICATION OF ONE AND TWO FAMILY DWELLINGS AND TOWNHOMES WILL BE DESIGNATED AS R5.

(E) Chapter 11 Additions is amended to read as follows: (5488)

1. Section 1101 General is amended to read as follows:

   1101.1 Scope. An addition to a building or structure shall comply with the Mesa Building, Mesa Plumbing, Mesa Electrical, Mesa Fire and Mesa Mechanical Codes and all other codes and standards as adopted for new construction without requiring the existing building or structure to comply with any requirements of those codes or of these provisions. (5488)

2. Section 1103 Structural is amended by adding a new sub-paragraph 6 to read as follows: (5488)

   6. Buildings, structures, appliances, equipment and system installations located in flood hazard areas shall comply with all Maricopa County Planning and Development Department regulations. No reference to flood hazard requirements in this chapter or the technical codes shall be constructed as allowing installations in
violation of Maricopa County Planning and Development regulations. Where conflicts exist between the requirements of this chapter and the Maricopa County Planning and Development Department regulations, the Maricopa County regulations shall govern. (5488)

(F) Chapter 16 Reference Standards is amended by modifying the NFPA Standards to read as follows: (4249,4641,5488)

Referenced Standards is amended to read as follows: (5488)

NFPA Standards (5488)

13R-19 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height (5488)

72-19 National Fire Alarm Code (5488)

4-8-4: Penalty Clause: (4249,4641, 5488)

Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (4249,4641,5488)
CHAPTER 9

MESA ENERGY CODE

(5055,5489)

4-9-1: INTERNATIONAL ENERGY CODE ADOPTED (5055,5489)

4-9-2: PENALTY CLAUSE (5055,5489)

4-9-1: INTERNATIONAL ENERGY CODE ADOPTED: (5055,5489)

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (5055,5489)

(A) Chapter 1 Administration. (5489)

(1) Section 101.1 of the 2018 International Energy Conservation Code is amended to read as follows: (5055,5489)

(2) 101.1 Title. These regulations shall be known as the "Mesa Energy Code," hereinafter referred to as “this code”. (5055,5489)

(3) Sections C101.2 through C109.3 of the 2018 International Energy Code are deleted in their entirety. (5055,5489)

(B) Chapter 4 Commercial Energy Efficiency (5055,5489)

(1) Section C401.2 Application shall be amended by adding new criteria: (5489)

C401.2 Application. Commercial buildings shall comply with one of the following: (5489)

1. The requirements of ANSI/ASHRAE/IESNA 90.1. (5489)

2. The requirements of Sections C402 through C405 and C408. In addition, commercial buildings shall comply with Section C406 and tenant spaces shall comply with Section C406.1.1. (5489)

3. The requirements of Sections C402.5, C403.2, C403.3 through C403.3.2, C403.4 through C403.4.2.3, C403.5.5, C403.7, C403.8.1 through C403.8.4, C403.10.1 through C403.10.3, C403.11, C403.12, C404, C405, C407 and C408. The building energy cost shall be equal to or less than 85 percent of the standard reference design building. (5489)

4. Industrial buildings containing unique uses and processes that may conflict with the Energy Code. The Building Official may grant exemptions from Mesa Energy Code requirements for buildings or improvements due to unique or specialized processing systems or components, such as prefabricated paint booths or assembly line enclosures. (5489)

Section 401.4 Compliance Testing. Where testing is required to determine air leakage of duct systems, the Building Official may allow random testing of no fewer than one in seven single family dwellings within a subdivision. (5055)

(2) Section R101.2 through R109.3 of the 2018 International Energy Code are deleted in their entirety.

(C) Chapter 4 Residential Energy Efficiency (5489)

(1) Section R401 is amended to read as follows: (5489)
At the end of R401 a new section has been added and reads as follows: (5489)

R401.4 Compliance Testing. Where testing is required to determine air leakage of duct systems, the building official may allow random testing of no fewer than one in seven single family dwellings within a subdivision. (5489)

4-9-2: PENALTY CLAUSE: (5055,5489)

Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (5055,5489)
CHAPTER 10

SWIMMING POOL AND SPA CODE

(5490)

4-10-1: INTERNATIONAL SWIMMING POOL AND SPA CODE (5490)
4-10-2: PENALTY CLAUSE (5490)

4-10-1: INTERNATIONAL SWIMMING POOL AND SPA ADOPTED: (5490)
The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (5490)

The 2018 International Swimming Pool and Spa Code. (5490)

(A) Chapter 1 Administration. (5490)

(1) Section 101.1 of the 2018 International Swimming Pool and Spa Code is amended to read, in its entirety, as follows: (5490)

101.1 Title. These regulations shall be known as the Mesa Swimming Pool and Spa Code, hereinafter referred to as “this code”. (5490)

(2) Section 101.2 through 108.7 of the 2018 International Swimming Pool and Spa Code is deleted in its entirety. (5490)

(B) Chapter 2 Definitions. (5490)

(1) Section 202 the definitions for “onground storable pool” and “residential swimming pool” are amended to read as follows: (5490)

ONGROUND STORABLE POOL: A pool that can be disassembled for storage or transport including any structure intended for swimming or recreational bathing that is capable of holding water over 18 inches (457.2 mm) deep. This includes portable pools with flexible or nonrigid walls that achieve their structural integrity by means of uniform shape, a support frame or a combination thereof, and that can be disassembled for storage or relocation. (5490)

RESIDENTIAL SWIMMING POOL (Residential Pool): A pool intended for use that is accessory to a residential setting and available only to the household and its guests including any structure intended for swimming or recreational bathing that contains water over 18 inches (457.2 mm) deep. This includes in-ground, above ground and on-ground swimming pools, hot tubs, spas and fixed in place wading pools. All other pools shall be considered public pools for purposes of this code. (5490)

Types I-V. Residential pools suitable for the installation of diving equipment by type. (5490)
Type O. A nondiving residential pool. (5490)

(C) Chapter 3 General Compliance is amended as follows: (5490)

(1) Section 305.2.1 Barrier height and clearances, number 1 is amended to read as follows: (5490)

305.2.1 Barrier height and clearances. Barrier heights and clearances shall be in accordance with all of the following: (5490)

1. The top of the barrier shall be not less than 60 inches (1524 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around
the entire perimeter of the barrier and for a distance of 4 feet (1219 mm) measured horizontally from the outside of the required barrier.

(2) Section 305.2.7 Chain link dimensions is amended to read as follows: (5490)

305.2.7 Chain link dimensions. The maximum opening formed by a chain link fence shall be not more than 1 ¾ inches (44 mm). Where the fence is provided with slats fastened at the top and bottom that reduce the openings, such openings shall be not greater than 1 ¾ inches (44 mm). The mesh shall not be less than 11 wire gauge. (5490)

(3) Section 305.4 Structure wall as a barrier is amended to read as follows: (5490)

305.4 Structure wall as a barrier. Where a wall of a dwelling or structure serves as part of the barrier and where doors or windows provide direct access to the pool or spa through that wall, one of the following shall be required: (5490)

a. Operable windows having a sill height of less than 48 inches (1219 mm) above the indoor finished floor and doors shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017. In dwellings or structures not required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located 54 inches (1372 mm) or more above the finished floor. In dwellings or structures required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located not greater than 54 inches (1372 mm) and not less than 48 inches (1219 mm) above the finished floor. (5490)

b. A safety cover that is listed and labeled in accordance with ASTM F1346 is installed for the pools and spas. (5490)

c. Multi panel sliding doors or walls shall meet the requirements of ISPSC 305.4 (1) or shall be secured in place by a permanent fastening method that requires a tool to remove. If a sliding glass door or panel is the only door to the pool area it shall meet the requirements of ISPSC 305.4 (1). (5490)

(4) Section 305.8 Barrier exceptions is a new section. (5490)

Section 305.8 Barrier exceptions. (5490)

a. An existing swimming pool or other body of water lawfully constructed prior to April 20, 1998, but which does not conform to these regulations, shall become subject to these regulations as a result of any alteration, addition, or expansion of a dwelling unit or guest room having access to such pool, that increases the livable floor area, and contains door openings providing direct access to the pool area. (5490)

b. The enclosure requirements specified in Section 305 of this Section shall not apply to any existing subdivision perimeter fence, golf-course-view fence, or similar boundary fence lawfully constructed prior to April 20, 1998, in accordance with an approved Planned Area Development (PAD), or Development Master Plan (DMP). (5490)

4-10-2: PENALTY CLAUSE: (5490)

Any person, firm, or corporation who shall violate any of the provisions of this Chapter of the Mesa City Code as amended shall be subject to all penalties and provisions of Section 4-1-9. (5490)
CHAPTER 1

SPECIAL EVENT LICENSE

SECTION:

5-1-1: PURPOSE AND INTENT

It is acknowledged by the City Council that special events enhance the lifestyle of the citizens of Mesa and create unique venues for expression, entertainment, and business that are not otherwise provided within the framework of the City Code. (2736)

The purpose of this Chapter is to establish a process for permitting and regulating certain temporary activities conducted on public or private property. This Chapter is intended to provide fair and reasonable regulations governing the time, place, and manner in which a special event may take place. (2736)

5-1-2: DEFINITIONS:

PERSON: An individual, firm, partnership, joint venture, association, corporation, or any other group or combination acting as a unit in the plural as well as the singular number. (2736)

SPECIAL EVENT: A temporary use in all zoning districts which: (2736)

(A) Is intended for purposes of entertainment, education, commercial promotion, or cultural, religious, ethnic, or political expression; and (2736)

(B) Is conducted on a site or in an area not specifically zoned, authorized, or otherwise approved for such use on a permanent basis; and (2736)

(C) Is carried on in a temporary structure or outside; and (2736)

(D) May occur in conjunction with an existing permitted use or as a separate activity; and (2736)

(E) Includes parades, sporting events, circuses, fairs, carnivals, festivals, religious revivals, political rallies, vehicle shows and displays, and similar recognized temporary activities. (2736)

(F) Shall not include wedding and funeral ceremonies, holiday boutiques, elections, private yard sales, Christmas tree and pumpkin sales lots, car washes, and activities such as retail sales promotions that could otherwise be lawfully conducted in accordance with the provisions of the Zoning Ordinance in the district where such promotion takes place. (2736)

5-1-3: LICENSE REQUIRED

5-1-4: LICENSE PROVISIONS

5-1-5: PRIVILEGE (SALES) TAX LICENSE REQUIRED (3572)

5-1-6: REFUSAL TO ISSUE OR REVOCATION OF LICENSE (3572)

5-1-7: APPEAL (3572)
5-1-3: LICENSE REQUIRED:

(A) Any person, whether as a member, agent, or employee, either for themselves or for any other person, who shall conduct a special event as specified in this Chapter shall first obtain a license from the Finance Director. (2736)

(B) It shall be unlawful for any person to conduct a special event within the corporate limits of the City without first having obtained a license as provided in this Chapter. (2736)

5-1-4: LICENSE PROVISIONS:

(A) License Fee and Conditions. Applications for a special event license shall be made in the office of the Tax and Licensing Administrator on a form provided therefor. Any person who submits an application for a special event license shall include the following: (2736)

1. A fee of one hundred dollars ($100.00) for each day of the special event, not to exceed a maximum of three hundred dollars ($300.00) for each event. (2736, 2864)

2. Certification by an insurance company duly licensed by the State of Arizona that the licensee has in effect insurance to protect the public, the licensee, and the City of Mesa, its elected officials, and employees from liability for losses and damages arising out of the activity which is the subject of the license if deemed necessary by the Finance Director. The specific policy form, limits, and endorsements shall reflect the type of activity anticipated by the license and shall be approved by the Finance Director as a condition of licensure. (2736)

(B) License Nontransferable. No license issued pursuant to this Chapter shall be assigned or transferred. Any attempted assignment or transfer shall be void and work a forfeiture on the license and all license fees paid. (2736)

(C) Exhibition of License. Each person licensed under this Chapter shall place or exhibit the license at all times in a conspicuous place and shall produce the same where requested to do so by any police officer. If the licensee or any person engaged or employed by the licensee shall refuse or neglect to exhibit the license, such person shall be guilty of a violation of this Chapter. (2736)

5-1-5: PRIVILEGE (SALES) TAX LICENSE REQUIRED: (3572)

When any portion of the special event involves a business activity where tangible personal property is sold, displayed for sale, or otherwise offered for sale in the City of Mesa, such business activity shall be conducted, and sales shall take place, in a manner which requires that any applicable local sales tax shall be paid to the City of Mesa in accordance with Title 5, Chapter 10 of the Mesa City Code, and the Model City Tax Code. (3572)
5-1-6: **REFUSAL TO ISSUE OR REVOCATION OF LICENSE:** (3572)

The Finance Director shall have the power to refuse to issue a license or to revoke at any time any license granted in accordance with this Chapter for any of the following causes: (2736)

(A) Fraud, misrepresentation, or false statement made in the course of applying for license; (2736)

(B) Fraud, misrepresentation, or false statement made in the course of carrying on the event; (2736)

(C) Any violation of this Chapter; (2736)

(D) Conviction of any crime or misdemeanor involving moral turpitude; (2736)

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; (2736)

(F) Failure to comply with any term or condition of approval as specified in the license application, such as but not limited to, building permits, tent permits, signage schedules, and development plans. (2736)

5-1-7: **APPEAL:** (3572)

Within five (5) days, excluding weekends and legal holidays, an applicant for a license or licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may designate a Hearing Officer to hear the appeal. (2383,2736)
CHAPTER 2

OFF TRACK BETTING (5100)

SECTION:

5-2-1: PURPOSE (5100)
5-2-2: DEFINITIONS (5100)
5-2-3: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS
      ADMINISTRATOR; DUTIES, APPEALS (5100)
5-2-4: LICENSE APPLICATION; FEE; TIMELINE (5100)
5-2-5: OFF TRACK BETTING LICENSE REQUIRED (5100)
5-2-6: OFF TRACK BETTING LICENSE APPLICATION; CONTENTS (5100)
5-2-7: LOCATION OF OFF TRACK BETTING ESTABLISHMENT (5100)
5-2-8: PAYMENT OF FEES AND TAXES (5100)
5-2-9: FEES (5100)
5-2-10: TERM OF LICENSE (5100)
5-2-11: PUBLIC HEARING ON OFF TRACK BETTING LICENSE; NOTICE (5100)
5-2-12: INFORMATION UPDATE (5100)
5-2-13: SPECIAL PROVISIONS (5100)
5-2-14: RENEWAL (5100)
5-2-15: INSPECTION OF PREMISES, PROPERTY AND RECORDS (5100)
5-2-16: GROUNDS FOR DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF LICENSE (5100)
5-2-17: POSTING AND DISPLAY OF LICENSE (5100)
5-2-18: PENALTY (5100)

5-2-1: PURPOSE: (5100)
The purpose of this Chapter is to protect the health, safety and welfare of residents of the City of Mesa (“City”) by means of regulation of Off Track Betting operators. (5100)

5-2-2: DEFINITIONS: (5100)
For the purposes of this Chapter, the following words and phrases, wherever used in this Chapter, shall have the meaning as defined in this Section, Mesa City Code 11-86-4, Arizona Revised Statutes Section 5-101, and Arizona Administrative Code Section R19-2-401: (5100)

ADDITIONAL WAGERING FACILITY: A facility which is not the enclosure in which authorized racing takes place but which meets the requirements of Arizona Revised Statutes Section 5-111, Subsection (A) and is used by an Arizona racetrack permitted for handling pari-mutuel wagering. (5100)

DOG RACING: Racing in which Greyhound dogs chase a mechanical lure. (5100)

HARNESS RACING: Horse racing in which the horses are harnessed to a sulky, carriage or similar vehicle and driven by a driver. (5100)

1 Editor’s Note – Former Chapter 2 Group Home for the Handicapped and Supervised Living Facility License was repealed by Ordinance 4844, which was adopted on May 19, 2008. Previous ordinances impacting Chapter 2: 1007, 1027, 1706, 1934, 2181, 2430, 2658, 3394, 3746.
HORSE RACING: Racing in which horses are mounted and ridden by jockeys. For purposes of county fair racing meetings, “horse racing” means racing in which horses or mules are mounted and ridden by jockeys. (5100)

OFF TRACK BETTING ESTABLISHMENT: An additional wagering facility which simulcasts horse, harness or dog racing events for the purpose of pari-mutuel wagering that is operated as an accessory use to an eating and drinking establishment as defined by Mesa City Code Section 11-86-4, and is authorized by issuance of a teletrack wagering permit in accordance with Arizona Revised Statutes Section 5-112 and Arizona Administrative Code Title 19, Chapter 2, Article 4. (5100)

OFF TRACK BETTING OPERATOR: Any person who holds a teletrack wagering permit for horse, harness or dog racing events within Arizona and who accepts bets or wagers on the results of any pari-mutuel race at a location which is not the enclosure in which authorized racing takes place. (5100)

PERSON: Any individual, partnership, limited partnership, firm, corporation, association, or any other group acting as a unit. (5100)

PARI-MUTUEL WAGERING: A system of betting which provides for the distribution among the winning patrons of at least the total amount wagered less the amount withheld under Arizona Revised Statutes Section 5-111. (5100)

RACING PROGRAM: Live races conducted at an authorized track, approved dark-day simulcasts and any simulcast races shown to the public in conjunction with live racing on which pari-mutuel wagering is allowed. (5100)

TELETRACKING: Telecast of live audio and visual signals of live or simulcast horse, mule, or Greyhound racing programs conducted at an authorized enclosure within Arizona to an authorized additional wagering facility within Arizona, by an Arizona racetrack permitee for the purpose of pari-mutuel wagering. (5100)

TELETRACK FACILITY: An additional wagering facility owned or leased by an Arizona racetrack permitee which is used for handling legal wagers. (5100)

TELETRACK WAGERING: Pari-mutuel wagering conducted at a teletrack facility within Arizona on a racing program which is conducted at an authorized track within Arizona. (5100)

TELETRACK WAGERING PERMIT: Permit issued by the Arizona Racing Commission authorizing an Arizona racetrack permitee to telecast a racing program to single or multiple teletrack wagering facilities within the state of Arizona for the purpose of pari-mutuel wagering. (5100)
5-2-3: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS
ADMINISTRATOR; DUTIES, APPEALS: (5100)

(A) It is the duty and responsibility of the Business Licensing and Revenue Collections Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator will issue, renew, suspend, or revoke the off track betting license in accordance with this Chapter, provided the decision to issue an off track betting license will be made by City Council following the hearing provided in Section 5-2-11. (5100)

(B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator to revoke, suspend or deny renewal of a license under this Chapter may appeal within ten (10) calendar days after being sent, by registered or certified mail, notice of such decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director, or designated representative, within thirty (30) calendar days of receipt of the appeal. A hearing officer designated by the City will render a decision within sixty (60) calendar days of the hearing. (5100)

5-2-4: LICENSE APPLICATION; FEE; TIMELINE: (5100)

(A) Any off track betting operator desiring to obtain an off track betting license must apply to the licensing office. Each application must be accompanied by all required application fees in accordance with the current Schedule of Fees and Charges. (5100)

(B) Upon approval, and prior to issuance of the off track betting license, the applicant must pay all required fees in accordance with the current Schedule of Fees and Charges. (5100)

(C) An application will be granted or denied within the schedule of administrative and substantive review timeframes, as established by the Business Licensing and Revenue Collections Administrator. (5100)

5-2-5: OFF TRACK BETTING LICENSE REQUIRED: (5100)

(A) It is unlawful for any person to conduct or operate as an off track betting operator or off track betting establishment in the City without first obtaining and maintaining in effect a current, unrevoked and unsuspended off track betting license as required by this Chapter. (5100)

(B) It is unlawful for any person to conduct or operate as an off track betting operator or off track betting establishment without obtaining and maintaining in effect a current, unrevoked and unsuspended teletrack wagering permit as required by the Arizona Racing Commission in accordance with Arizona Revised Statutes Section 5-112 and Arizona Administrative Code Title 19, Chapter 2, Article 4. (5100)

(C) The license required by this Chapter is in addition to any other licenses or permits required by any governmental authority necessary to lawfully conduct business. (5100)

(D) It is unlawful for any person licensed as provided in this Chapter to conduct business at any location not specified on such license. (5100)

(E) It is unlawful for any person licensed as provided in this Chapter to conduct teletrack wagering on any type of racing not specified on such license. (5100)

(F) Licenses issued pursuant to this Chapter are nontransferable. (5100)
OFF TRACK BETTING LICENSE APPLICATION; CONTENTS: (5100)

Each application for an off track betting license must, at a minimum, contain all of the information contained in this section. (5100)

(A) Applicant Information: legal name, physical address, mailing address, email address, business telephone number, fax number, type of ownership and statutory agent, if applicable. (5100)

(B) Information on the Mesa eating and drinking establishment that is the proposed location for which off track betting will be an accessory use: physical address, name of primary business at proposed location, and name and telephone number of representative of proposed location. (5100)

(C) If the applicant is a business entity, the full legal name, date of birth and residence address of all persons who participate in management, control or policy direction of the applicant, including, with respect to a corporation, the corporation’s officers, directors and stockholders holding twenty (20) percent or more of the outstanding shares of the corporation’s stock. (5100)

(D) Disclosure of information regarding the persons identified pursuant to subsections (A) and (C) of this section as to any:

1. Felony conviction of such persons within the preceding five (5) years; (5100)

2. Judicial ruling or administrative finding of violation of any law or regulation relating to racing, wagering or gaming, in any jurisdiction; and (5100)

3. Any revocation or suspension of a license or permit relating to pari-mutuel betting or teletracking activities. (5100)

(E) Proof the applicant holds a valid permit from the Arizona Racing Commission to conduct pari-mutuel races within the state of Arizona. (5100)

(F) Accurate drawings to scale indicating the floor plan of the proposed location for which off track betting will be an accessory use that include the precise location of all off track betting facilities and activities. (5100)

(G) Copy of the plan of operation submitted to the Arizona Racing Commission, in accordance with the specifications of Arizona Administrative Code Section R19-2-404. (5100)

(H) If applicant is an individual, proof the applicant’s presence in the United States is authorized under federal law, pursuant to Arizona Revised Statutes Section 41-1080. (5100)

(I) Any other identification and information as stated in the application. (5100)
5-2-7: LOCATION OF OFF TRACK BETTING ESTABLISHMENT: (5100)

(A) An off track betting license will not be granted unless located in an eating and drinking establishment in an approved commercial district in accordance with Mesa City Code Section 11-6-2 and 11-7-2. (5100)

(B) The provisions of this Section will not be construed as permitting any use or activity which is otherwise prohibited or made punishable by law. (5100)

5-2-8: PAYMENT OF FEES AND TAXES: (5100)

An application for the off track betting license will not be processed or renewed if the applicant is delinquent in payment of any City taxes, fees, renewals or other City payments due in accordance with Mesa City Code Section 1-32-400. (5100)

5-2-9: FEES: (5100)

(A) An application for an off track betting license must be accompanied by an application fee in accordance with the current Schedule of Fees and Charges and any other fees required by this Chapter. (5100)

(B) In order for an application to be administratively complete, all fees must be submitted according to the current Schedule of Fees and Charges. (5100)

(C) Submission of the annual renewal form must include the annual fee in accordance with the current Schedule of Fees and Charges before it will be processed. (5100)

(D) Fees are not prorated, transferable or refundable unless otherwise provided by law. (5100)

5-2-10: TERM OF LICENSE: (5100)

The off track betting license, issued pursuant to the provisions of this Chapter, will be issued for a term of one (1) year from the issue date. (5100)

5-2-11: PUBLIC HEARING ON OFF TRACK BETTING LICENSE; NOTICE: (5100)

(A) The City Council will hold a public hearing on an application for an off track betting license. Notice of the hearing will be given at least twenty (20) calendar days prior to the hearing and will be posted on the property of the proposed off track betting location. (5100)

(B) Council’s decision to approve or deny the application will be based on the criteria set forth in Section 16 of this Chapter. (5100)

(C) Within seven (7) calendar days of the public hearing the applicant will be notified in writing of the Council’s decision to approve or deny the application. The applicant must communicate the decision to the Arizona Racing Commission. (5100)
5-2-12: INFORMATION UPDATE: (5100)

(A) Except as otherwise provided herein, any change in the information provided in the application required to be submitted for the issuance of a license in accordance with this Chapter must be submitted to the licensing office in writing within ten (10) calendar days of such change. (5100)

(B) Altering the services offered, the site plan, number or pari-mutuel windows or tote machines, or type of racing conducted without written approval from the licensing office is unlawful. (5100)

5-2-13: SPECIAL PROVISIONS: (5100)

(A) Any person employed by an off track betting establishment in Mesa must be at least eighteen (18) years of age. (5100)

(B) A licensee will not knowingly allow a person who is under twenty one (21) years of age to be a patron of the pari-mutuel system of wagering. (5100)

(C) The licensee of the off track betting establishment must take all reasonable measures, including but not limited to requiring identification from persons placing bets or wagers at an off track betting establishment, to prevent unlawful gambling by anyone under the age of twenty one (21) years of age. (5100)

(D) Telettrack wagering may be conducted only between the hours of 7:00 A.M. and 12:00 A.M. (5100)

(E) Revocation or suspension of a state permit from the Arizona Racing Commission to conduct pari-mutuel races within the state of Arizona will constitute automatic revocation or suspension of the corresponding City license. (5100)

(F) It is unlawful for an off track betting establishment to receive a simulcast race from an unlicensed teletrack operator. (5100)

5-2-14: RENEWAL: (5100)

(A) Within one (1) year of the issue date for the previously effective license, all licensees under this Chapter wishing to remain licensed must apply for renewal on a form established by the licensing office. The renewal form must be submitted no later than forty five (45) calendar days prior to the expiration date with the applicable renewal fee, as set forth in the current Schedule of Fees and Charges. No license shall be renewed unless the licensee complies with all provisions of this Chapter. (5100)

(B) A licensee who fails to timely apply for renewal shall be subject to a penalty in accordance with the current Schedule of Fees and Charges. If the licensee fails to start the renewal process at least thirty (30) calendar days prior to the license expiration date, the license shall expire and become null and void. Licensees who fail to apply to renew their license, yet wish to continue operating an off track betting establishment, must file a new application for license and may not operate an establishment until a new license is issued. Granting of a license under this Chapter does not confer an entitlement to or presumption of renewal of the license. (5100)

5-2-15: INSPECTION OF PREMISES, PROPERTY AND RECORDS (5100)

To ensure compliance with this Chapter and other applicable laws, the business premises of any person required to be licensed under this Chapter, including any property on the premises related to the off track betting license, must be open to inspection by representatives of the City upon request at any time during the licensee’s regular business hours, or reasonable hours as agreed upon by the licensee and the City. (5100)
5-2-16: **GROUNDS FOR DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF LICENSE: (5100)**

The City Council may deny a license application and the Business Licensing and Revenue Collections Administrator may revoke, suspend or deny renewal of a license in accordance with this Chapter for the following grounds: (5100)

(A) Violation of the laws governing wagering within the state of Arizona, in accordance with Arizona Administrative Code Title 19, Chapter 2; (5100)

(B) Repeated acts of violence or disorderly conduct on the off track betting premise; (5100)

(C) False or misleading testimony by the licensee in an investigation or other proceeding related to wagering; (5100)

(D) Delinquency for more than thirty (30) calendar days in the payment of any taxes or fees owed to the City; (5100)

(E) Failure to operate an off track betting establishment in compliance with the plans submitted and approved pursuant to Section 5-2-6(G) of this Chapter. (5100)

(F) Failure to maintain a current Arizona teletrack wagering permit; (5100)

(G) Falsification of information submitted on an off track betting license application or renewal application; (5100)

(H) Violation of any of the provisions of this Chapter; or (5100)

(I) Violation of any Mesa City Code. (5100)

5-2-17: **POSTING AND DISPLAY OF LICENSE: (5100)**

Any off track betting operator licenses under this Chapter must have the City Off Track Betting License and the state Teletrack Wagering Establishment Permit posted in public view at the licensed Mesa location. (5100)

5-2-18: **PENALTY: (5100)**

Whenever in this Chapter any act or the failure to do any act is declared to be unlawful, the violation of any such provision of this Chapter is a class one misdemeanor. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. (5100)
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CHAPTER 3

PARK AND SWAP OPERATIONS

SECTION:

5-3-1: DEFINITIONS

5-3-2: LICENSES REQUIRED

5-3-3: DISPLAY OF LICENSES; DURATION AND RENEWAL; TRANSFER

5-3-4: FEE SCHEDULE

5-3-5: APPLICATIONS; FORMS; REFUSAL TO ISSUE

5-3-6: REVOCATION OR SUSPENSION OF LICENSE; APPEAL

5-3-7: POLICE REPORTS REQUIRED

5-3-8: PRIVILEGE LICENSE REPORTS AND COLLECTION OF TAXES

(REP. BY 4100, 8-25-03)

5-3-9: TRADING AREA; VISIBILITY OF MERCHANDISE

5-3-10: EXEMPTION

5-3-1: DEFINITIONS:

In this Chapter, unless the context otherwise requires, the following definitions shall apply:

POLICE CHIEF: The Chief of the Mesa Police Department.

PARK AND SWAP LOT: A building, structure, enclosure, lot, or other area into which persons are admitted to display, exchange, barter, buy, sell, or bargain for new and used merchandise, excluding those places normally engaged in the business of making sales at retail.

PARK AND SWAP MEET: The activity carried on at the park and swap lot and consists of the admitting of persons into a park and swap lot for the purpose of displaying, exchanging, bartering, buying, selling, or bargaining for new and used merchandise.

OWNER OR OPERATOR: The owner or operator of a park and swap lot or park and swap meet is the person or persons who control the admission, directly or through agents, of persons and merchandise into the trading area.

PARK AND SWAP MEET PARTICIPANT: Any person other than an owner or operator who brings goods, wares, and merchandise, both new and secondhand, to a park and swap meet for the purpose of displaying, exchanging, bartering, buying, selling, or bargaining these goods, wares, and merchandise.

5-3-2: LICENSES REQUIRED:

It shall be unlawful for any owner or operator to operate within the corporate limits of the City a park and swap lot without first having obtained a license as provided in this Chapter, together with a privilege license pursuant to Section 5-10-2, for reporting and paying monthly to the City all privilege license taxes due by reason of the operator’s operations. (4100)
5-3-3: DISPLAY OF LICENSES; DURATION AND RENEWAL; TRANSFER:

(A) All licenses issued under the provisions of this Chapter shall be displayed in a conspicuous place.

(B) All licenses, unless specifically excepted, shall be issued for a period of one (1) year and shall run from January 1 in each calendar year to December 31 next following, when they may be renewed, provided that no license shall be renewed unless the licensee conforms with the provisions of this Chapter. Licenses issued under this Chapter shall not be transferable.

5-3-4: FEE SCHEDULE:
The following fees shall be charged for applications and licenses for the operation of a park and swap lot: (1050, 4982)

| Application fee | As established in the current Schedule of Fees and Charges. |
| License Fee     | Due annually, as established in the current Schedule of Fees and Charges |

(1050, 4982)

5-3-5: APPLICATIONS; FORMS; REFUSAL TO ISSUE:

(A) An application for a license under this Chapter shall be made on forms furnished by the City. Every application shall be accompanied by an application fee in the amount provided in Section 5-3-4. In the event a license is not issued, the application fee shall not be returned to the applicant but shall be applied to cover the cost of processing the application.

(B) The Finance Director shall have the power to refuse to issue a license for any of the following causes:

1. Fraud, misrepresentation, or a false statement made in the course of applying for the license.

2. Conviction of any crime or misdemeanor involving moral turpitude within the last ten (10) years.

3. Any previous violation of this Chapter. (1613)

5-3-6: REVOCATION OR SUSPENSION OF LICENSE; APPEAL:
Whenever the Finance Director has knowledge or it is brought to the attention of said Director that any person licensed under this Chapter has violated, or is violating, any of the provisions of this Chapter, such person shall be cited to appear before the Finance Director and such City officials as the Director may deem necessary on a day certain to show cause why his license should not be suspended or revoked. Such citation shall state the duty of the person cited to appear personally at the time and place and shall be served by an officer of the Police Department in the manner provided for personal service of civil summons. It shall be the duty of the person cited to appear personally at the time and place named in the citation. He shall have the right at such hearing to be represented by counsel, to introduce witnesses on his behalf, and, at his own expense, to have the testimony given at such hearing transcribed. If, after such hearing, the Finance Director determines that there is a good and sufficient reason for the suspension or revocation of the cited person’s license, the Finance Director shall enter an order effective immediately to such effect and so notify the cited person by registered mail. If the person cited is dissatisfied with the order of the Finance Director, he may appeal to the City Manager within five (5) days, excluding weekends and legal holidays, after receipt of the decision of the Finance Director. The City Manager may designate a Hearing Officer to hear the appeal. (2383)
5-3-7: POLICE REPORTS REQUIRED:

(A) On each day of operation of a park and swap lot, the owner or operator shall, on forms provided by the City, obtain the following information on each park and swap meet participant:

1. Name and address.

2. Date and time of entry.

3. Vehicle description and license plate number, if any.

4. A general description of all property brought into the trading area. For any item of property with an initial asking price of twenty-five dollars ($25.00) or more or which has or did have a serial number, a complete description shall be furnished including the name, make, and any identifying number.

5. Signature of park and swap meet participant.

6. Driver’s license number and the state where issued, if any.

7. Social security number, if available.

8. Whether the person has a valid City of Mesa secondhand dealer’s license and the number thereof.

These forms and admission records shall be available for police inspection during normal business hours and may be filled out by the park and swap meet participant and turned over to the owner, operator, or his designated employee. The owner or operator shall be responsible for forwarding these reports to the Police Chief at the close of each business day.

(B) Each park and swap meet participant shall submit daily to the owner, operator, or his designated employee a list giving the complete description of each item of property traded, bartered, or sold by him which had an initial asking price of twenty-five dollars ($25.00) or more or a sale price of twenty-five dollars ($25.00) or more or had or did have a serial number and the name and address of the person receiving said property. The owner or operator shall be responsible for forwarding these reports to the Police Chief at the close of each day’s business. Forms for these reports will be provided to the owner or operator by the City of Mesa.

5-3-8: PRIVILEGE LICENSE REPORTS AND COLLECTION OF TAXES: (Repealed by 4100)

5-3-9: TRADING AREA; VISIBILITY OF MERCHANDISE:
The swap meet activities shall be conducted only in a building, structure, or other area which is sufficiently enclosed to enable the owner or operator or his employees to control effectively all persons and merchandise and only in an area zoned for this type of activity. All merchandise, both new and secondhand, for which the park and swap participant asks, or intends to ask, an initial price of twenty-five dollars ($25.00) or more shall at all times be visible to the general public and officials of the City.

5-3-10: EXEMPTION:
The provisions of this Chapter shall not be applied to any charitable organization having a valid solicitation’s permit for this activity from the City. This Chapter shall not apply to activities carried on by charitable organizations established and operated exclusively for a religious or charitable purpose if conducted solely among its members and guests by other members serving without remuneration or if such activities are conducted at the assemblies or services of the organization. (1050)
CHAPTER 4

SALE OF JEWELRY AT PUBLIC AUCTION

(Repealed By 4313)

CHAPTER 5

GOING OUT OF BUSINESS SALES

(Repealed By 4314)
CHAPTER 6

HANDBILLS AND CIRCULARS

SECTION:

5-6-1: DEFINITIONS
5-6-2: POSTING NOTICE, PLACARD, BILLS PROHIBITED IN CERTAIN PLACES
5-6-3: THROWING HANDBILLS BROADCAST IN PUBLIC PLACES PROHIBITED
5-6-4: PLACING IN VEHICLES
5-6-5: DISTRIBUTION ON UNINHABITED OR VACANT PRIVATE PREMISES
5-6-6: PROHIBITING DISTRIBUTION WHERE PROPERTY POSTED
5-6-7: DISTRIBUTION ON INHABITED PRIVATE PREMISES
5-6-8: HANDBILLS INCITING TO RIOT PROHIBITED
5-6-9: POSTING OF OBJECTIONABLE MATTER OR MATERIAL PROHIBITED

5-6-1: DEFINITIONS:
The following words, terms, and phrases when used in this Chapter shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. (Res. 1006)

COMMERCIAL HANDBILL: Shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise produced original or copies of any matter of literature: (Res. 1006)

(A) Which advertises for sale any merchandise, product, commodity, or thing or (Res. 1006)

(B) Which directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting the interests thereof by sales or (Res. 1006)

(C) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind when either of the same is held, given, or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety, and good order. Provided, that nothing contained in this clause shall be deemed to authorize the holding, giving, or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license where such license is or may be required by any law of this State or under any laws of this City or (Res. 1006)

(D) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor. (Res. 1006)
NEWSPAPER: Shall mean and include any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law and in addition thereto shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public. (Res. 1006)

NONCOMMERCIAL HANDBILL: Shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the aforesaid definitions of a commercial handbill or a newspaper. (Res. 1006)

PRIVATE PREMISES: Shall mean and include any dwelling, house, building, or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to such dwelling, house, building, or other structure. (Res. 1006)

PUBLIC PLACE: Shall mean and include any and all streets, boulevards, avenues, lanes, alleys, or other public ways and any and all public parks, squares, spaces, plazas, grounds, and buildings. (Res. 1006)

5-6-2: POSTING NOTICE, PLACARD, BILLS PROHIBITED IN CERTAIN PLACES:
No person shall post, stick, stamp, paint, or otherwise fix or cause the same to be done by any person any notice, placard, bill, card, poster, advertisement, or other paper or device calculated to attract the attention of the public, except such as may be authorized or required by the laws of the United States, this State, or of this City. (Res. 1006)

5-6-3: THrowing HANDBILLS BROADCAST IN PUBLIC PLACES PROHIBITED:
It shall be unlawful for any person to deposit, place, scatter, or cast any commercial handbill in or upon any public place within this City, and it shall be also unlawful for any person to hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill in any public place to any person willing to accept such. (Res. 1006)

5-6-4: PLACING IN VEHICLES:
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle. The provisions of this Section shall not be deemed to prohibit the handing, transmitting, or distributing of any noncommercial handbill to the owner or other occupant of any automobile or other vehicle who is willing to accept the same. (Res. 1006)

5-6-5: DISTRIBUTION ON UNINHABITED OR VACANT PRIVATE PREMISES:
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant. (Res. 1006)
5-6-6: **PROHIBITING DISTRIBUTION WHERE PROPERTY POSTED:**
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill upon any premises if requested by anyone thereon not to do so or if there is placed on said premises in a conspicuous position near the entrance thereof a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisements," or any similar notice indicating in any manner that the occupants of said premises do not desire to be molested or to have their right of privacy disturbed or to have any such handbills left upon such premises. (Res. 1006)

5-6-7: **DISTRIBUTION ON INHABITED PRIVATE PREMISES:**
No person shall distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted as provided herein, the aforesaid person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations. (Res. 1006)

5-6-8: **HANDBILLS INCITING TO RIOT PROHIBITED:**
It shall be unlawful for any person to post, hand out, transmit, distribute, or place any sign or any commercial or noncommercial handbill which may reasonably tend to incite riot or other public disorder or which advocates disloyalty to or overthrow of the government of the United States or of this State and is directed to producing or inciting imminent lawless action or is likely to produce or incite such action. (1612)

5-6-9: **POSTING OF OBJECTIONABLE MATTER OR MATERIAL PROHIBITED:**
It shall be unlawful for the owner, lessee, occupant, or agent of premises to permit any person to post, affix, or otherwise attach to any building, structure, or fixture located upon such premises, whether such fixtures be natural or artificial, any poster or handbill containing any matter prohibited by this Chapter. (Res. 1006)
CHAPTER 7

AUCTIONEERS, PAWN BROKERS, SCRAP METAL DEALERS, AND SECONDHAND DEALERS

(5465)

SECTION:

5-7-1: DEFINITIONS:
The terms of this Chapter have the below meanings unless the context otherwise requires. 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. The definitions prescribed in A.R.S. § 44-1601, 44-1621, and 44-1641 apply to this Chapter, where applicable, unless a term is specifically defined in this Chapter. All citations to specific statutes in this Chapter shall include the law as amended. (5465)

(1) APPLICANT: A person who applies for a license pursuant to this Chapter who, upon approval of the application, will be the licensee. (5465)

(2) ARTICLE: A particular item, thing, good, asset or other movable or transferable piece of property. (5465)

(3) AUCTIONEER: Any person who is the controlling person operating a business of auctioning articles or offering any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder. (2993, 5465)

(4) BUSINESS DAY: Any day between and including Monday through Friday. (5465)

(5) BUSINESS LICENSING ADMINISTRATOR: The Business Licensing and Revenue Collections Administrator of the City or their designee. (5465)

(6) BUSINESS SERVICES DIRECTOR: The Business Services Director of the City or their designee. (5465)

(7) CITY: City of Mesa, Arizona. (2993, 5465)

(8) CITY MANAGER: The City Manager pursuant to Chapter 20 of Title 1 of the Mesa City Code or their designee. (2993, 5465)
(9) **CONTROLLING PERSON:** Any individual (natural person) who is any of the following: (5465)

   (a) Stockholder who owns ten percent (10%) or more of a corporation; (5465)

   (b) General partner of a limited partnership or any partner of a non-limited partnership; (5465)

   (c) Managing member of a limited liability company/corporation; or (5465)

   (d) Sole proprietor of a sole proprietorship. (5465)

(10) **DESIGNATED AGENT:** The individual (natural person) designated by the licensee to be the party who receives City notices pursuant to this Chapter. If a licensee is an individual (natural person) the licensee may name themselves as the designated agent. (5465)

(11) **HEARING OFFICER:** The Business Services Department Director or their designee. (2993, 5465)

(12) **LICENSE:** A license issued to an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in accordance with this Chapter. (5465)

(13) **LICENSEE:** Any person to whom the City has issued a license under this Chapter or any person acting on behalf of such person. (2993, 5465)

(14) **LICENSING OFFICE:** Business Licensing and Revenue Collections Division of the City under the supervision of the Business Licensing Administrator. (5465)

(15) **PAWNBROKER:** A person engaged in the business of advancing money on the security of pledged goods or engaged in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time. (5465)

(16) **PERSON:** Any corporation, company, partnership, firm, association, organization, joint venture, business entity, trust, proprietor, agent, or society, as well as an individual (natural person). (2993, 5465)

(17) **POLICE DEPARTMENT:** The Police Department for the City pursuant to Title 3, Chapter 1 of the Mesa City Code. (2993, 5465)

(18) **SCHEDULE OF FEES AND CHARGES:** The current City schedule of fees and charges as approved by the City Council. (5465)

(19) **SCRAP METAL DEALER:** Each person (except “automotive recyclers” as defined and licensed pursuant to Arizona Revised Statutes Title 28, Chapter 10) whose primary business is the dismantling, selling or disposing of parts or accessories of motor vehicles engaged in the business of purchasing, trading, bartering, or otherwise receiving secondhand or castoff material of any kind which is commonly known as scrap metal. Scrap metal includes insulated and uninsulated metallic cables. (5465)

(20) **SECONDHAND:** Any new or used property (article) that has been sold, traded, exchanged, consigned or otherwise disposed of by the original owner. The definition of secondhand includes, but is not limited to: (i) old stamps; (ii) old coins and money; (iii) “precious item” as defined in A.R.S. § 44-1601; and (iv) used automotive components when purchased by a “used automotive components dealer” as that term is defined in A.R.S. § 44-1321. The definition of secondhand does not include “numismatic coin” as defined in A.R.S. § 44-1801. (2993, 5465)
SECONDHAND DEALER: Any person engaged in conducting, managing, facilitating, or carrying on the business of buying, selling, trading, exchanging, receiving on consignment, or otherwise dealing in any of the following secondhand items: goods, wares, merchandise, or articles. This definition applies whether such business is the principal or sole business carried on, managed, or conducted or is merely incidental to or in connection with a branch or department of some other business. (2993, 3600, 4916, 5465)

STATE: State of Arizona. (5465)

ADMINISTRATION; LICENSES

(A) It is the duty and responsibility of the Business Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, suspend, or revoke auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealer licenses in accordance with this Chapter. (5465)

(B) Any party aggrieved by a decision of the Business Licensing Administrator under this Chapter may appeal within ten (10) calendar days of issuance of the decision. The appeal must meet the requirements set forth in Section 5-7-9. (5465)

(C) Any person who operates a business in the City as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must obtain a license from the Licensing Office as provided in this Chapter. A person who operates as an antiques dealer is a secondhand dealer under this Chapter. Antiques dealers will be issued a license governed by the requirements of this Chapter pertaining to secondhand dealers; however, the title on the license will be that of “Antiques Dealer.” For the purposes of this Subsection (C), an “antiques dealer” means a person who is primarily engaged in the business of buying and selling items collected or desirable due to age, rarity, condition or some other unique feature. (5465)

(D) A person must obtain a separate license for each location in the City where they operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, except a separate license is not required for each location for firearms transactions by a pawnbroker acting as a federally licensed firearms dealer at an organized gun show in accordance with A.R.S. § 44-1627. (5465)

(E) All licenses will be issued for a period of one (1) year. Licenses cannot be sold or transferred. (5465)

(F) A licensee must display its license in a conspicuous place at the business location. (5465)

(G) A licensee must at all times be in compliance with local, state, and federal law applicable to the licensed activity which could include, but is not limited to, the laws set forth in Arizona Revised Statutes Title 44. If the language of this Chapter is preempted and conflicts with the language of state law, then the state law will control. (5465)

LICENSE APPLICATION; FEE

(A) Any person desiring to obtain an auctioneer, pawnbroker, scrap metal dealer or secondhand dealer license must apply to the Licensing Office. An applicant for a license must present to the Licensing Office the completed application, containing all information requested on the application and corresponding documents, along with the required application fee and fingerprint records. The application fee is non-refundable unless otherwise required by law. (5465)

(B) Following receipt from the applicant of a complete application, fingerprints, and application fee as set forth in the Schedule of Fees and Charges, the Licensing Office will refer the application to the Police Department for investigation and criminal record review in accordance with this Chapter. (5465)
(C) The Licensing Office will grant a license to an applicant unless it determines that the application is subject to denial in accordance with Section 5-7-8. (5465)

(D) Upon approval, and prior to the issuance of a license, the applicant must: (i) pay a first-year license fee in accordance with the Schedule of Fees and Charges, and (ii) provide the Licensing Office with a designated agent if that person was not named in the application. (5465)

(E) A person must apply for a license on forms furnished or approved by the City. The forms will include requests for information deemed necessary by the City consistent with the requirements of this Chapter and applicable law. (5465)

5-7-4: FINGERPRINTING REQUIREMENTS

(A) Each person applying for a license must submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons of the applicant. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5465)

(B) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data of license applicants and controlling persons, for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information will be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license. (5465)

(C) The Police Department will have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department will recommend to the Licensing Office approval or denial of the license. (5465)

5-7-5: LICENSE RENEWAL

(A) A license, unless revoked, may be renewed by a licensee and such renewal will be valid for a term of one (1) year. The completed renewal application must be submitted by the licensee no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee in the Schedule of Fees and Charges. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed in accordance with the requirements of this Chapter. (5465)

(B) If a licensee fails to submit a complete renewal application and renewal fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license will expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to renew their license, but who wish to continue operating as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, must file a new application for a license pursuant to Section 5-7-3 and may not operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in the City until a new license is issued. (5465)

(C) An application for renewal of a license may be denied based on the standards set forth in Section 5-7-8. (5465)
5-7-6: RECORDKEEPING AND REPORTING REQUIREMENTS; INSPECTIONS

(A) Pawnbrokers. Pawnbrokers must file a true, complete and accurate report with the Police Department of each article the pawnbroker receives subject to the reporting requirements set forth in Arizona Revised Statutes Title 44, Chapter 11, Article 3. (5465)

(1) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1625. Reports will be filed on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The pawnbroker must collect a fingerprint from the right index finger of the pledgor or seller as required on the approved forms. The pawnbroker must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. (5465)

(2) No article will be sold or exchanged by any pawnbroker until it has been in the custody of the pawnbroker for twenty (20) calendar days after the transaction date. Any article held in custody pursuant to this Subsection (A)(2) must not be altered or transformed in any way, but must be held in the same condition in which it was delivered to the pawnbroker. This Subsection (A)(2) does not apply to the redemption of pawned or pledged articles. (5465)

(B) Secondhand Dealers. (5465)

(1) Reportable Transactions and Records. (5465)

(a) Secondhand dealers must file a true, complete and accurate report with the Police Department of each article the secondhand dealer receives on deposit, consignment, trade, exchange, or purchase that meets any of the following requirements (hereafter “Reportable Transaction”): (5465)

   (i) Bears a serial number; (5465)

   (ii) Bears an owner applied number (O.A.N.); (5465)

   (iii) Has a fair market value in excess of one hundred dollars ($100.00); (5465)

   (iv) Any item that meets the definition of a “precious item” as that term is defined in A.R.S. § 44-1601; or (5465)

   (v) Any coin fabricated from a metal meeting the definition of a “precious item” as set forth in A.R.S. § 44-1601 and that does not meet the definition of “numismatic coin” as that term is defined in A.R.S. § 44-1801. (5465)

(b) Reports must be filed on forms approved by the Police Department within two (2) business days of the Reportable Transaction. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The secondhand dealer must collect a fingerprint of the right index finger of the pledgor or seller of an article in a Reportable Transaction as required on the approved forms and verify the identity of the seller as required by A.R.S. § 44-1602. The secondhand dealer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. (5465)

(c) A secondhand dealer will retain in its custody any article obtained in a Reportable Transaction at its place of business or other storage location approved by the Police Department for a period of twenty (20) calendar days after filing a completed report form with the Police Department. Any article held in custody must not be altered or transformed in any way, but will be held in the same condition in which it was delivered to the secondhand dealer. (5465)
(d) The provision of Subsection 5-7-6(B)(1) do not apply to any of the following: (5465)

(i) Purchases by a secondhand dealer from a business with a fixed business location of either business inventory or business equipment, provided the secondhand dealer acquires, by the time of the transaction, the secondhand dealer has documentation of: (5465)

   a. The name and address of the business; (5465)

   b. The state and local privilege (sales) tax license number of the business, if applicable; and (5465)

   c. A copy of the invoice or other document showing the business’s bona fide purchase of or right to possess the articles sold to the secondhand dealer and, where applicable, a copy of a completed report required by Subsection 5-7-6(B)(1) filed with the Police Department by the business. (5465)

(ii) Secondhand dealer purchases of household items from a place of residence provided all the below requirements are met. (5465)

   a. The purchase is made by the secondhand dealer by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the secondhand dealer has obtained a receipt for that cash payment from the seller bearing the seller’s name and address verified to be accurate by the secondhand dealer. (5465)

   b. The seller produced for the secondhand dealer’s inspection documentation establishing the seller is either the lawful occupant or the premises from which the household items are being sold or the seller had the legal right to sell the items offered for sale. The secondhand dealer must either retain a copy of the documentation produced or record from the documentation a description of the document, including the name or nature of the document, and, to the extent available, its date, the seller’s name and address thereon, and any account number. (5465)

(iii) Consignments to secondhand dealers, other than a firearm, provided that no payment is made by the secondhand dealer to the consignor for a period of ten (10) calendar days after the date of consignment. (5465)

(iv) Articles received by a secondhand dealer in trade, exchange, or by purchase which are: (1) used clothing or furniture; (2) from a business engaged in the lawful liquidation of its business; or (3) from an auctioneer or pawnbroker possessing a valid license. (5465)

(e) All documentation required to substantiate any of the exclusions set forth in Subsection (d) above must be retained on the business premises of the secondhand dealer for a period of twenty-four (24) months from the day the article is acquired by the secondhand dealer. (5465)

(2) Dealers of Precious Items. (5465)

   (a) In addition to the requirements set forth in Subsection 5-7-6(B)(1) above, secondhand dealers who deal in “precious item[s]” as defined in A.R.S. § 44-1601 must maintain the records, file the reports and meet all requirements of Arizona Revised Statutes Title 44, Chapter 11, Article 1. (5465)
(b) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1602. Reports will be filed on forms approved by the Police Department. The secondhand dealer must collect a fingerprint of the right index finger of the seller of a precious item as required on the approved forms. (5465)

The secondhand dealer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. (5465)

(3) Used Automotive Components Dealer. (5465)

“Used automotive component dealers”, as that term is defined in A.R.S. § 44-1321, must maintain the records and file the reports set forth in Arizona Revised Statutes Title 44, Chapter 9, Article 9. (5465)

(C) Auctioneers. Auctioneers must file a true, complete and accurate report with the Police Department of all articles received by the auctioneer except for clothing, books, records, compact discs, and audio tapes. Reports will be made on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The auctioneer must collect a fingerprint of the seller of the article as required on the approved forms. The auctioneer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. The reports must be delivered or postmarked within twenty-four (24) hours after receipt of the article. An auctioneer will describe the article using either of the following methods: (5465)

(1) By attaching a legible copy of the auctioneer’s consignment agreement, purchase receipt, purchase invoice, or other similar document containing a description of the article; or (5465)

(2) For groups of articles that are received as part of one business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of articles. (5465)

(D) Scrap Metal Dealers. Scrap metal dealers must file a true, complete and accurate record within twenty-four (24) hours of receipt of scrap metal in accordance with Arizona Revised Statutes Title 44, Chapter 11, Article 3.1. (5465)

(E) If a licensee comes into possession of abandoned property, the licensee must turn over such property to the Police Department who will hold the property in accordance with Police Department policy. For this Subsection (E), “abandoned property” is defined as property that was voluntarily discarded, left behind or otherwise intentionally relinquished by the owner. (5465)

(F) It will not be considered a violation of Section 5-7-6 if the violation is the result of a bona fide error, provided the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For the purpose of this Subsection (F), bona fide error means clerical, calculation, computer malfunction, programming, printing, and other similar errors. (5465)

(G) Inspections. The business premises of any licensee, along with their transaction records and stock of goods (articles) will be open to reasonable inspection by any peace officer of any governmental unit within or of this state when the business premises are open during regular business hours. Each licensee must maintain a current copy of this Chapter on the premises and will make it available upon request to any employee, customer, and law enforcement. (5465)

(H) All auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealers must maintain at their place of business a copy of any reports or transaction records required under this Chapter or applicable law for a period of at least two (2) years after the date the transaction occurred. (5465)
5-7-7: **FRUITS OF A CRIME; POLICE HOLD**

(A) Upon notification by any peace officer that the peace officer has probable cause to believe property received on deposit or consignment, in pawn, pledge, trade, exchange, or purchase are the fruits of a crime, the peace officer may place a Police Hold (as defined herein) on such article and no auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will dispose of such article (sell, trade, return to consignor, or otherwise relinquish possession of) until notified by the law enforcement agency of which the peace officer placing the hold is a member. (5465)

(B) A peace officer may place a hold on property requiring an article not to be disposed of in any manner (hereafter “Police Hold”). A Police Hold must be requested with a written notice; however, an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will honor a Police Hold made in person, via telephone, or by other reasonable means of communication for five (5) business days after which time the Police Hold will no longer be valid unless written notice is received continuing the Police Hold during the five (5) business day period. A written notice for a Police Hold will include all the following information: (5465)

1. The date the Police Hold; (5465)
2. A description of the property, including serial number if applicable; (5465)
3. The name and, if applicable, badge number of the peace officer requesting the Police Hold; (5465)
4. The telephone number of the peace officer requesting the Police Hold; and (5465)
5. The law enforcement agency’s report number. (5465)

(C) If a peace officer declares a Police Hold on any article, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must attach a tag supplied by the Police Department to the article. The tag will include the information required on the written notice of the Police Hold as set forth in Subsection (B) above. The tag must remain on the article until the law enforcement agency releases the Police Hold or until the Police Hold expires pursuant to Subsection (D) below. (5465)

(D) A Police Hold will expire ninety (90) calendar days after the date of the Police Hold. For the purpose of criminal investigation or for use in any judicial proceeding, a Police Hold may be extended by the law enforcement agency in ninety (90) day increments by written notification to the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer if the notification is received prior to the expiration of the Police Hold. (5465)

(E) Interest upon articles pawned or pledged will cease to accrue during a Police Hold. (5465)

(F) Upon receiving a receipt from any peace officer, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must turn over articles on a Police Hold to the peace officer. (5465)
5-7-8: LICENSE DENIAL, SUSPENSION, OR REVOCATION

(A) In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons: (5465)

1. Police Department recommends denial of an application based upon applicant’s failure to meet the requirements set forth in this Chapter or applicable state law. (5465)

2. Applicant or a controlling person was convicted within the ten (10) year period immediately preceding the date of application of any of the following: (5465)

   (a) a felony or misdemeanor offense having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, as applicable; (5465)

   (b) a felony offense involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or (5465)

   (c) a felony or misdemeanor offense of a crime involving moral turpitude. (5465)

3. Applicant failed to pay the application processing fee or, upon approval of the license, failed to pay the applicable license fee. (5465)

4. Applicant or a controlling person has an outstanding warrant for his or her arrest. (5465)

5. Application contained false statements or material misrepresentations. (5465)

6. Applicant failed to provide all the information and documentation required for the application. (5465)

7. Applicant or a controlling person is currently in violation of any provision of this Chapter. (5465)

8. Applicant currently owes a debt to the City and therefore cannot be issued a license as set forth in Mesa City Code Title 1, Chapter 32. (5465)

9. Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City. (5465)

10. Applicant, within the one (1) year period immediately preceding the date of application, had an application for a license denied or had a license revoked. (5465)

(B) In addition to any penalties set forth in this Chapter, an application for renewal of a license may be denied for any of the following reasons: (5465)

1. Applicant failed to submit the renewal application within the required time frame or pay the applicable fee. (5465)

2. For any reason set forth in Subsection (A) above except a renewal license may be issued if the licensee or controlling person has any felony or misdemeanor charge of the type set forth in Subsection (A) pending in a trial court (defined as a court of original jurisdiction where the evidence is first received and considered); however, the issuance of such renewal license will not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge including, but not limited to, suspension or revocation of the license. (5465)
(C) In addition to any penalties set forth in this Chapter, a license will be suspended if during the term of the license: (5465)

(1) Licensee or a controlling person for the licensee is convicted of a criminal offense: (5465)

   (a) Having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer; (5465)

   (b) Involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or (5465)

   (c) A crime involving moral turpitude. (5465)

(2) The application upon which the license was awarded was found to contain false statements or material misrepresentations, or the licensee failed to meet any of the requirements for the issuance of a license. (5465)

(3) Licensee or a controlling person for the licensee knows or should have known that trafficking in stolen property is occurring or has occurred in the operation of the licensed establishment. (5465)

(4) The licensee ceased to use the license for purposes of the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer. The failure of a licensee to operate in the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer under the license for thirty (30) consecutive calendar days will create a rebuttable presumption the licensee has ceased to use the license. (5465)

(5) If on two (2) or more occasions within an eighteen (18) month period, the licensee or an employee, agent or representative of the licensee, while in the conduct of business at the licensed establishment, commits a criminal offense of the type set forth in Subsection 5-7-8(C)(1). For the purposes of this Subsection (C)(5):

   (a) a person will be deemed to have committed an offense upon conviction; (5465)

   (b) in applying the eighteen (18) month provision, the date of the commission of the offense will be the determining factor; and (5465)

   (c) the two (2) or more offenses subjecting the license to suspension do not have to be committed by the same person and do not have to be violations of the same statute or ordinance so long as they are offenses of the type listed in Subsection 5-7-8(C)(1). (5465)

(6) The penalty for a suspension under Subsection (C) will be: (5465)

   (a) For the first suspension of a license during an eighteen (18) month period, licensee will pay a fine of $250 and the license will be suspended up to fourteen (14) calendar days. (5465)

   (b) For the second suspension of a license during an eighteen (18) month period, licensee will pay a fine of $500 and the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5465)

   (c) For the third suspension of a license during an eighteen (18) month period, the license will be revoked. (5465)

(D) In applying the eighteen (18) month period provision of Subsection 5-7-8(C)(6) the date the decision was issued by the Business Licensing Administrator for the first of the three (3) suspensions will constitute the beginning of the eighteen (18) month period. (5465)
5-7-9: APPEALS

(A) Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director; the failure of an appeal to meet the requirements of this Subsection will entitle the Business Services Director to deny the appeal without further review. (5465)

(B) If an appeal meets the requirements of Subsection (A), the Business Services Director will schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (A) will suspend the decision of the Business Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Hearing Officer, will be reinstated and dated as of the original date the decision was issued by the Business Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter. (5465)

(C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony will be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery will be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5465)

(D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, will constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5465)

(E) The decision of the Business Licensing Administrator, if not appealed, will be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Business Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer will be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5465)

5-7-10: EXEMPTIONS

The requirements of this Chapter do not apply to any of the following: (5465)

(1) Any person who deals exclusively with clothing, phonograph records, books, audio cassette tapes, videotapes, compact discs, or digital video discs. (5465)

(2) Any person who deals exclusively in titled vehicles or titled articles, the transfer of title to which is governed by the laws of the state, must be evidenced by written instrument, and recorded as a public record. (5465)

(3) The operator of any self-service storage facility foreclosing its lien in accordance with A.R.S. § 33-1704. For this Subsection (3), the terms “operator” and “self-service storage facility” have the meanings prescribed in A.R.S. § 33-1701. (5465)

(4) Garage sales, rummage sales, or similar nonrecurring sales between individuals. (5465)
(5) Any organization exempt from federal income tax under Section 501 of the Internal Revenue Code. (5465)

(6) Any business dealing in rent-to-own merchandise where the business is the original owner of the merchandise. (5465)

(7) Any person who deals exclusively in “numismatic coins” as that term is defined in A.R.S. § 44-1801. (5465)

(8) Any operator of an Automated Kiosk who is issued an Automated Kiosk license by the City pursuant to Mesa City Code Title 5, Chapter 22. (5465)

5-7-11: PENALTY

Among other penalties that may apply, a person that violates any provision of this Chapter will be guilty of a class one misdemeanor. Upon conviction, an individual (natural person) will be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, a business entity will be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00). Each day in which a violation continues will constitute a separate criminal offense, punishable as described above. (5465)
CHAPTER 8

PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

SECTION:

5-8-1: PURPOSE OF THIS CHAPTER

The purposes of this Chapter shall be to protect the health, safety, and welfare of residents of the City by means of investigation and regulation of peddlers, solicitors, canvassers, and transient merchants. (1016)

5-8-2: LICENSE REQUIRED

It shall be unlawful for any peddler, solicitor, canvasser, transient merchant, itinerant merchant, or itinerant vendor as the same is herein defined to engage in such business within the corporate limits of the City without first obtaining a license therefor in compliance with the provisions of this Chapter; provided, however, that the provisions of this Chapter shall not apply to the producers of agricultural products as defined in A.R.S. §3-561 or to any member of the family or agents or persons in the service of the producer when the agricultural products are sold or disposed of on behalf of and for the benefit of the producer or to persons soliciting for newspaper subscriptions. (1428, 1891)

5-8-3: DEFINITIONS

PEDDLER: Any person who, either personally or through agents or employees or by transporting either persons or property, whether a resident of the City or not, travels by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions who offers and exposes the same for sale or who makes sales and delivers articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a motor vehicle, railroad car, or other vehicle or conveyance or from a fixed location on foot, and further provided that one who solicits orders and as a separate transaction makes delivery to purchasers as a part of the scheme or design to evade the provisions of this Chapter shall be deemed a peddler subject to the provisions herein contained. (1475, 1981)
SOLICITOR OR CANVASSER: Any individual, whether resident of the City or not, traveling either by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop, or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT, ITINERANT MERCHANT, ITINERANT VENDOR: Any person, whether owner or otherwise, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within said City and who, in furtherance of such purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat or public room in a hotel, lodging house, apartment, shop, or any street or other place within the City for the exhibition and sale of such goods, wares, and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm, or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this Chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any such local dealer, trader, merchant, or auctioneer.

5-8-4: APPLICATION AND APPLICATION FEE:
Applicants for a license under this Chapter must file with the Finance Director a sworn application in writing on a form to be furnished by the Finance Director which shall contain, but not necessarily be limited to, the following information:

(A) Name and description of the applicant.

(B) Address (legal and local).

(C) A brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant.

(D) If employed, the name and address of the employer, together with credentials establishing the exact relationship.

(E) The length of time for which the right to do business is desired.

(F) If a vehicle is to be used, a description of the same, together with license number or other means of identification.

(G) A photograph of the applicant taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2") showing the head and shoulders of the applicant in a clear and distinguishing manner.
(H) The fingerprints of the applicant and the names of at least two (2) reliable property owners of the City who will certify as to the applicant’s good character and business responsibility or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.

(I) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal laws, the nature of the offense, and the punishment or penalty assessed therefor.

(J) If the applicant is a minor, such applicant shall not be fingerprinted, but no license shall be issued unless the minor’s parent(s) or guardian(s) appears personally before the Finance Director or the authorized designee of the Finance Director and provides the following:

1. Satisfactory evidence that the person or persons are in fact the parent(s) or guardian(s) of the particular applicant;

2. A written statement signed by the parent(s) or guardian(s) and witnessed by the Finance Director or the authorized designee of the Finance Director giving permission for the applicant to be licensed upon the meeting of provisions of this Chapter.

(K) No license issued hereunder shall be transferable. At the time of filing the application, a fee of ten dollars ($10.00) shall be paid to the Finance Director, no part of which shall be refunded.

5-8-5: INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE:

Upon receipt of such application, the Finance Director shall cause an investigation to be made to determine whether the applicant or any officer, director, trustee, partner, agent, employee, or other person associated with the applicant: (1016,1605,1815)

(A) Has been convicted of a felony involving a transaction in securities or consumer fraud in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1016,1605,1815)

(B) Has been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, or theft by false pretenses in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1016,1605,1815)

(C) Has been or is presently subject to an injunction, judgment, decree, or permanent order of any federal court entered within the seven- (7-) year period immediately preceding the filing of the application of such injunction, judgment, decree, or permanent order: (1016,1605,1815)

1. Involving the violation of fraud or registration provisions of the securities laws of that jurisdiction or (1016,1605,1815)

2. Involving the violation of the consumer fraud laws of that jurisdiction. (1016,1605,1815)
(D) Has been convicted of a felony involving moral turpitude or burglary, robbery, or theft as defined in Arizona Revised Statutes or a crime of violence in any state or federal jurisdiction within the seven- (7) year period immediately preceding the filing of the application. (1844)

If, as a result of such investigation, it is determined that any of the items set forth above as A, B, C, and D are determined to exist, the application shall be denied. If not, and if a privilege license as set forth in Title 5, Chapter 10 of the Mesa City Code is required by the nature of the business the applicant desires to carry on and has been obtained by the applicant, a license shall be issued by the Finance Director upon payment of the required fee. (1016, 1605,1815,1844)

5-8-6: FEES:
The license fee for any peddler, solicitor, canvasser, or transient merchant shall be thirty dollars ($30.00) per quarter if paid on a quarterly basis or one hundred dollars ($100.00) per year if paid on an annual basis. All such fees shall be paid in advance. (1428)

5-8-7: BOND REQUIRED:
Before any license as provided herein shall be issued for engaging in the business of peddler, solicitor, canvasser, or transient merchant as defined in this Chapter, every applicant plying his trade as an individual shall file with the Finance Director a surety bond running to the City in the amount of one thousand dollars ($1,000.00). Every business, firm, company, or corporation which has employees or agents acting in the capacity of peddler, solicitor, canvasser, or transient merchant shall file with the Finance Director a blanket surety bond covering all such employees or agents and running to the City in the amount of five thousand dollars ($5,000.00).

Every bond for those engaging in a transient or an itinerant business or as a peddler as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant’s agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating and concerning sale of goods, wares, and merchandise and will pay all judgments rendered against said applicant for any violation, together with all judgments and costs that may be recovered against him by any person for damage arising out of any misrepresentation or deception practiced on any person transacting any such business with such applicant, whether said misrepresentations or deceptions were made or practiced by the applicant or its agents or employees either at the time of making a sale or through any advertising of any nature whatsoever printed or circulated with reference to the goods, wares, or merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person or directly by the aggrieved person.

Every bond for those engaging in the business of solicitor or canvasser as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant’s agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating and concerning the business of solicitor or canvasser and guaranteeing to any citizen of the City that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor or canvasser and further guaranteeing any citizen of the City doing business with said solicitor or canvasser that the property purchased will be delivered according to the representations of said solicitor or canvasser.

Regardless of the number of claimants and the number of years any bond required to be filed pursuant to this Section has been in force, the total liability of the surety shall in no event exceed the total sum of the penalty of such bond. (1428,1605)
5-8-8: **LICENSE TO BE POSTED:**
The license issued to the licensee hereunder by the Finance Director shall be posted in a conspicuous place if the licensee is using a vehicle or building in his business and otherwise must be kept by the person and exhibited at any time upon request. (1043,1605)

5-8-9: **LOCATION RESTRICTIONS:**
No licensee hereunder shall have any exclusive right to any location in a public street, nor shall any be permitted a stationary location thereon or within three hundred feet (300') of a public school ground, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this Chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced. No business activity shall be carried on in any area of the City by any licensee who is licensed pursuant to this Chapter where such business activity is prohibited by the City of Mesa Zoning Ordinance. (1043)

5-8-10: **UNDUE NOISES PROHIBITED; HOURS OF OPERATION:**
Licensees, agents, and employees of licensees and persons acting on behalf of licensees shall not yell, shout, cry out, blow a horn, ring a bell, or use any sound-amplifying devices such as loudspeakers, microphones, radios, sound-amplifying systems, or any other similar devices for the purpose of attracting attention to any goods, wares, or merchandise if the sound emitted or produced is of sufficient volume that it can be plainly heard upon the public thoroughfares. Licensees, agents, and employees of licensees shall not conduct any business activities between the hour of eight (8:00) P.M. of any day and the hour of eight (8:00) A.M. of the following day. (1629)

5-8-11: **UNLAWFUL ACTS:**
It shall be unlawful for any peddler, solicitor, canvasser, or transient merchant in the course of business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers or Solicitors" or similar wording is exposed to public view. (1043)

5-8-12: **DUTY OF POLICE OFFICERS TO ENFORCE:**
It shall be the duty of any police officer of the City to enforce this Chapter. The Chief of Police shall report to the Finance Director all violations of this Chapter. (1043,1605)

5-8-13: **RENEWALS:**
Licenses which are continually renewed shall pay only the applicable fees prescribed in Section 5-8-6. Licenses which are not continuously renewed, upon application for renewal, shall be treated as an original application. (1428)

5-8-14: **SUSPENSION AND REVOCATION:**
Whenever the Finance Director has reason to believe that any licensee is guilty of any of the following acts:

(A) Fraud, misrepresentation, or false statement contained in the application for license;

(B) Fraud, misrepresentation, or false statement made in the course of carrying on his business;
(C) Violation of any of the provisions of this Chapter;

(D) Conviction of any crime or misdemeanor involving moral turpitude;

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; and

(F) Failure to file an additional surety bond as required by Section 5-8-7 hereof within ten (10) days after the liability of the surety on the previous bond has been exhausted, the Finance Director shall immediately suspend the license and give the licensee notice by registered mail of the suspension and of a hearing to be held within ten (10) days to determine whether or not the permit should be revoked. The notice shall contain a statement of the purported reason for the suspension. At the hearing the licensee shall have the right to be represented by counsel, to introduce witnesses on his behalf and at his own expense, and to have the testimony given at the hearing transcribed. Within the next three (3) days after the hearing, if the Finance Director determines that there is a good and sufficient reason for revocation of the licensee’s license, the Finance Director shall enter an order revoking the license effective immediately and notify the licensee by registered mail. (1428,1605)

5-8-15: APPEAL:
Within five (5) days, excluding weekends and legal holidays, an applicant for license or a licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (2383)

5-8-15.01: RESTRICTIONS OF ISSUING A LICENSE; ADDITIONAL UNLAWFUL ACTS:

(A) If the license of the licensee has been revoked pursuant to provisions of Section 5-8-14 of this Code, the Finance Director shall designate a period of time not exceeding three (3) years, during which time a renewal or a new license may not be issued to the same licensee or to a corporation controlled by that licensee. Unless otherwise specified by the Finance Director, the period of disqualification shall be the maximum three- (3-) year period.

(B) No licensee shall knowingly permit a person whose license is under suspension or has been revoked to be employed in any capacity by the licensee during the period of suspension or the period of time that a renewal or new license may not be issued to such person pursuant to provisions of Subsection (A) of this Section.

(C) Every licensee whose license has been revoked may be disqualified from obtaining or retaining a privilege tax license for a period of up to one (1) year from the date of such revocation. (1428,1605)

5-8-16: SEVERABILITY:
If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portions. (1016)
CHAPTER 9

REGULATING THE SALE OF ALCOHOLIC BEVERAGES

SECTION:

5-9-1: DEFINITION
In this Chapter, unless the context otherwise requires, all words and phrases shall have the same meaning as is provided in Title 4, Chapter 1, Article 1, Arizona Revised Statutes, and amendments thereto. (919,4338)

5-9-2: POWERS AND DUTIES OF THE COUNCIL:
The Council shall administer and enforce provisions of this Chapter and shall have power to prescribe necessary rules and regulations for carrying out such provisions. (919)

5-9-3: MANUFACTURE OR SALE WITHOUT LICENSE ILLEGAL:
It shall be unlawful for any person to buy, sell, or deal in spirituous liquors within the City under any circumstances which would require a license from the State without first having procured a license issued by the Business Licensing and Revenue Collections Administrator as herein provided. Such license shall be displayed by the licensee at a conspicuous place in the business. (1606,4338)

5-9-4: APPLICATION FOR LICENSE:
(A) Any person desiring a license to manufacture, sell, or deal in spirituous liquor shall file an application on forms prescribed and furnished by the Arizona State Department of Liquor Licenses and Controls. (4338)

Each application, except a qualifying organization requesting a special event liquor license, shall pay to the Special Licensing Office at the time of making application an application fee in accordance with the current Schedule of Fees and Charges, no part of which shall be returned whether the application is granted or not. (1606,1646,2127,4338)

(B) The Special Licensing Office shall immediately file one (1) copy of the application in the office and post the other for a period of twenty (20) days in a conspicuous place on the front of the premises wherein the business is proposed to be conducted, with a statement requiring any person who is a bona fide resident residing, owning, or leasing property within a one- (1-) mile radius from the premises proposed to be licensed and who is in favor of or opposed to the issuance of the license to file written arguments in favor of or opposed to the issuance of the license with the City Clerk within twenty (20) days after the date of posting. The City Clerk shall forward all written arguments to the Business Licensing and Revenue Collections Administrator. (2127,4338)
(C) The Council shall then enter an order recommending approval or disapproval within sixty (60) days after filing of the application and shall file a certified copy of the order with the State Liquor Board. If the recommendation is for disapproval, then a statement of the specific reasons containing a summary of the testimony or other evidence supporting the recommendation for disapproval shall be attached to the order. All petitions submitted to the City Council within the twenty-(20-) day period for filing protests shall be transmitted to the State Liquor Board with the certified copy of the order. Upon approval of the application by the State Liquor Board, the Business Licensing and Revenue Collections Administrator shall issue a license to the applicant. (1606,4338)

5-9-5: QUALIFICATIONS OF LICENSEE:
No applicant shall be issued a spirituous liquor license from the City unless such applicant meets all of the requirements set forth in the Arizona Revised Statutes, Title 4, Chapter 2, Article 1, as amended, for the issuance of a State liquor license. (4338)

5-9-6: ISSUANCE OF LICENSES:
Every person applying for a license under this Chapter shall pay the application fee provided for in Section 5-9-4 hereof and shall also pay the issuance fee and the license fee described in this Chapter for each place of business maintained by such applicant. (1673)

5-9-7: ISSUANCE; LICENSE AND TRANSFER FEES:
The issuance fees and annual fees for licenses to be paid to the City shall in accordance with the current Schedule of Fees and Charges. (4338)

The issuance fee shall be paid at the time of making application for the license, and if the license is not issued, shall be returned to the applicant. The first annual fee shall be paid with the application, and if the license is not issued, it shall be returned to the applicant. The renewal fee shall be paid annually in advance on or before the thirty-first (31) day of December of each year, and if not paid when due, an additional twenty percent (20%) penalty shall immediately become due and owing. Every license shall expire on December 31 of each year. (919, 2127,2139)

Each application for a transfer of license, whether a transfer from person to person, location to location, change of agent for a corporation, or any other type of transfer, shall for the purposes of this Chapter be treated as if the application were for the issuance of an original license, and the application fee, the issuance fee, and the annual fee shall be paid with such application, notwithstanding that the annual fees may have been paid with respect to that license elsewhere. (919)

5-9-8: SANITATION AND COMPLIANCE WITH OTHER LAWS AND ORDINANCES:
It shall be unlawful for any person to sell spirituous liquors in the City without first having provided this place of business or establishment adequate toilet and sanitation conveniences and without having first complied with all the requirements of any law or ordinance of the City or any law of the State which may be applicable thereto. (919,4338)
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**ARTICLE II - DETERMINATION OF GROSS INCOME**

| 14   | 200     |        |     | Determination of gross income: in general |
| 14   | (A)     |        |     | Includes: |
| 14   | 1       |        |     | Value from sales of property or service |
| 14   | 2       |        |     | Total sale or lease price |
| 14   | 3       |        |     | Receipts, cash, barter, exchange, reduction of debt, etc. |
| 14   | 4       |        |     | Including deposits and deferred payments (Reg. 200.1) |
| 14   | (B)     |        |     | Barter, exchange, trade-outs, etc. |
| 14   | (C)     |        |     | No deduction for cost, losses, etc. |
| 14   | (D)     |        |     | Gross income, gross receipts |
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<td>220 Determination of gross income: artificially contrived transactions</td>
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<td>230 Determination of gross income based upon method of reporting</td>
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**ARTICLE III - LICENSING AND RECORD KEEPING**

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<td>Every person storing/using tangible personal property on which tax is imposed</td>
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### PRIVILEGE AND EXCISE TAXES (Index)

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<td>Must maintain books and records for Tax Collector during any business day; electronic filing</td>
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#### ARTICLE IV - PRIVILEGE TAXES

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## PRIVILEGE AND EXCISE TAXES (Index)

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<td>Such acts constitute a Class One misdemeanor</td>
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<td>Filing a lien does not preclude any other collection methods</td>
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<td>Liens can be released in whole or in part upon payment</td>
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<td>Actions to recover tax</td>
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<td>Cannot begin until tax actually assessed</td>
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<td>Within six years after assessment is final</td>
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<td>Prior to any written agreement between taxpayer and Tax Collector, if one exists</td>
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<td>At any time upon a lien</td>
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<td>Collection of taxes when there is succession in and/or cessation of business</td>
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### ARTICLE VI - USE TAX

| 88   | 600     |        |     | Use tax: definitions |
| 88   |        |        |     | Acquire (for storage or use) |
| 88   |        |        |     | Retailer |
| 88   |        |        |     | Storage (within the City) |
| 88   |        |        |     | Use (of tangible personal property) |
| 88   | 601     |        |     | (Reserved) |
| 88   | 602     |        |     | (Reserved) |
| 88   | 610     |        |     | Use tax: imposition of tax; presumption |
| 88   | A       |        |     | Imposition of tax |
| 88   | B       |        |     | Measure of tax; rate |
| 88   | 1       |        |     | Cost of goods stored or used in the City |
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<td>Any retailer not located in the City who is licensed to collect use tax</td>
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<td>Any agent of a retailer not maintaining a place of business within the City who sells or leases tangible personal property within the City</td>
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<td>Any purchaser or lessor of tangible personal property within the City who claimed exemption from tax at time of purchase/lease from a retailer</td>
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<td>Leases of motion picture film, etc. to an amusement business, etc. to generate income</td>
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## ARTICLE VII - ACCESS TO CARE PROGRAM

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<td>ATC tax is determined to be unlawful under city, state or federal law</td>
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CHAPTER 10

PRIVILEGE AND EXCISE TAXES

SECTION:

5-10-1: CODE ADOPTED
5-10-2: VIOLATION; PENALTY (2447)

5-10-1: CODE ADOPTED:
That certain document known as "Chapter 10, Privilege and Excise Taxes of the City of Mesa, Arizona," three (3) copies of which are on file in the office of the City Clerk of the City, which document was made a public record by Resolution No. 5831 of the City, is hereby referred to, adopted and made a part hereof as if fully set out in this Chapter, the provisions thereof to become effective on April 8, 1987. (2175)

5-10-2: VIOLATION, PENALTY: (2447)
Any person convicted of a violation of any provision of Title 5, Chapter 10, Mesa City Code shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a term not to exceed six (6) months, or by both fine and imprisonment. (2447,2466)

CHAPTER 10 - PRIVILEGE AND EXCISE TAXES

ARTICLE I - GENERAL CONDITIONS AND DEFINITIONS

5-10-1: WORDS OF TENSE, NUMBER, AND GENDER; CODE REFERENCES:

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

(B) For the purposes of this Chapter, all Code references, unless specified otherwise, shall:

1. Refer to this City Code.

2. Be deemed to include all amendments to such Code references.

5-10-100: GENERAL DEFINITIONS:
For the purposes of this Chapter, the following definitions apply:

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

BROKER: Any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter and who receives for his principal all or part of the gross income from the taxable activity.
BUSINESS: Includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either directly or indirectly, but does not include either: casual activities or sales; or the transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system. (5190)

BUSINESS DAY: Any day of the week when the Tax Collector’s Office is open for the public to conduct the Tax Collector’s business.

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

COMBINED TAXES: The sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Chapter 6, Article 3, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter. (3729/Reso. 7458)

COMMERCIAL PROPERTY: Any real property or portion of such property used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as office, etc. (2977/Reso. 6722)

COMMUNICATIONS CHANNEL: Any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

CONSTRUCTION CONTRACTING: The activity of a construction contractor.

CONSTRUCTION CONTRACTOR: A person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract. (3420/Reso. 7134)

DELIVERY (OF NOTICE) BY THE TAX COLLECTOR: Receipt (of notice) by the taxpayer.

DELIVERY, INSTALLATION, OR OTHER DIRECT CUSTOMER SERVICES: Services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer’s books and records.

ENGAGING: When used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
EQUIVALENT EXCISE TAX:

1. A Privilege or Use Tax levied by another Arizona municipality upon the transaction in question and paid either to such Arizona municipality directly or to the vendor;

2. An excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question and paid either to such jurisdiction directly or to the vendor; or

3. An excise tax levied by a Native American government organized under the laws of the federal government upon the transaction in question and paid either to such jurisdiction directly or to the vendor. (2977/Reso. 6722)

FEDERAL GOVERNMENT: The United States government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

FOOD: Any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. §42-1387. Under no circumstances shall "food" include alcoholic beverages or tobacco or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall “Food” include an edible product, beverage, or ingredient infused, mixed, or in any way combined with Medical Marijuana or an active ingredient of Medical Marijuana. (5059)

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

JET FUEL: Jet fuel as defined in A.R.S. Section 42-5351. (3729/Reso. 7458)

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

LESSEE: Includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

LESSOR: Includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

LICENSING (FOR USE): Any agreement between the user ("licensee") and the owner or the owner’s agent ("licensor") for the use of the licensor’s property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

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

MANUFACTURED BUILDING: A manufactured home, mobile home, or factory-built building as defined in A.R.S. §41-2142. (2977/Reso. 6722)

MANUFACTURER: A person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms qualities, properties, and combinations.
MEDICAL MARIJUANA: Means “Marijuana” used for a “Medical Use” as those terms are defined in A.R.S. Section 36-2801. (5059)

MINING AND METALLURGICAL SUPPLIES: All tangible personal property acquired by persons engaged in activities defined in Section 5-10-432 for such use. This definition shall not include: (2977/Reso. 6722)

1. Janitorial equipment and supplies.
2. Office equipment, office furniture, and office supplies.
3. Motor vehicles licensed for use upon the highways of the State.

MODIFIER: A person who reworks, changes, or adds to products, wares, or articles of manufacture.

NONPROFIT ENTITY: Any entity organized and operated exclusively for charitable purposes or operated by the federal government, the State, or any political subdivision of the State.

OCCUPANCY (OF REAL PROPERTY): Any occupancy or use or any right to occupy or use real property, including any improvements, rights, or interests in such property.

OUT-OF-CITY SALE: The sale of tangible personal property and job printing if all of the following occur:

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

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

OUT-OF-STATE SALE: The sale of tangible personal property and job printing if all of the following occur:

1. The order is placed from without the State of Arizona; and (4835)
2. The property is delivered to the buyer at a location outside the State; and (4835)
3. The property is purchased for use outside the State. (4835)

OWNER-BUILDER: An owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

PERSON: An individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the federal government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.
**PROSTHETIC:** Means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner, or veterinarian: (2977, 5190/Reso. 6722)

1. Any man-made device for support or replacement of a part of the body or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

2. Insulin, insulin syringes, and glucose test strips sold with or without a prescription. (3270/Reso. 6970)

3. Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

4. Drugs or medicine, including oxygen.

5. Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

6. Durable medical equipment which has a federal Health Care Financing Administration Common Procedure Code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home. (3270/Reso. 6970)

7. Orthodontic devices dispensed by a dental professional who is licensed under Title 32, Chapter 11 to a patient as part of the practice of dentistry. (5059, 5190)

8. Under no circumstances shall “prosthetic” include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person. (5190)

**QUALIFYING COMMUNITY HEALTH CENTER:**

1. An entity that is recognized as nonprofit under Section 501(c)3 of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either: (3476,4616/Reso. 7209,4169/Reso. 8205)
   
   (a) The sole provider of primary care in the community. (3476,4616/Reso. 7209)

   (b) A nonhospital-affiliated clinic that is located in a federally designated medically underserved area in this State. (3476,4616/Reso. 7209)

2. Includes clinics that are being constructed as qualifying community health centers. (4169,4616/Reso. 8205)

**QUALIFYING HEALTH CARE ORGANIZATION:** An entity that is recognized as nonprofit under Section 501(c)3 of the United States Internal Revenue Code and that uses, saves, or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health- and medical-related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved, or invested to lease, purchase, or construct a facility for health- and medical-related education and charitable services are included in the eighty percent (80%) requirement. (3476/Reso. 7209,4169/Reso. 8205)
QUALIFYING HOSPITAL: Means any of the following: (3476/Reso. 7209,4169/Reso.8205)

1. A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (3476/Reso. 7209)

2. A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services, or health-related services and is not used or held for profit. (3476/Reso. 7209)

3. A hospital, nursing care institution, or residential care institution which is operated by the federal government, this State, or a political subdivision of this State. (3476/Reso. 7209)

4. A facility that is under construction and that on completion will be a facility under Subdivision 1, 2, or 3 of this paragraph. (4169/Reso. 8205)

RECEIPT (OF NOTICE) BY THE TAXPAYER: The earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer’s address of record with the Tax Collector.

REMEDICATION: Those actions that are reasonable, necessary, cost-effective, and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess, and evaluate such release or threat of release, actions of remediation, removal, or disposal of hazardous substances, or taking such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic, and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply. (3420/Reso. 7134)

RENTAL EQUIPMENT: Tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

1. The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and (2321,4616)

2. The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation to an extent greater than fifteen percent (15%) of its actual use. (4616)

RENTAL SUPPLY: An expendable or nonexpendable repair or replacement part sold to become part of "rental equipment," provided that:

1. The documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
2. The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and (2321)

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

REPAIRER: A person who restores or renews products, wares, or articles of manufacture.

RESIDES WITHIN THE CITY: In cases other than individuals whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

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

RETAIL SALE (SALE AT RETAIL): The sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

RETAILER: Any person engaged or continuing in the business of sales of tangible personal property at retail.

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

SOLAR DAYLIGHTING: A device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting. (4835)

SOLAR ENERGY DEVICE: A system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a Trombe wall, and not merely as a part of a normal structure, such as a window. (4835)
SPECULATIVE BUILDER: Either: (3729/Reso. 7458)

1. An owner-builder who sells or contracts to sell at any time improved real property (as provided in Section 5-10-416) consisting of:

   (a) Custom, model, or inventory homes, regardless of the stage of completion of such homes; or

   (b) Improved residential or commercial lots without a structure; or (3729/Reso. 7458)

2. An owner-builder who sells or contracts to sell improved real property, other than improved real property specified in Subsection (1) above: (3729/Reso. 7458)

   (a) Prior to completion; or

   (b) Before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete. (2535)

SUBSTANTIALLY COMPLETE: The construction contracting or reconstruction contracting:

1. Has passed final inspection or its equivalent;

2. Certificate of Occupancy or its equivalent has been issued; or

3. Is ready for immediate occupancy or use. (2535)

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

TAX COLLECTOR: The Finance Director or his designee or agent for all purposes under this Chapter.

TAXPAYER: Any person liable for any tax under this Chapter.

TAXPAYER PROBLEM RESOLUTION OFFICER: The individual designated by the City to perform the duties identified in Section 5-10-515 and 5-10-516. In cities with a population of fifty thousand (50,000) or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than fifty thousand (50,000), the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Office is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector. (3270/Reso. 6970)

TELECOMMUNICATION SERVICE: Any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.
TRANSIENT: Any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days. (4616)

UTILITY SERVICE: The producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

5-10-110: DEFINITIONS; INCOME-PRODUCING CAPITAL EQUIPMENT:

(A) The following tangible personal property, other than items excluded in Subsection (D) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:

1. Machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining, or metallurgical operations. The terms "manufacturing," "processing," "fabricating," "job printing," "refining," and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting, and refining. (2977/Reso. 6722)

2. Mining machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading, or transporting such extracted material to the surface. "Mining" includes underground, surface, and open pit operations for extracting ores and minerals. (2977/Reso. 6722)

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems. (2977/Reso. 6722)

4. Machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power. (2977/Reso. 6722)

5. Pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this Section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals, and any other parts that are used in operating the pipes or valves. (2977/Reso. 6722, 3729/Reso. 7458)

6. Aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property, or United States mail in intrastate, interstate, or foreign commerce. (2977/Reso. 6722)

(b) Any foreign government for use by such government outside of this State. (2977/Reso. 6722)
(c) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State. (2977/Reso. 6722)

7. Machinery, tools, equipment, and related supplies used or consumed directly in repairing, remodeling, or maintaining aircraft, aircraft engines, or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property. (2977/Reso. 6722)

8. Railroad rolling stock, rails, ties, and signal control equipment used directly to transport persons or property. (2977/Reso. 6722, 3729/Reso. 7458)

9. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes. (2977/Reso. 6722)

10. Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town, or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation. (2977/Reso. 6722)

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


13. Machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering and designing, developing, or testing prototypes, processes, or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services. (2977/Reso. 6722)

14. (Reserved)

15. Included in income-producing capital equipment are liquid, solid, or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development, or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This Subsection does not include chemicals that are used or consumed in activities such as packaging, storage, or transportation, but does not affect any deduction for such chemicals that is otherwise provided by this Code. Chemicals meeting the requirements of this Subsection are deemed not to be expendable under Subsection (D) of this Section. (2977/Reso. 6722, 3476/Reso. 7209, 3729/Reso. 7458)
16. Cleanrooms that are used for manufacturing, processing, fabrication, or research and development, as defined in paragraph 13 of this Subsection, of semiconductor products. For purposes of this paragraph, "cleanroom" means all property that comprises or creates an environment where humidity, temperature, particulate matter, and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom: * (3476/Reso. 7209)

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting, and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment. (3476/Reso. 7209)

(b) Does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment. (3476/Reso. 7209)

17. Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia, or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five (5) years after the start of initial construction. For purposes of this paragraph: (3476/Reso. 7209)

(a) "Motion picture, multimedia, or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, CD-Rom, video game production, commercial advertising and television episode production, and other genres that are introduced through developing technology. (3476/Reso. 7209)

(b) "Soundstage complex" means a facility of multiple stages including production offices, construction shops, and related areas, property, and costume shops, storage areas, parking for production vehicles, and areas that are leased to businesses that complement the production needs and orientation of the overall facility. (3476/Reso. 7209)

18. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control, or transmit telecommunications information: (3476/Reso. 7209)

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations Parts 25 and 100. (3476/Reso. 7209)

(b) Any satellite television or data transmission facility, if both of the following conditions are met: (3476/Reso. 7209)

i. Over two-thirds (2/3) of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one (1) or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations Parts 25 and 100. (3476/Reso. 7209)

ii. Over two-thirds (2/3) of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services. (3476/Reso. 7209)

* Pursuant to Ordinance 3476/Reso. 7209, Section 5-10-110, Subsection (A), paragraph 16 is retroactive to April 1, 1987
For purposes of Subdivision (b) of this paragraph, "test period" means the three hundred sixty-five- (365-) day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers. (3476/Reso. 7209)

19. Machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility, or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs. (3729/Reso. 7458)

20. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity, or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality, or a political subdivision of this State to prevent, monitor, control, or reduce land, water, or air pollution. (3729/Reso. 7458)

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission order issued April 21, 1997, 47 Code of Federal Regulations Part 73. This paragraph does not exempt any of the following: (3729/Reso. 7458)

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph. (3729/Reso. 7458)

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph. (3729/Reso. 7458)

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first. (3729/Reso. 7458)

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

(C) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in Subsection (D) below, where the property is acquired to become an integral part of another item itemized in Subsections (A) or (B) above.

(D) The tangible personal property defined as "income-producing capital equipment" in this Section shall not include:

1. Expendable materials. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in Subsections (A), (B), or (C) of this Section regardless of the cost or useful life of that property. (2977/Reso. 6722, 3729/Reso. 7458)
2. Janitorial equipment and hand tools. (2977/Reso. 6722)

3. Office equipment, furniture, and supplies.

4. Tangible personal property used in selling or distributing activities.

5. Motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to Subsection (A)10 above without regard to the use of such motor vehicles. (2977/Reso. 6722)

6. Shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt. (2977/Reso. 6722)

7. Motors and pumps used in drip irrigation systems. (2977/Reso. 6722)

(E) For the purposes of this Section: (2977/Reso. 6722)

1. "Aircraft" includes: (2977/Reso. 6722)

   (a) An airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121. (2977/Reso. 6722)

   (b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property. (2977/Reso. 6722)

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation. (2977/Reso. 6722)

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**5-10-115: DEFINITIONS; COMPUTER SOFTWARE, CUSTOM COMPUTER PROGRAMMING:**

(A) **COMPUTER SOFTWARE:** Any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter regardless of the method by which title, possession, or right to use the software is transferred to the user.

(B) **CUSTOM COMPUTER PROGRAMMING:** Any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

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

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

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**5-10-120: (RESERVED):**
ARTICLE II - DETERMINATION OF GROSS INCOME

5-10-200: DETERMINATION OF GROSS INCOME; IN GENERAL:

(A) Gross income includes:

1. The value proceeding or accruing from the sale of property, the providing of service, or both.

2. The total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

3. All receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

4. All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

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

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

(D) For the purposes of this Chapter the total amount of gross income, gross receipts or gross proceeds of sales for nuclear fuel shall be deemed to be the value of the purchase price of uranium oxide used in producing the fuel. The tax imposed by this Chapter may be imposed only once for any one quantity or batch of nuclear fuel regardless of the number of the transactions or financing arrangements which may occur with respect to that nuclear fuel. (5190)

5-10-210: DETERMINATION OF GROSS INCOME; TRANSACTIONS BETWEEN AFFILIATED COMPANIES OR PERSONS:

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

5-10-220: DETERMINATION OF GROSS INCOME; ARTIFICIALLY CONTRIVEN TRANSACTIONS:

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

5-10-230: DETERMINATION OF GROSS INCOME BASED UPON METHOD OF REPORTING:

The method of reporting chosen by a taxpayer, as provided in Section 5-10-520, necessitates the following adjustments to gross income for all purposes under this Chapter:
(A) Cash basis. When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:

1. The total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions and
2. All amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are allowed. Interest on finance contracts may be deducted if separately itemized on all books and records. (3270/Reso. 6970)

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

1. The amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made and only to the extent that such amount was actually charged-off, and also only to the extent that such amount is or was included as taxable gross income and
2. If any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection.

5-10-240: EXCLUSION OF CASH DISCOUNTS, RETURNS, REFUNDS, TRADE-IN VALUES, VENDOR-ISSUED COUPONS, AND REBATES FROM GROSS INCOME:

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

1. Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.
2. The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.
3. The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 5-10-427. (2977/Reso. 6722)
4. When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.
5. Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.
6. In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer. (3270/Reso. 6970)

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

5-10-250: EXCLUSION OF COMBINED TAXES FROM GROSS INCOME; ITEMIZATION; NOTICE; LIMITATIONS:

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

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

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

5-10-260: EXCLUSION OF FEES AND TAXES FROM GROSS INCOME; LIMITATIONS

(A) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees, or both, have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III regarding record keeping are met. For the purpose of the exclusion provided by this Subsection only, the terms vendor and vendee shall also apply to a lessor and lessee, respectively, of a motor vehicle if, in addition to all other requirements of this Subsection, the lease agreement specifically requires the lessee to pay such fees or taxes and such amounts are separately itemized in the documentation provided to the lessee.
(B) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III relating to record keeping have been met.

(C) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III regarding record keeping are met: (3270/Reso. 6970)

1. Emergency telecommunication services excise tax imposed pursuant to A.R.S. §42-1472. "Emergency telecommunications services" means telecommunication services or systems that use Number 911 or a similarly designated telephone number for emergency calls; (3270/Reso. 6970)

2. The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. §42-1472; (3270/Reso. 6970)

3. Federal excise taxes on communications services as imposed by 26 U.S.C. §4251; (3270/Reso. 6970)

4. Car rental surcharge imposed pursuant to A.R.S. §48-4234; (3270/Reso. 6970)

5. Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. §4001(01); (3270/Reso. 6970)

6. Waste tire disposal fees imposed pursuant to A.R.S. §44-1302. (3270/Reso. 6970,4169/Reso. 8205)

(D) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor. (3270/Reso. 6970)

5-10-265: (RESERVED) (2977/RESO. 6722)

5-10-266: EXCLUSION OF MOTOR CARRIER REVENUES FROM GROSS INCOME
There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following: (2977/Reso. 6722)

(A) A motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16. (2977,4616/Reso. 6722, 3476/Reso. 7209)

(B) Leasing, renting, or licensing a motor vehicle, subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16. (2977/Reso. 6722, 3476/Reso. 7209)

(C) The sale of a motor vehicle, and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting, or licensing such property. (2977/Reso. 6722, 3476/Reso. 7209)
(D) For the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing twenty-six thousand (26,000) pounds or more, a lightweight motor vehicle which weighs twelve thousand one (12,001) pounds to twenty-six thousand (26,000) pounds, and a light motor vehicle weighing twelve thousand (12,000) pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15, or A.R.S. Title 28, Chapter 16. (3476,4616/Reso. 7209)

5-10-270: EXCLUSION OF GROSS INCOME OF PERSONS DEEMED NOT ENGAGED IN BUSINESS:

(A) For the purposes of this Section, the following definitions shall apply:

1. FEDERALLY EXEMPT ORGANIZATION: An organization which has received a determination of exemption or qualifies for such exemption under 26 U.S.C. §501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity," "nonlicensed business," or "public educational entity."

2. GOVERNMENTAL ENTITY: The federal government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.

3. NONLICENSED BUSINESS: Any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.

4. PROPRIETARY CLUB: Any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. §§501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.

5. PUBLIC EDUCATIONAL ENTITY: Any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

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

(C) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:

1. Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. §§501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue as prescribed by regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.
2. Gross income from unrelated business income as that term is defined in 26 U.S.C. §512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.

3. (Reserved)

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

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

2. The Privilege License number of the otherwise exempt vendee; and

3. Such other information as the Tax Collector may require.

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

(F) In any case, if a federally exempt organization, proprietary club, or nonlicensed business rents, leases, licenses, or purchases any tangible personal property for its own storage or use and no City Privilege or Use Tax or equivalent excise tax has been paid on such transaction, said organization, club, or business shall be liable for the Use Tax upon such acquisitions or use of such property.

5-10-280: (RESERVED): (3729/RESO. 7458)

5-10-285: (RESERVED):

5-10-290: (REPEALED BY 3039)
ARTICLE III - LICENSING AND RECORD KEEPING

5-10-300: LICENSING REQUIREMENTS:

(A) The following persons shall make application to the Tax Collector for a Transaction Privilege and Use Tax License and no person shall engage or continue in business or engage in such activities until he shall have such a license: (2533,2910,4037,4852,5259)

1. Every person engaging or continuing in business activities within the city or town upon which a Transaction Privilege Tax is imposed by this Chapter. (5259)

2. Every person engaging or continuing in business within the city or town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter. (5259)

3. (Reserved)

(B) For the purpose of determining whether a Transaction Privilege and Use Tax License is required, a person shall be deemed to be “engaging or continuing in business” within the city or town if: (4037,4852,5259)

1. Engaging in any activity as a principal or broker, the gross receipts of which may be subject to Transaction Privilege Tax under Article IV of this Chapter, or (5259)

2. Maintaining within the city or town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business; maintaining within the city or town directly, or if a corporation by a subsidiary, any real or tangible personal property; or having any agent or other representative operating within the city or town under the authority of such person, or if a corporation by a subsidiary, irrespective of whether such place of business, property, or agent or other representative is located here permanently or temporarily, or (5259)

3. Soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the city or town from customers, consumers, or users located within the city or town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this city or town. (5259)

4. A person shall also be deemed to be “engaging or continuing in business” if engaging in any activity subject to Use Tax under Article VI of this Chapter for business purposes. Individuals who acquire items subject to Use Tax for their own personal use or their family’s personal use are not required to obtain a license. (5259)

5. (Reserved)

(C) A person engaging in more than one activity subject to Transaction Privilege Tax at any one business location is not required to obtain a separate license for each activity, provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. (4037,5259)
(D) The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days. (2977/Reso. 6722, 4037, 5259)

(E) Limitation. The issuance of a Transaction Privilege and Use Tax License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject. (4037, 5259)

(F) Casual activity. For the purposes of this Chapter, individuals engaging in a “casual activity or sale” are not subject to the license requirements imposed under this Article provided that they are only engaged in private sales activities, such as the sale of a personal automobile or garage sale, on no more than three separate occasions during any calendar year. (5259)

5-10-310: LICENSING: SPECIAL REQUIREMENTS: (5259)

(A) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaging in business as partners, limited or general, shall be in the name of the partnership. (5259)

(B) Limited Liability Companies. Application for a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business shall provide, as a minimum, the names and addresses of all members and the manager. Licenses issued to persons engaging in business as Limited Liability Companies, shall be in the name of the LLC. (5259)

(C) Corporations. Application for a Transaction Privilege and Use Tax License for a corporation engaging or continuing in business shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaging in business as corporations shall be in the name of the corporation. (5259)

(D) Multiple Locations or Multiple Business Names. A person engaging or continuing in one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment. (2321, 5259)

(E) Real Property Rental, Leasing, and Licensing for Use. In all cases the Transaction Privilege and Use Tax License shall be issued only to the owner of the real property regardless of the owner engaging a property manager or other broker to oversee the owner’s business activity including filing tax returns on behalf of the owner. Each rental property that can be independently sold or transferred is deemed to be a separate business establishment. Each platted parcel of real property subject to the tax imposed by this Chapter is deemed to be a separate business establishment and requires a separate license, regardless of the number of rental units located on that platted parcel. If one structure is located on multiple parcels in a manner such that ownership of an individual parcel cannot be sold or transferred without requiring alteration to divide the structure, one license shall be required for all affected parcels. (5259)
5-10-320: LICENSE FEES; ANNUAL RENEWAL; RENEWAL FEES: (5259)

(A) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of twenty dollars ($20.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately identified in this Section. The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such annual renewal fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (2533, 2785, 2910, 4852, 4927, 5259)

(B) The Transaction Privilege and Use Tax License to engage in the business activity of residential real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of twenty dollars ($20.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (5259)

(C) The Transaction Privilege and Use Tax License to engage in the business activity of commercial real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of twenty dollars ($20.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (5259)

5-10-330: LICENSING: DURATION; TRANSFERABILITY; DISPLAY; PENALTIES; PENALTY WAIVER; RELICENSING; FEES COLLECTIBLE AS IF TAXES. (5259)

(A) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector’s office to be deemed paid and received. (5259)

(B) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee’s place of business. (5259)

(C) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540. (5259)

(D) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or portion of a year he operated without a license, plus a license penalty of 50% of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540. (5259)
Any licensee who permits his license to expire through cancellation as provided in Section 5-10-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 5-10-320. (5259)

Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license. (5259)

Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the city for all applicable fees and penalties and shall be subject to the provisions of Sections 5-10-580 and 5-10-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections. (5259)

5-10-340: LICENSING; CANCELLATION; REVOCATION: (5259)

(A) Cancellation. The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector. (5259)

(B) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee. (5259)

(C) Notice and Hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector. (5259)

(D) After cancellation or revocation of a taxpayer’s license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter. (5259)

5-10-350: OPERATING WITHOUT A LICENSE: (5259)

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter. (5259)

5-10-360: RECORD KEEPING REQUIREMENTS: (5259)

(A) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by this Article; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day. (3270/Reso. 6970, 5259)
(B) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and
documents. Such letter directive shall apply:

1. Only for future reporting periods, and

2. Only by express determination of the Tax Collector that such specific record keeping is necessary due to the
inability of the taxing jurisdiction to conduct an adequate examination of the past activities of the taxpayer,
which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the
taxpayer. (5259)

5-10-362: RECORD KEEPING; INCOME: (5259)
The minimum records required for persons having gross income subject to, or exempt or excluded
from, tax by this Chapter must show: (5259)

(A) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City. (5259).

(B) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return.
(5259)

(C) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the
official State tax return. (5259)

(D) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed: (5259)

1. If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease or license for use of
rental equipment: (5259)

   a. the City Privilege License number and State Transaction Privilege Tax License number of the customer
   (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer
   resides), and (5259)

   b. the name, business address, and business activity of the customer, and (5259)

   c. evidence sufficient to persuade a reasonable prudent businessman that the transaction is believed to be in
   good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the
   vendee in the ordinary and regular course of his business activity, as provided by Regulation. (5259)

2. If the transaction is claimed to be exempt for any other reason: (5259)

   a. the name, business address, and business activity of the customer, and (5259)

   b. evidence which would establish the applicability of the exemption to a reasonably prudent businessman
   acting in good faith. Ordinary business documentation which would reasonably indicate the applicability
   of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed
   from liability therein, if he acts in good faith as provided by Regulation (5259)

(E) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct
customer services, where applicable, evidence that the deductible income has been separately stated and
shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other
deductions, exemptions, and exclusions shall be separately shown and substantiated. (5259)
(F) With respect to special classes and activities, such other books, records and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class. (5259)

(G) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter. (5259)

5-10-364: RECORDKEEPING: EXPENDITURES: (5259)

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are: (5259)

(A). The total price of all goods acquired for use or storage in the City. (5259)

(B) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City. (5259)

(C) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license. (5259)

(D) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable. (5259)

(E) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:

1. All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders. (5259)

2. Disbursement of collected gratuities and related payroll information required of restaurants. (5259)

3. (Reserved)

4. The validity of any claims of proof of exemption. (5259)

5. A claimed alternative prior value for reconstruction. (5259)

6. All claimed exemptions to the Use Tax imposed by Article VI of this Chapter. (5259)

7. Costs used to compute the “computed charge” claimed for retail service and repair. (5259)

8. (Reserved)

9. (Reserved)

(F) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer. (5259)

(G) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter. (5259)
5-10-366: RECORDKEEPING: OUT-OF-CITY AND OUT-OF-STATE SALES: (5259)

(A) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations. (5259)

(B) Out-State-Sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation: (5259)

1. Documentation of location of the buyer at the time of the order placement; and (5259)

2. Shipping, delivery, or freight documents showing where the buyer took delivery; and (5259)

3. Documentation of intended location of use or storage of the tangible personal property sold to such buyer. (5259)

5-10-370: RECORDKEEPING: CLAIM OF EXCLUSION, EXEMPTION, DEDUCTION, OR CREDIT; DOCUMENTATION; LIABILITY: (5259)

(A) All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required either by this Chapter or Regulation. (5259)

(B) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor. (5259)

5-10-372: PROOF OF EXEMPTION: SALE FOR RESALE; SALE, RENTAL, LEASE, OR LICENSE OF RENTAL EQUIPMENT: (5259)

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of “sale for resale or lease” or “lease for re-lease” does not meet this burden and is insufficient to justify an exemption. The “reasonable evidence” must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions. (5259)

5-10-380: INADEQUATE OR UNSUITABLE RECORDS. (5259)

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either: (5259)

(A) To provide such other records required by this Chapter or Regulation; or (5259)

(B) To correct or to reconstruct his records, to the satisfaction of the Tax Collector. (5259)
ARTICLE IV - PRIVILEGE TAXES

5-10-400: IMPOSITION OF PRIVILEGE TAXES; PRESUMPTION:

(A) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

1. Privilege Tax upon persons on account of their business activities to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not or whether derived from within the City or from without.

2. (Reserved)

3. A privilege tax upon persons for the privilege of selling jet fuel, whether derived from residents of the City or not, or whether derived from within the City or from without, in accordance with the provisions of Section 5-10-400. (3729/Reso. 7458)

(B) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(C) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income, or gallons sold, is subject to the tax until the contrary is established by the taxpayer. (3729/Reso. 7458)

(D) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

5-10-405: ADVERTISING:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of local advertising by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from local advertising. All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "local advertising," except the following: (3491,4553,5478)

1. The advertising of a product or service which is sold or provided both within and without the State by more than one (1) "commonly designated business entity" within the State and in which the advertisement names either no "commonly designated business entity" within the State or more than one (1) "commonly designated business entity."
COMMONLY DESIGNATED BUSINESS ENTITY: Any person selling or providing any product or service to its customers under a common business name or style even though there may be more than one (1) legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

2. The advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

3. The advertising of a product which may only be purchased from an out-of-State supplier.

4. Political advertising for United States Presidential and Vice Presidential candidates only.

5. Advertising by means of product purchase coupons redeemable at any retail establishment carrying such product, but not product coupons redeemable only at a single commonly designated business entity.

6. Advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(B) (Reserved)

5-10-407: (RESERVED) (2321)

5-10-410: AMUSEMENTS, EXHIBITIONS, AND SIMILAR ACTIVITIES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the City or takes place entirely within the City, which includes the following type or nature of businesses: (2977,4616,5478/Reso. 6722,3491,4553)

1. Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment. (2977/Reso. 6722)

2. (Reserved)

(B) Deductions or Exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section: (4616)

1. (Reserved)

2. Amounts retained by the Arizona Exposition and Arizona State Fair Board from ride ticket sales at the annual State Fair. (4616)
3. Income received from a hotel business subject to tax under Section 5-10-444, if all of the following apply:

   (a) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax. (4616)

   (b) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection. (4616)

   (c) The hotel business has provided an exemption certificate to the person engaging in business under this section. (4616)

4. Income that is specifically included as the gross income of a business activity upon which another section of this article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity. (4616)

5. Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business. (4616)

   (C) The tax imposed by this section shall not include arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement. (4616)

5-10-415: CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City. (3491, 4553, 5478)

1. However, gross income from construction contracting shall not include charges related to groundwater-measuring devices required by A.R.S. §45-604.

2. (Reserved)

3. Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 5-10-427. (2977/Reso. 6722)

4. For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services. (4835)
(B) Deductions and Exemptions. (3729/Reso. 7458)

1. Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

2. All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

3. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under: (3729/Reso. 7458)

   (a) Section 5-10-465, Subsections (G) and (P) (3729/Reso. 7458)

   (b) Section 5-10-660, Subsections (G) and (P) (3749/Reso. 7458)

   shall be exempt or deductible, respectively, from the tax imposed by this Section.* (3729/Reso. 7458)

4. The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to Section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one (1) of the following: (3729/Reso. 7458, 3954/Reso. 7756)

   (a) To be incorporated into real property. (3729/Reso. 7458)

   (b) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

   (c) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

5. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

6. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-415, Subsection (B)3 is retroactive to January 1, 1999
7. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

8. The gross proceeds of sales or gross income received from a post-construction contract to perform post-construction treatment of real property for termite and general pest control, including wood-destroying organisms, shall be exempt from tax imposed under this Section. (3954/Reso. 7756)

9. Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(a) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, Subsection D. (4616)

(b) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation. (4616)

(c) Any other information considered to be necessary. (4616)

10. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer. For the purposes of this paragraph: (4616, 4979)

(a) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(c) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

11. For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sale or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)
(C) **SUBCONTRACTOR:** A construction contractor performing work for either:

1. A construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number. (2535)

2. An owner-builder who has provided the subcontractor with a written declaration that:

   (a) The owner-builder is improving the property for sale; and

   (b) The owner-builder is liable for the tax for such construction contracting activity; and

   (c) The owner-builder has provided the contractor his City Privilege License number. (2535)

3. A person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and setup and has provided the subcontractor his City privilege license number. (2977/Reso. 6722)

   Subcontractor also includes a construction contractor performing work for another subcontractor as defined above. (2535)

5-10-416: **CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:**

(A) The tax shall be equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City. (3491,4553,5478)

1. The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

2. **IMPROVED REAL PROPERTY:** Any real property:

   (a) Upon which a structure has been constructed; or

   (b) Where improvements have been made to land containing no structure (such as paving or landscaping); or

   (c) Which has been reconstructed as provided by regulation; or

   (d) Where water, power, and streets have been constructed to the property line.

3. **SALE OF IMPROVED REAL PROPERTY:** Includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
4. **PARTIALLY IMPROVED RESIDENTIAL REAL PROPERTY:** As used in this Section, means any improved real property as defined in Subsection (A)2 above being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale. (2321)

(B) Exclusions.

1. In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income as provided by regulation.

2. Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

3. (Reserved)

4. A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in Subsection (A)4 above to another speculative builder only if all of the following conditions are satisfied:

   (a) The speculative builder purchasing the partially improved residential real property has a valid City Privilege License for construction contracting as a speculative builder; and (2535)

   (b) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all Privilege Taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and (2535)

   (c) The seller also:

      i. Maintains proper records of such transactions in a manner similar to the requirements provided in this Chapter relating to sales for resale; and

      ii. Retains a copy of the written declaration provided by the buyer for the transaction; and

      iii. Is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City Privilege Tax return where he claims the exclusion. (2321,2535)

5. For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, “direct costs” means the portion of the actual costs that are directly expended in providing architectural or engineering services. (4835)

(C) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions, and tax credits: (3729/Reso. 7458)
1. Exemptions. (3729/Reso.7458)

(a) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under:

i. Section 5-10-465, Subsections (G) and (P) (3729/Reso. 7458)

ii. Section 5-10-660, Subsections (G) and (P) (3729/Reso. 7458)

shall be exempt or deductible, respectively, from the tax imposed by this Section.* (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(c) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(d) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph: (4616,4979).

(i) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(iii) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-416, Subsection (C)1(a) is retroactive to January 1, 1999
2. Deductions. (3729/Reso. 7458)

(a) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%). (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one (1) of the following: (3729/Reso. 7458, 3954/Reso. 7756)

(i) To be incorporated into real property. (3729/Reso. 7458)

(ii) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

(c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)

3. Tax Credits. (3729/Reso. 7458)

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector. (3729/Reso. 7458)

(a) A tax credit equal to the amount of City privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder. (3729/Reso. 7458)

(b) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property. (3729/Reso. 7458)

(c) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported. (3729/Reso. 7458)
5-10-417: CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS:

(A) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two percent (2.00%) of: (3491,4553,5478)

1. The gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 5-10-415(C)2; and

2. The purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(B) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services. (4835)

(C) The tax liability of this Section is subject to the following provisions relating to exemptions, deductions, and tax credits: (3729,4835/Reso. 7458)

1. Exemptions. (3729/Reso. 7458)

(a) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under: (3729/Reso. 7458)

i. Section 5-10-465, Subsections (G) and (P) (3729/Reso. 7458)

ii. Section 5-10-660, Subsections (G) and (P) (3729/Reso. 7458)

shall be exempt or deductible, respectively, from the tax imposed by this Section.* (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed by this Section. (3729/Reso. 7458)

(c) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-417, Subsection (B)1(a) is retroactive to January 1, 1999
(d) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph: (4616,4979).

(i) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(iii) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

2. Deductions. (3729/Reso. 7458)

(a) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%). (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to Section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one (1) of the following: (3729/Reso. 7458, 3954/Reso. 7756)
(i) To be incorporated into real property. (3729/Reso. 7458)

(ii) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

(c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)

3. Tax Credits. (3729/Reso. 7458)

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector. (3729/Reso. 7458)

(a) A tax credit equal to the amount of City privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder. (3729/Reso. 7458)

(b) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property. (3729/Reso. 7458)

(c) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported. (3729/Reso. 7458)

(D) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 5-10-540, will be based on reportable date.

(E) (Reserved)

5-10-417: (RESERVED) (3729/RESO. 7458)

5-10-420: (RESERVED):
5-10-422: JET FUEL SALES: (3729/RESO. 7458)

(A) The tax rate shall be at an amount of three (3) cents per gallon sold from the business activity upon every person engaging or continuing in the business of selling jet fuel. (3729/Reso. 7458)

1. Gallons sold includes all gallons sold, bartered, exchanged, included as part or whole of a trade-out, or similar transactions regardless of the type or form of payment. (3729/Reso. 7458)

2. For purposes of this Section the following terms are substitutable in Articles III and V of this Chapter, and corresponding regulations: (3729/Reso. 7458)

   (a) "Gallons" for "gross income." (3729/Reso. 7458)

   (b) "Gallon(s)" for "amount(s)." (3729/Reso. 7458)

(B) The burden of proving that a sale of jet fuel is not a taxable sale shall be upon the person who made the sale. (3729/Reso. 7458)

(C) Except as provided in Section 5-10-567, when this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a jet fuel sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax. (3729/Reso. 7458)

(D) The appropriate tax liability for any jet fuel sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the rate of the city or town of such seller's location. (3729/Reso. 7458)

(E) Exemptions. Notwithstanding Section 5-10-400(D), the exemptions in Sections 5-10-465(A), (B), and (D) through (Z) will apply to sales of jet fuel taxed under this Section. (3729/Reso. 7458)

5-10-425: JOB PRINTING:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction. (3491, 4553, 5478)

(B) The tax imposed by this Section shall not apply to:

1. Job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

2. Out-of-City sales.

4. Job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by Subsection 5-10-435(A) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.

5. Sales of job printing to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

6. (Reserved) (2977/Reso. 6722)

5-10-427: MANUFACTURED BUILDINGS

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income, including site preparation, moving to the site, and/or setup, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building. (2977,4553,5478 Reso. 6722,3491)

(B) The sale of used manufactured buildings is not taxable. (2977/Reso. 6722)

(C) The sales price of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. The sale of such items is subject to the tax under Section 5-10-460. (2977/Reso. 6722)

(D) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability. (2977/Reso. 6722)

5-10-430: TIMBERING AND OTHER EXTRACTION: (2977,4553/RESO. 6722)

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the following businesses: (3491,4553,5478)

1. Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use. (2977/Reso. 6722)

2. Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use. (2977/Reso. 6722)

(B) The rate specified in Subsection (A) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State. (2977/Reso. 6722)
(C) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of State without making sale of such products or ships his products outside the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out of State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(D) (Reserved) (2977/Reso. 6722)

5-10-432: MINING

(A) The tax rate shall be at an amount equal to one-tenth of one percent (.1%), not to exceed one-tenth of one percent (.1%), of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use. (2977/Reso. 6722)

(B) The rate specified in Subsection (A) above shall be applied to the value of the entire product mined, smelted, or produced for sale, profit, or commercial use when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State. (2977/Reso. 6722)

(C) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of State without making sale of such products or ships his products outside the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out of State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section. (2977/Reso. 6722)

5-10-435: PUBLISHING AND PERIODICALS DISTRIBUTION

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business activity of: (3491, 4553, 5478)

1. Publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 5-10-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

2. Distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(B) "Location of publication" is determined by:

1. Location of the editorial offices of the publisher, when the physical printing is not performed by the publisher or

2. Location of either the editorial offices or the printing facilities if the publisher performs his own physical printing.
(C) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further, except sales of published items directly or through distributors for the purpose of resale to retailers subject to the Privilege Tax on such resale.

(D) "Circulation," for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(E) Allocation of Taxes Between Cities and Towns. In cases where publication or distribution occurs in more than one (1) city or town, the measurement of gross income subject to tax by the City shall include:

1. That portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

2. Only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(F) The tax imposed by this Section shall not apply to sales of newspapers, magazines, or other periodicals to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

5-10-440: (RESERVED):

5-10-444: HOTELS:

The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any: (3491,4553,5478)

(A) Person. (2535)

(B) Exclusions. The tax imposed by this section shall not include: (2535,4616)

1. Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other State or a political subdivision of this State or of any other State in a privately operated prison, jail or detention facility. (4616)

2. Gross proceeds of sales or gross income that is properly included in another business activity under this article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity. (4616)

3. Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article. (4616)
4. Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 5-10-410 or Section 5-10-475 due to an exclusion, exemption or deduction. (4616)

5. Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 5-10-445 or Section 5-10-450 as rental, leasing or licensing for use of real or tangible personal property. (4616)

6. Income from providing telephone, fax or Internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 5-10-470 as telecommunication services. (4616)

5-10-445: RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration to the tenant in actual possession or the licensing for use of real property to the final licensee located within the City for a consideration, including any improvements, rights, or interest in such property; provided further that: (2977,4553,5478/Reso. 6722,3476/Reso. 7209,3491)

1. Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

2. Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

3. However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 5-10-470.

(B) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(C) Charges by a qualifying hospital, qualifying community health center, or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt. (3476/Reso. 7209)

(D) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(E) (Reserved)
(F) A person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased, or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is not deemed to be in the rental business and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease, and license income from all such lodging spaces and commercial units of real estate, even though said person may have fewer than two (2) lodging spaces. (2535,2977,4841/Reso. 6722)

(G) (Reserved)

(H) (Reserved)

(I) (Reserved)

(J) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 5-10-444 of this Code. (2535)

(K) (Reserved)

(L) (Reserved) (2977/Reso. 6722)

(M) (Reserved) (2977/Reso. 6722)

(N) Notwithstanding the provisions of Section 5-10-200(B), the fair market value of one (1) apartment in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section. (2977/Reso. 6722)

(O) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State, or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail, or detention facility is exempt from the tax imposed by this Section. (3729/Reso. 7458)

(P) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt. (3954/Reso. 7756)

(Q) Charges to patients receiving "personal care" or "directed care," by any licensed assisted living facility, licensed assisted living center, or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title 36, Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt. (3954/Reso. 7756)
Income received from the rental of any “low-income unit” as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the “gross rent” defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory “low-income unit” rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the “gross rent” limitation for the unit and the rent received from that unit. (4582)

Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph: (5059, 5190)

1. “Affiliated companies, businesses, persons or reciprocal insurers” means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and the lessee. (5059, 5190)

2. “Controlling interest” means direct or indirect ownership of a least eighty per cent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation. (5059, 5190)

3. “Reciprocal Insurer” has the same meaning prescribed in A.R.S. Section 20-762. (5059, 5190)

RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY; ADDITIONAL TAX UPON TRANSIENT LODGING: (3175,4616,5018)
In addition to the taxes levied as provided in Section 5-10-444, there is hereby levied and shall be collected an additional tax in an amount equal to five percent (5%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient. (3175,4192,4616,5018)

RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by regulation. (3491,4553,5478)

(B) Special Provisions Relating to Long-Term Motor Vehicle Leases: A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor’s interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

1. Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

2. Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

3. Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 5-10-410 or to a radio station, television station, or subscription television system.

4. Rental, leasing, or licensing for use of the following:
   
   (a) Prosthetics.
   
   (b) Income-producing capital equipment.
   
   (c) Mining and metallurgical supplies.

   These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies. (2977/Reso. 6722)

5. Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)3 of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement, or rehabilitation programs or testing for mentally or physically handicapped persons. (3476/Reso. 7209)

6. Separately billed charges for delivery, installation, repair, and/or maintenance as provided by regulation.

7. Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.

8. The gross income from coin-operated washing, drying, and dry cleaning machines or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.

9. Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State as prescribed by regulation if such rental, leasing, or licensing had been a sale. (2977/Reso. 6722)

10. Rental, leasing, or licensing for use an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § Section 1-215. (3729,4616/Reso. 7458, 3921)
11. Rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and City, as applicable, for examination. (4979)

5-10-452: (RESERVED) (2535)

5-10-455: RESTAURANTS AND BARS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity. (3491, 4553, 5478)

(B) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, setup, and cleanup charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this section. (2321)

(C) The tax imposed by this section shall not apply to sales to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321, 3476/Reso. 7209)

(D) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. §42-5061 (A) (49) that serves the food and beverages to its passengers, without additional charge, for consumption in flight. (3476, 4616/Reso. 7209)

(E) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments, or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. (3476/Reso. 7209)

(F) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476/Reso. 7209)

5-10-460: RETAIL SALES; MEASURE OF TAX; BURDEN OF PROOF; EXCLUSIONS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail. (3491, 4553, 5478)

(B) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
(C) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:

1. Sales of stocks, bonds, options, or other similar materials.

2. Sales of lottery tickets or shares pursuant to Article 1, Chapter 5, Title 5, Arizona Revised Statutes.

3. Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

4. Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax shall be considered gross income of that business activity and are not includable as gross income subject to the tax imposed by this Section.

5. Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(D) (Reserved)

(E) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax. (3270/Reso. 6970)

(F) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller’s location.

(G) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section. (3729/Reso. 7458)

5-10-465: RETAIL SALES; EXEMPTIONS:
Income derived from the following sources is exempt from the tax imposed by Section 5-10-460:

(A) Sales of tangible personal property to a person regularly engaged in the business of selling such property.

(B) Out-of-City sales or out-of-State sales. (2977/Reso. 6722)

(C) Charges for delivery, installation, or other direct customer services as prescribed by regulation.

(D) Charges for repair services as prescribed by regulation when separately charged and separately maintained in the books and records of the taxpayer.

(E) Sales of warranty, maintenance, and service contracts when separately charged and separately maintained in the books and records of the taxpayer.
(F) Sales of prosthetics.

(G) Sales of income-producing capital equipment.

(H) Sales of rental equipment and rental supplies.

(I) Sales of mining and metallurgical supplies.

(J) Sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single-trip use fuel tax permit issued under A.R.S. §28-5739; or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle. (3270/Reso. 6970, 3476/Reso. 7209)

(K) Sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.

(L) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State. (3270/Reso. 6970)

(M) Sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient or component part of a product.

(N) Sales made directly to the federal government to the extent of: (2447)

1. One hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer. (2447)

2. Fifty percent (50%) of the gross income derived from retail sales made by any other person. (2447)

(O) Sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 5-10-455 or the equivalent excise tax upon such income. (2977/Reso. 6722)
(P) Sales of tangible personal property to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)3 of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement, or rehabilitation programs or testing for mentally or physically handicapped persons. (3476/Reso. 7209)

(Q) Sales of Food. (IN98-1/Election 3-14-00)

Definitions. (IN98-1/Election 3-14-00)

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply: (IN98-1/Election 3-14-00)

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other nonstaple foods. (IN98-1/Election 3-14-00)

2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs. (IN98-1/Election 3-14-00)

3. "Automatic retailer" means a coin-operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers. (IN98-1/Election 3-14-00)

4. "Caterer" means a person engaged in the business of serving meals, food, and drinks on the premises used by his customer, but does not include employees hired by the hour or day. (IN98-1/Election 3-14-00)

5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food, and grocery items kept under refrigeration. (IN98-1/Election 3-14-00)

6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle. (IN98-1/Election 3-14-00)

7. "Food." (IN98-1/Election 3-14-00)

(a) Food is defined as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages, or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax-exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the statute, and are therefore subject to the sales tax, shall be referred to herein as "taxable foods." (IN98-1/Election 3-14-00)
(b) "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the City does not consider food for human consumption: (IN98-1/Election 3-14-00)

i. Pet food and supplies. (IN98-1/Election 3-14-00)
ii. Cosmetics and grooming items. (IN98-1/Election 3-14-00)
iii. Tobacco products. (IN98-1/Election 3-14-00)
iv. Soaps and paper products and household supplies. (IN98-1/Election 3-14-00)
v. Dietary supplements such as vitamins or protein supplements. (IN98-1/Election 3-14-00)
vi. Medicines. (IN98-1/Election 3-14-00)
vii. Fertilizer. (IN98-1/Election 3-14-00)

8. "Food for Consumption on the Premises." (IN98-1/Election 3-14-00)

(a) "Food for consumption on the premises" means the following: (IN98-1/Election 3-14-00)

i. Hot prepared food, including products, items, or ingredients of food which are prepared and sold or intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer. (IN98-1/Election 3-14-00)

ii. Hot or cold sandwiches including frozen sandwiches. (IN98-1/Election 3-14-00)

iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and within parking areas (for in-car consumption). (IN98-1/Election 3-14-00)

iv. Food served with trays, glasses, dishes, or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer. (IN98-1/Election 3-14-00)

v. Beverages sold in cups, glasses, or open containers. Beverages shall include items such as milk shakes and ice cream floats. (IN98-1/Election 3-14-00)

vi. Food sold by caterers. (IN98-1/Election 3-14-00)
vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction, food for consumption on the premises does not include sales of tax-exempt food by a qualified retailer within the premises of a full-time educational institution that charges tuition for a full course of studies. (IN98-1/Election 3-14-00)

(b) Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable. (IN98-1/Election 3-14-00)

9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption. (IN98-1/Election 3-14-00)

10. "Home" means a natural person’s usual or habitual dwelling place, including rest homes, nursing homes, jails, and other such institutions. (IN98-1/Election 3-14-00)

11. "Premises" means the total space and facilities, including buildings, grounds, and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer. (IN98-1/Election 3-14-00)

12. "Qualified Retailer." (IN98-1/Election 3-14-00)

(a) A qualified retailer or qualified retail business is one that may be eligible to sell tax-exempt food without including the sale of tax-exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer. (IN98-1/Election 3-14-00)

(b) Qualified retailers are: (IN98-1/Election 3-14-00)

i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the Food Stamp Program. If a retailer is eligible to participate in the Food Stamp Program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Arizona Department of Revenue (and is approved by the State) to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include: (IN98-1/Election 3-14-00)

(1) Grocery stores; (IN98-1/Election 3-14-00)

(2) Convenience stores; (IN98-1/Election 3-14-00)

(3) Butcher shops; (IN98-1/Election 3-14-00)
(4) Bakeries; (IN98-1/Election 3-14-00)

(5) Dairy stores; (IN98-1/Election 3-14-00)

(6) Cheese stores; (IN98-1/Election 3-14-00)

(7) Farmer’s markets. (IN98-1/Election 3-14-00)

ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations. (IN98-1/Election 3-14-00)

iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups. (IN98-1/Election 3-14-00)

iv. Delicatessen business, if such retailer conducts his business so that the sale of tax-exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax-computing keys which are used to record taxable and tax-exempt sales. (IN98-1/Election 3-14-00)

v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include: (IN98-1/Election 3-14-00)

(1) Snackmobile; (IN98-1/Election 3-14-00)

(2) Chuck wagon; (IN98-1/Election 3-14-00)

(3) Mobile hot dog stands. (IN98-1/Election 3-14-00)

vi. Vending machines and other automatic retailers. (IN98-1/Election 3-14-00)

13. "Staple food" means those food items intended for home preparation and consumption, which includes meats, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. (IN98-1/Election 3-14-00)

14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the sales tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises. (IN98-1/Election 3-14-00)

15. Tax-Exempt Foods. (IN98-1/Election 3-14-00)

   (a) "Tax-exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1998, to be purchased with food coupons issued by the United States Department of Agriculture. (IN98-1/Election 3-14-00)
(b) Tax-exempt foods shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1998. (IN98-1/ Election 3-14-00)

(c) The following are examples of items which the City will consider as tax-exempt food: (IN98-1/Election 3-14-00)

- Bread and flour products
- Vegetables and vegetable products
- Candy and confectionery
- Sugar, sugar products and substitutes
- Cereal and cereal products
- Butter, oleomargarine, shortening, and cooking oils
- Cocoa and cocoa products
- Coffee and coffee substitutes
- Milk and milk products
- Eggs and egg products
- Tea
- Meat and meat products
- Spices, condiments, extracts, and food colorings
- Fish and fish products
- Frozen foods
- Soft drinks and soda (including bottles on which a deposit is required to be paid)
- Fruit and fruit products
- Packaged ice cream products
- Dietary substitutes
- Ice cubes and bottled water including carbonated and mineral water
- Purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax-computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted. (IN98-1/Election 3-14-00)

(R) Sales of the following to persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry, or ratites: (2977/Reso. 6722)

1. Seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.

2. Feed for livestock, poultry, or ratites, including salt, vitamins, and other additives to such feed. (2977/Reso. 6722)

3. Livestock, poultry, or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses. (2977/Reso. 6722)

4. (Reserved)
This exemption shall not be construed to include machinery, equipment, fuels, lubricants, pharmaceuticals, repair and replacement parts, or other items used or consumed in the running, maintenance, or repair of machinery, equipment, buildings, or structures used or consumed in the business of farming, ranching, or feeding of livestock, poultry, or ratites. (2977/Reso. 6722)

(S) Sales of groundwater-measuring devices required by A.R.S. §45-604.

(T) Sales of paintings, sculptures, or similar works of fine art, provided that such works of fine art are sold by the original artist; and provided further that sales of "art creations," such as jewelry, macramé, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether sold by the artist or by another.

(U) Sales of aircraft acquired for use outside the State as prescribed by regulation. (2977/Reso. 6722)

(V) Sales of food products by producers as provided for by A.R.S. §3-561, §3-562, and §3-563. (3270,4616/Reso. 6970)

(W) (Reserved)

(X) Sales of food and drink to a person who is engaged in business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees’ hours of employment. (5190)

(Y) (Reserved)

(Z) Gross income received for tangible personal property consisting of manufactured items destroyed by being subjected to destructive stress, strain, or similar testing for the purpose of developing engineering information or for the purpose of quality control, but only to the extent that a sale of said property would otherwise be exempt by the provisions of this Chapter.

(AA) The sale of tangible personal property used in remediation contracting as defined in Section 5-10-100 and Regulation 5-10-100.5. (3420/Reso. 7134)

(BB) Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries, or federal, state, county, or municipal libraries for use by the public as follows: (3476/Reso. 7209)

1. Printed or photographic materials. (3476/Reso. 7209)
2. Electronic or digital media materials. (3476/Reso. 7209)

(CC) Sales of food, beverages, condiments, and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. §42-5061 (A) (49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476,4616/Reso. 7209)
(DD) In computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services. (3476/Reso. 7209)

(EE) For the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470 is considered to be a sale for resale in the regular course of business. (3476/Reso. 7209)

(FF) Sales of alternative fuel as defined in A.R.S. §1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. §49-426 or §49-480. (3476/Reso. 7209)

(GG) Sales of food, beverages, condiments, and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476, 5190/Reso. 7209)

(HH) Sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 5-10-444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy. (3476/Reso. 7209)

(II) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline. (3729/Reso. 7458)

(JJ) Sales of food, beverages, condiments, and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks, or other disposable containers, or other items which facilitate the consumption of food. (3729/Reso. 7458)

(KK) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215. (3729,4616/Reso. 7458, 3921)

(LL) Sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the Department of Revenue as a Solar Energy Retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and City, as applicable, for examination. (4835)

(MM) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)
(NN) Sales of magazines or other periodicals or other publications by this state to encourage tourist travel. (5190)

(OO) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing. (5190)

(PP) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. (5190)

(QQ) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service. (5190)

(RR) Sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This Subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction. (5190)

5-10-470: TELECOMMUNICATION SERVICES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City. (3491,4553,5478)

1. Telecommunication services shall include:

   (a) Two-way voice, sound, and/or video communication over a communications channel.

   (b) One-way voice, sound, and/or video transmission or relay over a communications channel.

   (c) Facsimile transmissions.

   (d) Providing relay or repeater service.

   (e) Providing computer interface services over a communications channel.

   (f) Time-sharing activities with a computer accomplished through the use of a communications channel.
2. Gross income from the business activity of providing telecommunication services to consumers within this City shall include:

(a) All fees for connection to a telecommunication system.

(b) Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.

(c) Fees charged for access to or subscription to or membership in a telecommunication system or network.

(d) Charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.

(e) Charges for telephone, fax or Internet access services provided at an additional charge by a hotel business subject to taxation under Section 5-10-444. (4616)

(B) Resale Telecommunication Services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(C) Interstate Transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

(D) (Reserved)

(E) (Reserved)

(F) Prepaid Calling Cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 5-10-460 are exempt from the tax imposed under this Section. (3729/Reso. 7458)

(G) Internet Access Services. The gross income subject to tax under this Section shall not include sales of Internet access services to the person's subscribers and customers. For the purposes of this Subsection: (3954/Reso. 7756)

1. "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio. (3954/Reso. 7756)

2. "Internet access" means a service that enables users to access content, information, electronic mail, or other services over the Internet. Internet access does not include telecommunication services provided by a common carrier. (3954/Reso. 7756)

5-10-475: TRANSPORTING FOR HIRE:

The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State: (3491, 4553, 5478)

(A) Transporting of persons or property by railroad; provided, however, that the tax imposed by this Subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one (1) railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads. (3729/Reso. 7458)
(B) Transporting of oil or natural or artificial gas through pipe or conduit.

(C) Transporting of property by aircraft.

(D) (Reserved)

(E) (Reserved)

(F) Deductions or Exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section:

1. Income that is specifically included as the gross income of a business activity upon which another section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity. (4616).

2. Income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business. (4616)

(G) The tax imposed by this section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation. (4616)

5-10-480: UTILITY SERVICES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

1. Consumers or ratepayers who reside within the City.

2. Consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(B) Exclusion of Certain Sales of Natural Gas to a Public Utility. Notwithstanding the provisions of Subsection (A) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its rate payers shall be considered a retail sale of tangible personal property subject to Sections 5-10-460 and 5-10-465 and not considered gross income taxable under this Section.

(C) Resale Utility Services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser’s customers or rate payers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
(D) (Reserved)

(E) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

(F) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle. (3270/Reso. 6970)

(G) The tax imposed by this Section shall not apply to: (3270/Reso. 6970)

1. Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial, or industrial developments or connecting residential, commercial, or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement, or debt service of the utility system or systems. (3270/Reso. 6970)

2. Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on, or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment. (3270/Reso. 6970)

(H) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. §1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. §49-426 or §49-480. (3476/Reso. 7209)

(I) The tax imposed by this Section shall not apply to sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)

5-10-485: WASTEWATER REMOVAL SERVICES (2535, 4990, 5190)

(A) The tax rate shall be an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing wastewater removal services by means of sewer lines or similar pipelines to: (4990, 5190, 5478)

1. Consumers or ratepayers who reside within the city. (5190)

2. Consumers or ratepayers of this city, whether within the city or without, to the extent that this city provides such persons wastewater removal services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this city for providing such wastewater removal services to such persons. (5190)

(B) The tax imposed by this Section shall not apply to gross income relating to the providing of wastewater removal services from a qualifying hospital, qualifying community health center or a qualifying health care organization. (4990)
ARTICLE V - ADMINISTRATION

5-10-500: ADMINISTRATION OF THIS CHAPTER; RULE MAKING:

(A) The administration of this Chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector.

(B) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

(C) Except as provided in this Section, no rule or regulation shall be adopted until approved by formal action of the City Council.

(D) (Reserved) (3270/Reso. 6970)

(E) The Unified Audit Committee shall publish uniform guidelines that interpret the model city tax code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005. (3954/Reso. 7756)

1. Prior to finalization of uniform guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment. (3954/Reso. 7756)

2. Pursuant to A.R.S. Section 42-6005(D), when the State statutes and the Model City Tax Code are the same and where the Arizona Department of Revenue has issued written guidance, the Department's interpretation is binding on cities and towns. (3954/Reso. 7756)

5-10-510: DIVULGING OF INFORMATION PROHIBITED; EXCEPTIONS ALLOWING DISCLOSURE:

(A) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.

(B) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the federal government, the State of Arizona, or any political subdivisions.

(C) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.

(D) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.

(E) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report and the amount of such delinquent and unpaid tax, penalty, or interest to a private collection agency having a written collection agreement with the City.
(F) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-6003, A.R.S. Section 42-6005, and A.R.S. Section 42-6056.

(G) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 5-10-435 upon publishing and distribution of periodicals.

(H) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

5-10-515: DUTIES OF TAXPAYER PROBLEM RESOLUTION OFFICER:

(A) The Taxpayer Problem Resolution Officer shall assist taxpayers in:

1. Obtaining easily understandable tax information and information on audits, corrections, and appeals procedures of the City.

2. Answering questions regarding preparing and filing the returns required under this Chapter.

3. Locating documents filed with or payments submitted to the Tax Collector by the taxpayer.

(B) The Taxpayer Problem Resolution Officer shall also:

1. Receive and evaluate complaints of improper, abusive, or inefficient service by the Tax Collector or any of his designees, employees, or agents and recommend to the City Manager or, for a City without a City Manager, the Chief Administrative Officer, appropriate action to correct such service.

2. Identify policies and practices of the Tax Collector or any of his designees, employees, or agents that might be barriers to the equitable treatment of taxpayers and recommend alternatives to the City Manager or, for a City without a City Manager, the Chief Administrative Officer.

3. Provide expeditious service to taxpayers whose problems are not resolved through normal channels.

4. Negotiate with the Tax Collector, his designees, employees, or agents to resolve the most complex and sensitive taxpayer problems.

5. Take action to stop or prohibit the Tax Collector from taking an action against a taxpayer.

6. Participate and present taxpayers’ interests and concerns in meetings formulating the City’s policies and procedures under and interpretation of this Chapter.

7. Compile data each year on the number and type of taxpayer complaints and evaluate the actions taken to resolve those complaints.
8. Survey taxpayers each year to obtain their evaluation of the quality of service provided by the Tax Collector, his designees, employees, and agents. (3270/Reso. 6970)

9. Perform other functions which relate to taxpayer assistance as prescribed by the City Manager or, for a City without a City Manager, the Chief Administrative Officer. (3270/Reso. 6970)

(C) Actions taken by the Taxpayer Problem Resolution Officer may be reviewed and/or modified only by the City Manager or, for a City without a City Manager, the Chief Administrative Officer upon request of the Tax Collector or a taxpayer. (3270/Reso. 6970)

(D) The Mayor and Council of the City shall be provided with a report quarterly which identifies: (3270/Reso. 6970)

1. Any complaints of improper, abusive, or inefficient service received by the Taxpayer Problem Resolution Officer since the date of the last report. (3270/Reso. 6970)

2. Any recommendations made, action taken, or surveys obtained by the Taxpayer Problem Resolution Officer pursuant to Subsection (B)1-9 above since the date of the last report. (3270/Reso. 6970)

5-10-516: TAXPAYER ASSISTANCE ORDERS: (3270/RESO. 6970)

(A) The Taxpayer Problem Resolution Officer, with or without a formal written request from a taxpayer, may issue a taxpayer assistance order that suspends or stays an action or proposed action by the Tax Collector if, in the Problem Resolution Officer’s determination, a taxpayer is suffering or will suffer a significant hardship due to the manner in which the Tax Collector is administering the tax laws. (3270/Reso. 6970)

(B) A taxpayer assistance order may require the Tax Collector to release any lien perfected under this Chapter or cease any action or refrain from taking any action to enforce against the taxpayer any section of this Chapter pending resolution of the issue giving rise to the taxpayer assistance order. (3270/Reso. 6970)

(C) The Taxpayer Problem Resolution Officer, City Manager, or, for a City without a City Manager, the Chief Administrative Officer may modify, reverse, or rescind a taxpayer assistance order. A taxpayer assistance order is binding on the Tax Collector until it is reversed or rescinded. (3270/Reso. 6970)

(D) The running of the applicable statute of limitations for any action that is the subject of a taxpayer assistance order is suspended from the date the taxpayer applies for the order or the date the order is issued, whichever is earlier, until the order’s expiration date, modification date, or revision date, if any. Interest that would otherwise accrue on an outstanding tax obligation is not affected by the issuance of a taxpayer assistance order. (3270/Reso. 6970)

(E) A taxpayer assistance order may not be used: (3270/Reso. 6970)

1. To contest the merits of a tax liability. (3270/Reso. 6970)

2. To substitute for informal protest procedures or administrative or judicial proceedings to review a deficiency assessment, collection action, or denial of a refund claim. (3270/Reso. 6970)
**5-10-517: BASIS FOR EVALUATING EMPLOYEE PERFORMANCE: (3270/RESO. 6970)**

(A) The Tax Collector shall solicit evaluations from taxpayers and include such evaluations in the performance appraisals of his employees, where applicable. (3270/Reso. 6970)

(B) The Tax Collector shall not evaluate an employee on the basis of taxes assessed or collected by that employee. (3270/Reso. 6970)

**5-10-520: REPORTING AND PAYMENT OF TAX:**

(A) Returns. The returns required under this Chapter shall be made upon forms prescribed or approved by the Tax Collector and shall be considered filed only when the accuracy of the return has been attested to, by signature upon the form, by an authorized agent of the taxpayer and when such form has been received by the Tax Collector.

(B) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.

(C) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.

(D) Method of Reporting. Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.

1. Taxpayers must report all gross income subject to the tax using the same basis of reporting.

2. Taxes imposed upon construction contracting shall be reported as follows:

   (a) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.

   (b) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.

   (c) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 5-10-417.

**5-10-530: WHEN TAX DUE; WHEN DELINQUENT; VERIFICATION OF RETURN; EXTENSIONS:**

(A) Except as provided elsewhere in this Section, the taxes shall be due and payable monthly on or before the twentieth (20th) day of the month next succeeding the month in which the tax accrues.

1. Quarterly Returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income in excess of five thousand dollars ($5,000.00) but less than fifty thousand dollars ($50,000.00) to file returns on a calendar-quarterly basis. The taxes for each calendar quarter shall be due and payable on or before the twentieth (20th) day of the month next succeeding the end of each calendar quarter.
2. Annual Returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income of not more than five thousand dollars ($5,000.00) to file returns for such taxes on a calendar-annual basis. The taxes for each calendar year shall be due and payable on or before the twentieth (20th) day of January of the following year.

(B) Special Requirements of Taxpayers Filing Quarterly or Annual Returns. No taxpayer may report on a quarterly or annual basis until he has established, to the Tax Collector’s satisfaction, six (6) months' reporting history. It is the taxpayer’s responsibility to notify the Tax Collector and increase his reporting frequency (to quarterly or monthly as applicable) when his taxable income or tax due exceeds the maximum limits for his current reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Tax Collector, is sufficient cause for the Tax Collector to deny future filings by the taxpayer on a quarterly or annual basis.

(C) Delinquency Date. Except as provided in Subsection (D) below, all returns and remittances received within the Tax Collector’s office on or before the last business day of the month when due shall be regarded as timely filed. The start of business of the first business day following the month when due shall be the delinquency date. It shall be the taxpayer’s responsibility to cause his return and remittance to be timely received. Mailing the return or remittance on or before the due date or delinquency date does not relieve the taxpayer of the responsibility of causing his return or remittance to be received by the last business day of the month when due. (2535)

(D) Jeopardy Reporting. If the Tax Collector determines that the collection of any tax due to the City is in jeopardy, the Tax Collector may direct the taxpayer to file his return and remit the tax on a weekly, daily, or transaction-by-transaction basis. Such return and remittance shall be due upon the date fixed by the Tax Collector, and the "delinquency date" shall be the following day.

(E) Extensions. The Tax Collector may extend the time for filing a return, for good cause shown, and only when requested in writing and received by the Tax Collector prior to the tax due date. However, the time for filing such return shall not be extended beyond the last business day of the month next succeeding the due date of such return. In such cases, only the penalties for late filing and late payment may be waived by the Tax Collector for filing and payment within the extension period. Notwithstanding the granting of an extension, the interest payable for late payment of taxes shall be paid for the period commencing upon the original delinquency date and ending on the date the tax is paid. The interest may not be waived by the Tax Collector. (2977/Reso. 6722)

5-10-540: INTEREST AND CIVIL PENALTIES:

(A) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by Section 6621 of the United States Internal Revenue Code and compounded annually under the method described in Subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621 (B) of the Internal Revenue Code, plus three percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 5-10-570. (3270,4582/Reso. 6970)
1. On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered as part of the principal amount of the tax and accrues interest pursuant to this section. (4582)

2. Interest accrued prior to October 1, 2005 shall not be added to the principal. (4582)

(B) In addition to interest assessed under Subsection (A) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

1. A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

2. A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under Subsection (B)1 above for the same tax period, the total penalties under Subsection (B)1 and this Subsection shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

3. A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period. (3270/Reso. 6970)

4. If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under Subsection (B)1 or (B)2 above for the same tax period, the total penalties imposed under Subsections (B)1, (B)2, and this Subsection shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

5. If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(C) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

(D) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to Subsection (B)1 or (B)2 above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer and the Tax Collector nevertheless decides to assess penalties pursuant to Subsection (B)1 or (B)2 above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector’s determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause. (3270/Reso. 6970)
(E) The assessment of the penalties prescribed by Subsections (B)3 through (B)5 above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon Subsection (B)3, (B)4 or (B)5 above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances. (3270/Reso. 6970)

(F) The Tax Collector shall waive or adjust penalties imposed by Subsections (B)1 and (B)2 above upon a finding that: (3270/Reso. 6970)

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner;

2. The amount of the penalty is greatly disproportionate to the amount of the tax; or

3. The failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question: (3270/Reso. 6970)

(a) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

(b) Erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

(c) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

(d) Unavoidable absence of the taxpayer immediately prior to the due date.

(e) Destruction by fire or other casualty of the taxpayer’s place of business or records.

(f) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

(g) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due. (3270/Reso. 6970)

(h) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter, and after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required. (3270/Reso. 6970)

(i) The taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation. (3270/Reso. 6970)

(j) The taxpayer can provide some public record (court case; report in a periodical, professional journal, or publication; etc.) stating that the transaction is not subject to tax. (3270/Reso. 6970)

(k) The Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period. (3270/Reso. 6970)
A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

(G) No request for waiver of penalty under Subsection (F) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under Subsection (F) above may appeal under the provisions of Section 5-10-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer’s receipt of notice by the City that waiver has been denied. (3270/Reso. 6970)

(H) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City. (2321, 3270/Reso. 6970)

(I) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake." Examples of negligence include: (3270/Reso. 6970)

1. The taxpayer’s failure to maintain records in accordance with Article III of this Chapter; (3270/Reso. 6970)

2. Repeated failures to timely file returns; or (3270/Reso. 6970)


5-10-541: ERRONEOUS ADVICE OR MISLEADING STATEMENTS BY THE TAX COLLECTOR; ABATEMENT OF PENALTIES AND INTEREST; DEFINITION: (3270/RESO. 6970)

(A) Notwithstanding Section 5-10-540(A), no interest or penalty may be assessed on an amount assessed as a deficiency if either: (3270/Reso. 6970)

1. The deficiency assessed is directly attributable to erroneous written advice furnished to the taxpayer by an employee of the City acting in an official capacity in response to a specific request from the taxpayer and not from the taxpayer’s failure to provide adequate or accurate information. (3270/Reso. 6970)

2. All of the following are true: (3270/Reso. 6970)

(a) A tax return form prepared by the Tax Collector contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this Chapter. (3270/Reso. 6970)

(b) The taxpayer reasonably relies on the statement. (3270/Reso. 6970)

(c) The taxpayer’s underpayment directly results from this reliance. (3270/Reso. 6970)

(B) Each employee of the Tax Collector, at the time any oral advice is given to any person, shall inform the person that the Tax Collector is not bound by such oral advice. (3270/Reso. 6970)

(C) For purposes of this Section, "tax return form" includes the instructions that the Tax Collector prepares for use with the tax return form. (3270/Reso. 6970)
5-10-542: PROSPECTIVE APPLICATION OF NEW LAW OR INTERPRETATION OR APPLICATION OF LAW: (3954,4582/RESO. 7756)

(A) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law. (3954/Reso. 7756)

(B) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law: (3954/Reso. 7756)

1. The change in interpretation or application applies prospectively only unless it is favorable to taxpayers. (3954/Reso. 7756)

2. The Tax Collector shall not assess any tax, penalty, or interest retroactively based on the change in interpretation or application. (3954/Reso. 7756)

(C) For purposes of Subsection (B), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter. (3954/Reso. 7756)

(D) (Reserved)

5-10-545: DEFICIENCIES; WHEN INACCURATE RETURN IS FILED; WHEN NO RETURN IS FILED; ESTIMATES:

(A) If the taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return and payment of the amount of tax required and additional taxes are determined by the Tax Collector to be due, the Tax Collector shall deliver written notice of his determination of a deficiency to the taxpayer, and such deficiency, plus penalties and interest, shall be due and payable forty-five (45) days after receipt of the notice and demand. Such additional taxes shall bear any applicable civil penalties and interest as provided in Section 5-10-540, and every such notice of a determination of an additional amount due shall be assessed within the limitation period provided in Section 5-10-550.

1. When a Return is Filed. If the Tax Collector is not satisfied with a return and payment of the amount of tax required by this Chapter to be paid to the City, he may examine the return or examine the records of the taxpayer and redetermine the amount of tax, penalties, and interest required to be paid for any periods available to the Tax Collector under Section 5-10-550, based upon the information contained in the return or records or based upon any information within his possession or which comes into his possession.

2. When No Return is Filed. If any person fails to make a return, the Tax Collector may make an estimate of the amount of tax due under this Chapter and compute any applicable penalties and interest due, based upon any information within his possession or which comes into his possession.

(B) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not in any way invalidate the Tax Collector’s estimate. It is the responsibility of the taxpayer to prove that the Tax Collector’s estimate is not reasonable and correct by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.
5-10-546: CLOSING AGREEMENTS IN CASES OF EXTENSIVE TAXPAYER MISUNDERSTANDING OR MISAPPLICATION; CITY ATTORNEY APPROVAL; RULES: (3270/RESO. 6970)

(A) If the Tax Collector determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this Chapter, it may enter into closing agreements with those taxpayers under the following terms and conditions: (3270/Reso. 6970)

1. Extensive misunderstanding or misapplication of the tax laws occurs if the Tax Collector determines that more than sixty percent (60%) of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws. (3270/Reso. 6970)

2. The Tax Collector shall publicly declare the nature of the possible misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misapplication and the definition of the affected class. (3270/Reso. 6970)

3. If after the public hearing the Tax Collector determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws, it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation in the City and through the next two Model City Tax Code updates. (3270/Reso. 6970)

4. A closing agreement under this Section may abate some or all of the penalties, interest, and tax that taxpayers have failed to remit, or the agreement may provide for the prospective treatments of the matter as to the class of affected taxpayers. All taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods. (3270/Reso. 6970)

5. Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into an equivalent closing agreement providing for a pro rata credit or refund of their taxes previously paid. (3270/Reso. 6970)

6. The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to adhere to such a requirement, the closing agreement is voidable by the Tax Collector, and he may assess the taxpayer for the delinquent taxes. The Tax Collector may issue such a proposed assessment within six (6) months after the date that he declares that closing agreement void or within the period prescribed by Section 5-10-550 of this Chapter. (3270/Reso. 6970)

(B) Before entering into closing agreements pursuant to this Section, the Tax Collector shall secure such approval as required by Charter, ordinance, or administrative regulation. (3270/Reso. 6970)

(C) After a closing agreement has been signed pursuant to this Section, it is final and conclusive except on a showing of fraud, malfeasance, or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed upon, or the agreement shall not be modified by any officer, employee, or agent of the City. The agreement or any determination, assessment, collection, payment, abatement, refund, or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action, or proceeding. (3270/Reso. 6970)

(D) The Tax Collector shall report in writing its activities under this Section to the Mayor and City Council on or before February 1 of each year. (3270/Reso. 6970)
5-10-550: LIMITATION PERIODS:

(A) Limitation When a Return Has Been Filed.

1. Except as provided elsewhere in this Section, the Tax Collector may assess additional tax due at any time within four (4) years after the date on which the return is required to be filed or within four (4) years after the date on which the return is filed, whichever period expires later. (3270/Reso. 6970)

2. However, if a taxpayer does not report an amount properly reportable which is in excess of twenty-five percent (25%) of the taxable amount stated on the return, the Tax Collector may assess additional tax due at any time within six (6) years after the date on which the return was filed. (2535,3270/Reso. 6970)

3. Any delay in commencement or completion of any examination by the Tax Collector which is requested or agreed to in writing by the taxpayer shall be excluded from the computation of any limitation period prescribed by this Section; the Tax Collector shall be entitled to make a determination for taxes due without exclusion of any such time period, and any limitation period shall be extended for a length of time equivalent to the period of the agreed-upon delay. (3270/Reso. 6970)

4. Any assessment by the Tax Collector of additional tax due shall be deemed to have been made by mailing a copy of a notice of audit assessment by certified mail to the taxpayer’s address of record with the Tax Collector or by personal delivery of a copy of a notice of audit assessment to the taxpayer or his authorized agent.

(B) Suspension of Limitation Period. The limitation period on assessment shall be suspended for any period:

(3270/Reso. 6970)

1. The assets of the taxpayer are in the control or custody of the court in any proceeding before any court of jurisdiction within the United States of America, and for one hundred eighty (180) calendar days thereafter; or

2. Which the taxpayer and the Tax Collector agree upon in writing. (3270/Reso. 6970)

(C) When No Return Filed; Fraudulent Return. In the case of a fraudulent return with the intent to evade tax or the failure or refusal to file a return for any month, the Tax Collector may assess the amount of taxes payable for that month at any time without any reliance by the taxpayer upon any time limitation provided elsewhere in this Chapter. (3270/Reso. 6970)

(D) Special Provisions Relating to Owner-Builders. The limitation for an owner-builder subject to the tax as prescribed in Section 5-10-417 shall be based upon the date such tax liability is reportable or was reported as provided in Section 5-10-417.

5-10-553: EXAMINATION OF TAXPAYER RECORDS; JOINT AUDITS (3921)

(A) Waiver of Joint Audit. A taxpayer that does not authorize a joint audit to be conducted for a tax jurisdiction is subject to audit by that tax jurisdiction at any time subject to the limitation provisions provided in Section 5-10-550. (3921)
(B) Tax Jurisdiction Acceptance of Joint Audit. If the Arizona Department of Revenue intends to conduct an audit of a taxpayer, the cities or towns for whom a joint audit is being conducted may accept the audit by the Arizona Department of Revenue or may elect to have a representative participate, provided that no more than two (2) city or town representatives in total may participate. (3921)

1. If a city or town does not accept the audit as a joint audit, the city or town may not conduct an audit of the taxpayer for forty-two (42) months from the close of the last tax period covered by the audit unless an exception applies to that taxpayer pursuant to A.R.S. Section 42-2059. (3921)

2. If a joint audit is performed by a city or town, the Arizona Department of Revenue is not prohibited from conducting an audit that does not violate the provisions of A.R.S. Section 42-2059. (3921)

5-10-555: TAX COLLECTOR MAY EXAMINE BOOKS AND OTHER RECORDS; FAILURE TO PROVIDE RECORDS:

(A) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter for any periods available to him under Section 5-10-550.

(B) In order to perform any examination authorized by this Chapter, the Tax Collector may issue an Administrative Request for the attendance of witnesses or for the production of documents as provided by regulation.

(C) If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information, the Tax Collector may, in addition to penalties prescribed under Section 5-10-540, impose an additional penalty of twenty-five percent (25%) of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. (3270/Reso. 6970)

(D) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards. (3270/Reso. 6970)

(E) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings to determine the correct tax. The provisions of Section 5-10-545(B) concerning estimates shall apply.

(F) The Tax Collector shall give the taxpayer written notice of his determination of a deficiency by certified mail to the taxpayer's address of record with the Tax Collector, and the tax deficiency, plus interest and penalties, is final forty-five (45) days from the date of receipt of the notice by the taxpayer unless an appeal is taken pursuant to the provisions of Sections 5-10-570 through 5-10-575. (2977/Reso. 6722)
5-10-556: NO ADDITIONAL AUDITS OR PROPOSED ASSESSMENTS; EXCEPTIONS:

(A) Once the Tax Collector completes an examination authorized by Section 5-10-555 and a written notice of the determination of a deficiency has been issued to the taxpayer pursuant to Section 5-10-545(A) or 5-10-555(F), the taxpayer’s liability for the time period subjected to the examination is fixed and determined, and no additional audit or examination may be conducted by the Tax Collector with respect to such time period except under the following circumstances: (3270/Reso. 6970)

1. If a taxpayer files a claim for refund under Section 5-10-560, the Tax Collector may conduct an examination limited to the issues presented in the refund claim. (3270/Reso. 6970)

2. If the taxpayer failed to disclose material information during the initial examination, falsified books or records, or otherwise engaged in conduct which prevented the Tax Collector from conducting an accurate examination. The applicability of this Subsection and the Tax Collector’s right to proceed thereunder may be raised and contested by the taxpayer in a subsequent administrative review brought pursuant to Section 5-10-570. (3270/Reso. 6970)

(B) An audit or examination conducted by any other taxing jurisdiction will not preclude the Tax Collector from conducting an audit or examination for the same time period. (3270/Reso. 6970)

(C) If the Tax Collector issues a notice of deficiency pursuant to either Section 5-10-545(A) or Section 5-10-555(F), the Tax Collector may not increase the proposed deficiency except in one (1) or more of the following circumstances: (3270/Reso. 6970)

1. The taxpayer made a material misrepresentation of fact. (3270/Reso. 6970)

2. The taxpayer failed to disclose a material fact. (3270/Reso. 6970)

3. The Tax Collector submitted a written request for information prior to issuance of the assessment, and the taxpayer, despite possessing or having access to such information, failed to provide it within sixty (60) days as required by Section 5-10-555(C). (3270/Reso. 6970, 3476/Reso. 7209)

4. After issuing the notice of determination of deficiency but before the deficiency became final, the Arizona Tax Court, Court of Appeals, or Supreme Court issued a decision, the applicability of which causes the deficiency initially proposed to increase. (3270/Reso. 6970)

5-10-560: ERRONEOUS PAYMENT OF TAX; CREDITS AND REFUNDS; LIMITATIONS:

(A) The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties, or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be cancelled from the accounts of the City if no timely filed request for credit or refund is made by the claimant claiming same within one (1) year following the date of determination and notice by the Tax Collector of the excess payment. For purposes of this section, “claimant” means a taxpayer that has paid a tax imposed under this article and has submitted a credit or refund claim under this section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer’s behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from customers by separately stated itemization. (3270, 4582/Reso. 6970)
(B) No credit shall be allowed or refund paid except under one (1) of the following conditions: (3270/Reso. 6970)

1. As provided in Section 5-10-565.

2. Upon examination of filed returns for any period not excluded by Section 5-10-550 and not to exceed the tax, penalty, or interest actually paid with such returns. (3270/Reso. 6970)

3. Upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 5-10-550. In the case of an examination performed at the taxpayer’s request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest actually paid within the limitation period provided in Section 5-10-550, such period to be calculated from the date of receipt of the taxpayer’s request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits. (3270/Reso. 6970)

4. Upon the claimant’s submission of a written claim for credit or refund of any taxes, penalties, or interest paid to the City by the claimant. (3270,4582/Reso. 6970)

(C) A credit or refund claim submitted by a claimant pursuant to subsection (B)(4) of this section must:

1. Identify the name, address and city tax identification number of the taxpayer; and (4582)

2. Identify the dollar amount of the credit or refund requested; and (4582)

3. Identify the specific tax period involved: and (4582)

4. Identify the specific grounds upon which the claim is based. (4582)

(D) When a written claim for credit or refund is submitted pursuant to subsection (B)(4) of this section, no credit shall be allowed or refund paid except for those taxes, penalties, or interest paid in excess of the amount due within the limitation period provided in Section 5-10-550. The credit or refund limitation period shall be calculated from the date the Tax Collector receives the claimant’s written claim meeting the requirements of Subsection (C) of this section. (3270,4582/Reso. 6970)

(E) The following additional requirements apply to the Tax Collector and the claimant for claims for credit or refund submitted pursuant to Subsection (B)(4) of this section: (3270,4582/Reso. 6970)

1. The Tax Collector shall notify the claimant that the claim for credit or refund has been received and shall indicate whether the claim meets the requirements of Subsection (C) of this section. If the claim does not meet the requirements of Subsection (C) of this section, the Tax Collector shall identify the deficiency in writing. Any claim that does not meet the requirements of Subsection (C) of this section shall not secure the limitation period pursuant to section 5-10-550. (4582)

2. The Tax Collector may request, in writing, additional information or documentation from the claimant to support the requested credit or refund. Such information or documentation must be reasonably related to the claim and required to be maintained under this chapter in the normal course of business. (4582)
(a) The claimant may request in writing one or more extensions to supply the requested information or documentation. The Tax Collector may reject an extension request only by denying the claim in whole or in part, subject to appeal by the claimant pursuant to Section 5-10-570 (4582).

(b) A claimant aggrieved by a request for information or documentation under this subsection may file an appeal in the manner provided for in Section 5-10-570 regarding the scope of the request for information or documentation. Such petition must be filed no later than the last day by which requested information or documentation must be provided to the Tax Collector, including any extensions. The decision of the Hearing Officer regarding a request for information or documentation may not be appealed by either party until the claim has been approved or denied, in whole or in part, under Subsection (H) of this section or through Subsubsections (E)(3) or (E)(4) of this section. A claimant shall not be barred from raising the issue of the reasonableness of the Tax Collector’s information or documentation request in an appeal filed under Subsection (H) of this section or through Subsubsections (E)(3) or (E)(4) of this section through a lack of filing a petition under this Subsubsection. (4582)

3. If the Tax Collector fails to request additional information or documentation pursuant to this section and fails to issue a determination on any claim for credit or refund within six (6) months after the claim is filed, the claimant may consider the claim denied and may file an appeal pursuant to Section 5-10-570. (4582)

4. If the Tax Collector fails to issue a determination within six (6) months of receiving all requested additional information or documentation, the claimant may consider the claim for credit or refund denied and may file an appeal pursuant to Section 5-10-570. (4582)

5. The burden of proof to show that a notice, request, determination or other communication was received by the claimant in this section is on the Tax Collector, and will be satisfied by receipt of notice. The burden of proof to show that a claim or additional information or documentation was received by the Tax Collector is on the claimant and will be satisfied by receipt of notice. (4582)

(F) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to Subsections (B)(3) or (B)(4) of this section. Such interest shall be allowed on the overpayment of tax at the rate and in the manner set forth in Section 5-10-540 (A), as follows: (3270,4582/Reso. 6970)

1. For credits or refunds authorized pursuant to Subsection (B)(3) of this section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim following the date of notice to the claimant authorizing the credit or refund. (4582)

2. For credits or refunds authorized pursuant to Subsection (B)(4) of this section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of subsection (C) of this section. (4582)

(G) The Tax Collector shall give the claimant a written notice of determination for a claim made under Subsection (B) of this section. If the determination is a denial of a claim, in whole or in part, the determination must state that the claim for credit or refund has been denied in whole or in part, with the reason for denial, and must include the claimant's rights of appeal pursuant to section 5-10-570. (4582)
(H) A determination by the Tax Collector under this section, whether an approval of a claim or a denial of a claim, in whole or in part, shall become final forty-five (45) days from the date of receipt of the notice by the claimant, unless an appeal is made pursuant to Section 5-10-570. If the claimant is the prevailing party in an appeal of a determination under this section, Section 5-10-578 shall apply, except that reasonable fees and other costs may be awarded either by the Hearing Officer or court and are not subject to the monetary limitations of Subsection 5-10-578(E) if the tax collector’s position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this section, “reasonable fees and other costs” means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant’s case and necessary fees for attorneys or other representatives. (4582)

(I) The amendments to this section as enacted in Ordinance #4582 shall be effective as follows:

1. For any claim for refund or credit received by the Tax Collector before October 1, 2005, (4582)

   (a) The provisions of this section as it existed prior to the adoption of Ordinance #4582 shall apply, except that interest shall be allowed from and after October 1, 2005 as provided in Subsection (F) of this section as enacted by Ordinance #4582. (4582)

   (b) Except as noted in Subsection (1)(A) above, the amendments to this section as enacted in Ordinance #4582 shall not be cited or considered in the construction or the interpretation of the city tax refund or credit provisions, interest provisions, or appeal provisions in effect prior to October 1, 2005. (4582)

2. The provisions of this section enacted by ordinance #4582 shall apply to all claims for refund or credit, for any periods as determined by subsections (D) or (E) of this section, received by the Tax Collector from and after October 1, 2005, except for claims that, in whole or in part, had been received by the collector prior to October 1, 2005. (4582)

(J) Any refund paid under the provisions of this section shall be paid from the privilege tax revenue accounts. (4582)

5-10-565: PAYMENT OF TAX BY THE INCORRECT TAXPAYER OR TO THE INCORRECT ARIZONA CITY OR TOWN: (3270/RESO. 6970)

(A) When it is determined that taxes have been reported and paid to the City by the wrong taxpayer, any taxes erroneously paid shall be transferred by the City to the privilege tax account of the person who actually owed and should have paid such taxes, provided that the City receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. (3270/Reso. 6970)

(B) An assignment and waiver provided under this Section must: (3270/Reso. 6970)

1. Identify the name and City privilege license number of the person who erroneously paid the tax and the person who should have paid the tax. (3270/Reso. 6970)

2. Provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid. (3270/Reso. 6970)

3. Authorize the City treasurer to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax. (3270/Reso. 6970)
When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax. (3270/Reso. 6970)

This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. §42-1452. The limitations and procedures set forth in A.R.S. §42-1452 shall apply to all payments under this Section. (3270/Reso. 6970)

When reference is made in this Section to this City or an Arizona city or town and payments made to or requested from this City or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this City or an Arizona city or town. (3270/Reso. 6970)

RESERVED

ADMINISTRATIVE REVIEW; PETITION FOR HEARING OR FOR REDETERMINATION; FINALITY OF ORDER: (3270/RESO. 6970)

For purposes of this section, "Municipal Tax Hearing Office" means the administrative offices of the Municipal Tax Hearing Officer. (3921)

Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

Administrative Review. (3270/Reso. 6970)

1. Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of any tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

(a) Within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due or that a request for refund or credit has been denied;

(b) By voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment;

(c) By petition accompanying a timely filed return contesting an amount reported but not paid; or

(d) By petition requesting review of denial of waiver of penalty as provided in Subsection 5-10-540(G). (3270/Reso. 6970)
2. Extension to File a Petition. In all cases, the taxpayer may request an extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow a forty-five (45) day extension to file a petition, when such written request has been properly and timely made by the taxpayer. The Tax Collector may grant an additional extension and may determine the corresponding time of any such extension at his sole discretion. (4979)

3. Requirements for Petition.

(a) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of determinations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

(b) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made, the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

(c) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under this Section.

4. Transmittal to the Hearing Officer. The City shall designate a Hearing Officer, who may be other than an employee of the City. The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Office (MTHO) within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition. (2535, 3270/Reso. 6970, 3921)

5. Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same. (2535)

6. Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

7. Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.

8. Notice of Refund or Adjusted Assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision. (3270/Reso. 6970)
(C) Stipulations That Future Tax is Also Protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income. (3270/Reso. 6970)

(D) When an Assessment is Final. (3270/Reso. 6970)

1. If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by Subsection (B) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due, and any tax, interest, or penalty determined to be due shall be final as provided in Subsections 5-10-545(A) and 5-10-555(F).

2. The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by Subsection (B)8 above, unless the taxpayer appeals the order or decision in the manner provided in Section 5-10-575. (3270/Reso. 6970)

(E) (Reserved)

5-10-571: JEOPARDY ASSESSMENTS:

(A) If the Tax Collector believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax or deficiency declared to be in jeopardy, including interest, penalties, and additions.

(B) Jeopardy assessments are immediately due and payable, and the Tax Collector may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment or within such additional time as the Tax Collector may allow, by bond or collateral in favor of the City in the amount Tax Collector declared to be in jeopardy in his notice.

(C) Bond or Collateral.

1. "Bond or collateral" shall mean either:

   (a) A bond issued in favor of the City by a surety company authorized to transact business in this State and approved by the Director of Insurance as to solvency and responsibility or

   (b) Collateral composed of securities or cash which are deposited with, and kept in the custody of, the Tax Collector.

2. Shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Tax Collector must be of a nature that they may be sold at public or private sale without notice to the taxpayer.
(D) If bond or collateral is not filed within the period prescribed by Subsection (B) above, the Tax Collector may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Sections 5-10-570 and 5-10-575. The filing of a petition by the taxpayer under Section 5-10-570, however, shall not stay the Tax Collector's rights to pursue any collection proceedings. (2321)

(E) If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 5-10-570, including requests for additional time to file a petition.

5-10-572: EXPEDITED REVIEW OF JEOPARDY ASSESSMENTS: (3270/RESO. 6970)

(A) Within thirty (30) days after the day on which the Tax Collector furnishes the written notice required by Section 5-10-571(A), the taxpayer, pursuant to Section 5-10-570, may request the Tax Collector to review the action taken. Within fifteen (15) days after the request for review, the Tax Collector shall determine whether both the jeopardy determination and the amount assessed are reasonable. (3270/Reso. 6970)

(B) Within thirty (30) days after the Tax Collector notifies the taxpayer of the determination he reach pursuant to Subsection (A) above, the taxpayer may bring a civil action in the appropriate court. If the taxpayer so requests, the City shall stipulate to an accelerated and expedited resolution of the civil action. If the court determines that either the jeopardy determination or the amount assessed is unreasonable, the court may order the Tax Collector to abate the assessment, to predetermine any part of the amount assessed, or to take such other action as the court finds to be appropriate. A determination made by the court under this Subsection is final except as provided in Arizona Revised Statutes §12-170. (3270/Reso. 6970)

5-10-575: JUDICIAL REVIEW:

(A) A taxpayer may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action against the City in the appropriate Court of this County. A taxpayer is not required to pay any tax, penalty, or interest upheld by the Hearing Officer before seeking such judicial review. (3270/Reso. 6970)

(B) The Tax Collector may seek judicial review of all or any part of a Hearing Officer’s decision by initiating an action in the appropriate Court of this County.

(C) An action for judicial review cannot be commenced by either the taxpayer or the Tax Collector more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Hearing Officer’s decision, unless the time to commence such an action is extended in writing signed by both the taxpayer and the Tax Collector. Failure to bring the action within thirty (30) days or such other time as is agreed upon in writing shall constitute a waiver of any right to judicial review, except as provided in Subsection (F) below. (3270/Reso. 6970)

(D) The court shall hear and determine the appeal as a trial de novo; however, the Tax Collector cannot raise in the court any grounds or basis for the assessment not asserted before the Hearing Officer. Nothing in this Subsection, however, shall preclude the Tax Collector from responding to any arguments which are raised by the taxpayer in the appeal. (3270/Reso. 6970)
(E) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This Subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This Subsection applies to a factual issue if a preponderance of the evidence demonstrates that: (3729/Reso. 7458)

1. The taxpayer asserts a reasonable dispute regarding the issue. (3729/Reso. 7458)

2. The taxpayer has fully cooperated with the Tax Collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the taxpayer's control, as reasonably requested by the Tax Collector. (3729/Reso. 7458)

3. The taxpayer has kept and maintained records as required by the City. (3729/Reso. 7458)

(F) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment. (3729/Reso. 7458)

(G) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil procedure. (3729/Reso. 7458)

5-10-577: REFUNDS OF TAXES PAID UNDER PROTEST:
In the event the Hearing Officer’s decision or a final judgment by the Court is rendered in favor of the taxpayer to recover protested taxes, it shall be the duty of the Tax Collector, upon receipt of such decision or of a certified copy of such final judgment, to authorize a warrant in favor of the taxpayer in an amount equal to the amount of the tax found by such decision or by the final judgment to have been paid under protest, and such warrant shall include the amount of interest or other cost that may have been recovered against the City by the final judgment in such action in the courts, to be paid from the Privilege Tax revenue accounts.

5-10-578: REIMBURSEMENT OF FEES AND OTHER COSTS; DEFINITIONS: (3270/RESO. 6970)

(A) A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to any administrative proceeding brought by the taxpayer pursuant to Section 5-10-570(B). For purposes of this Section, a taxpayer is considered to be the prevailing party only if both of the following are true: (3270/Reso. 6970)

1. The Tax Collector’s position was not substantially justified. (3270/Reso. 6970)

2. The taxpayer prevails as to the most significant issue or set of issues. (3270/Reso. 6970)

(B) Reimbursement under this Section may be denied if any of the following circumstances apply: (3270/Reso. 6970)

1. During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter. (3270/Reso. 6970)

2. The reason that the taxpayer prevailed is due to an intervening change in the applicable law. (3270/Reso. 6970)
(C) The taxpayer shall present an itemization of the reasonable fees and other costs to the Taxpayer Problem Resolution Officer within thirty (30) days after receipt by the taxpayer of a notice of refund or recalculated assessment issued by the Tax Collector pursuant to Section 5-10-570(B)8. The Taxpayer Problem Resolution Officer shall determine the validity of the fees and other costs within thirty (30) days after receiving the itemization. The Taxpayer problem Resolution Officer’s decision is considered a final decision. Either the taxpayer or the Tax Collector may seek judicial review of the Taxpayer Problem Resolution Officer’s decision. An action for judicial review, however, shall not be commenced more than thirty (30) days after receipt of the Resolution Officer’s decision. (3270/Reso. 6970)

(D) In the event judicial review is not sought pursuant to Subsection (C) above, the City shall pay these fees and other costs awarded as provided in this Section within thirty (30) days after demand by a person who has received an award pursuant to this Section. (3270/Reso. 6970)

(E) Reimbursement to a taxpayer under this Section shall not exceed twenty thousand dollars ($20,000.00) or actual monies spent, whichever is less. The reimbursable attorney or representative fees shall not exceed one hundred dollars ($100.00) per hour or actual monies spent, whichever is less, unless the Taxpayer Problem Resolution Officer determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or representatives for the proceeding involved justifies a higher fees. (3270/Reso. 6970)

(F) For purposes of this Section, "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses; the cost of any study, analysis, report, test, or project that is found to be necessary to prepare the party’s case; and necessary fees for attorneys or other representatives. (3270/Reso. 6970)

5-10-580: CRIMINAL PENALTIES:

(A) It is unlawful for any person to knowingly or willfully:

1. Fail or refuse to make any return required by this Chapter.

2. Fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.

3. Make or cause to be made a false or fraudulent return.

4. Make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.

5. Fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.

6. Fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

7. Advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.
8. Fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

9. Reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure an exemption from taxes imposed by this Chapter.

(B) The violation of any provision of Subsection (A) above shall constitute a Class 1 Misdemeanor.

(C) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

5-10-590: CIVIL ACTIONS:

(A) Liens.

1. Any tax, penalty, or interest imposed under this Chapter which has become final as provided in this Chapter shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer; the amount of the tax, penalty, and interest; the period or periods for which the same is due and the date of accrual thereof; the amount of the recording costs by the County Recorder in any county in which the taxpayer owns real property; and the documentation and lien processing fees imposed by the City Council; and further stating that the City claims a lien therefor. (2977/Reso. 6722)

2. The notice and claim of lien shall be signed by the City Manager under his official seal or the official seal of the City, and with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and with respect to personal property, shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest, and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien. (2977/Reso. 6722)

3. Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and may be collected in the manner set forth in Subsection (B) below. (2977/Reso. 6722)

4. Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above, and lien release fees imposed by the County Recorder in any county in which the lien was recorded, thereby be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property for partial payment of monies due the City. (2977/Reso. 6722)

(B) Actions to Recover Tax. An action may be brought by the City Attorney or other legal advisor to the City designated by the City Council at the request of the Tax Collector in the name of the City to recover the amount of any taxes, penalties, interest, recording costs, lien processing fees, and lien release fees due under this Chapter; provided that: (2977/Reso. 6722)

1. No action or proceeding may be taken or commenced to collect any taxes levied by this Chapter until the amount thereof has been established by assessment, correction, or reassessment and
2. Such collection effort is made or the proceedings begun:

(a) Within six (6) years after the assessment of the tax;

(b) Prior to the expiration of any period of collection agreed upon in writing by the Tax Collector and the taxpayer before the expiration of such six-(6-) year period, or any extensions thereof; or

(c) At any time for the collection of tax arising by reason of a tax lien perfected, recorded, or possessed by the City under this Section.

5-10-595: COLLECTION OF TAXES WHEN THERE IS SUCCESSION IN AND/OR CESSATION OF BUSINESS:

(A) In addition to any remedy provided elsewhere in this City Code that may apply, the Tax Collector may apply the provisions of Subsections (B) through (D) below concerning the collection of taxes when there is succession in and/or cessation of business.

(B) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods or quits his business if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(C) Any person who purchases or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder as provided in Sections 5-10-416 and 5-10-417.

(1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor’s debtor by any means set forth in this Subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 5-10-416(A)(4) and all of the requirements of Section 5-10-416(B)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale. (5017)

(2) In the event a creditor or its affiliate uses the acquired improved real property for an business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 5-10-416 and 5-10-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition. (5017)

(3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this Subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate. (5017)

(4) If the tax liability imposed by either Section 5-10-416 or Section 5-10-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the Tax Collector by the debtor subsequent to payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the Tax Collector in good faith, against the tax imposed on the creditor or its affiliate by either Paragraph 1 or Paragraph 2 of this Subsection. (5017)
(5) Notwithstanding anything in this Chapter to the contrary, if a creditor or its affiliate is subject to tax as
described in Paragraph 1 or Paragraph 2 of this Subsection and such creditor or affiliate has not previously
been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which
the tax is due. (5017)

(D) A person’s successors or assignees shall withhold from the purchase money an amount sufficient to cover the
taxes required to be paid and interest or penalties due and payable until the former owner produces a receipt
from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as
then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller
for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the
certificate cannot be issued.

1. If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation
of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax
Collector.

2. If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is
personally liable for payment of the amount of taxes required to be paid by the former owner on account of
the business so purchased with interest and penalties accrued by the former owner or assignees. (2321)

5-10-596: AGREEMENT FOR INSTALLMENT PAYMENTS OF TAX: (3270/RESO. 6970)

(A) The City may enter into an agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax
imposed by this Chapter by means of installment payments. The Tax Collector may require a taxpayer who
requests an installment payment agreement to complete a financial report in such form and manner as the Tax
Collector may prescribe. (3270/Reso. 6970)

(B) The Tax Collector, without notice, may alter, modify, or terminate an installment payment agreement if the
taxpayer: (3270/Reso. 6970)

1. Fails to pay an installment at the time the installment payment is due under the agreement. (3270/Reso. 6970)

2. Fails to pay any other tax liability at the time the liability is due. (3270/Reso. 6970)

3. Fails to file any tax report or return at the time the report or return is due. (3270/Reso. 6970)

4. Fails to furnish any information requested by the Tax Collector within thirty (30) days after receiving a
written request for such information. (3270/Reso. 6970)

5. Fails to notify the Tax Collector of a material improvement in the taxpayer’s financial condition above the
income previously reported in the most recent income statement within thirty (30) days after the material
improvement.

6. Provides inaccurate, false, or incomplete information to the Tax Collector. (3270/Reso. 6970)

(C) Notwithstanding any installment payment agreement, the Tax Collector may offset any tax refunds against
the liabilities provided for in the installment payment agreement, may file and perfect any tax liens, and in the
event the taxpayer breaches any term or provision of the installment payment agreement, may engage in
collection activities. (3270/Reso. 6970)
(D) The Tax Collector, without notice, may terminate an installment payment agreement if the Tax Collector believes that the collection of tax to which the payment agreement pertains is in jeopardy. (3270/Reso. 6970)

(E) If the Tax Collector determines that the financial condition of a taxpayer has improved, the Tax Collector may alter, modify, or terminate the agreement by providing notice to the taxpayer at least thirty (30) days before the effective date of the action. The notice shall include the reasons why the Tax Collector believes the alteration, modification, or termination is appropriate. (3270/Reso. 6970)

(F) An installment payment agreement shall remain in effect for the term of the agreement except as otherwise provided in this Section. (3270/Reso. 6970)

(G) A taxpayer who is aggrieved by a decision of the Tax Collector to refuse to enter into an installment payment agreement or to alter, modify, or terminate an agreement entered into pursuant to this Section may petition the Taxpayer Problem Resolution Officer to review that determination. The Taxpayer Problem Resolution Officer may stay such alteration, modification, or termination pending its review and may modify or nullify the determination. (3270/Reso. 6970)

(H) The City and the taxpayer may modify any installment payment agreement at any time by entering into a new or modified agreement. (3270/Reso. 6970)

5-10-597: PRIVATE TAXPAYER RULINGS; REQUEST; REVOCATION OR MODIFICATION; DEFINITION: (3270/RESO. 6970)

(A) The Tax Collector shall issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall: (3270/Reso. 6970)

1. State the name, address, and if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling. (3270/Reso. 6970)

2. Describe all facts that are relevant to the requested ruling. (3270/Reso. 6970)

3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the Tax Collector or any other taxing jurisdiction in connection with an active audit, protest, or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing jurisdiction for a ruling. (3270/Reso. 6970)

4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer. (3270/Reso. 6970)

(B) A private taxpayer ruling may be revoked or modified by either: (3270/Reso. 6970)

1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by regulations and court decisions. (3270/Reso. 6970)

2. Actual written notice by the Tax Collector to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling. (3270/Reso. 6970)
(C) With respect to the taxpayer or prospective taxpayer to whom a private taxpayer ruling is issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification, and the Tax Collector shall not assess any penalty or tax attributable to erroneous advice that is furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if: (3270/Reso. 6970)

1. The taxpayer reasonably relied on the private taxpayer ruling. (3270/Reso. 6970)

2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information. (3270/Reso. 6970)

(D) A private taxpayer ruling may not be relied upon, cited, or introduced into evidence in any proceeding by any taxpayer other than the taxpayer who received the ruling. (3270/Reso. 6970)

(E) A taxpayer may appeal the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the Tax Collector pursuant to Section 5-10-570 within forty-five (45) days after receiving written notice of the intent to retroactively apply a revoked or modified private taxpayer ruling. (3270/Reso. 6970)

(F) A private taxpayer ruling constitutes the Tax Collector’s interpretation of the sections of this Chapter only as they apply to the taxpayer making, and the particular facts contained in, the request. (3270/Reso. 6970)

(G) A private taxpayer ruling which addresses a taxpayer’s ongoing business activities will apply only to transactions that occur or tax liabilities that accrue from and after the date of the taxpayer’s ruling request. (3270/Reso. 6970)

(H) The Tax Collector shall attempt to issue private taxpayer rulings within forty-five (45) days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed beyond the forty-five (45) days, the Tax Collector shall notify the requester of the delay and the proposed date of issuance. (3270/Reso. 6970)

(I) Within thirty (30) days after being issued, the Tax Collector shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings are open to public inspection subject to the confidentiality requirements prescribed by Section 5-10-510. (3270/Reso. 6970)

(J) In this Section, "private taxpayer ruling" means a written determination by the Tax Collector issued pursuant to this Section that interprets and applies one (1) or more sections contained in this Chapter and any applicable regulations. (3270/Reso. 6970)

(K) A private taxpayer ruling issued by the Arizona Department of Revenue pursuant to A.R.S. §42-139.21 may be relied upon by the taxpayer to whom the ruling was issued and must be recognized and followed by any City in which such taxpayer has obtained a privilege license if the City has not issued a ruling addressing the facts described in the taxpayer’s ruling request and the statute at issue in the taxpayer’s ruling request is in essence worded and written the same as the applicable section hereunder. (3270/Reso. 6970)
ARTICLE VI - USE TAX

5-10-600: USE TAX; DEFINITIONS:
For the purposes of this Article only, the following definitions shall apply, in addition to the definitions provided in Article I:

**ACQUIRE (FOR STORAGE OR USE):** Purchase, rent, lease, or license for storage or use.

**RETAILER:** Means any person selling, renting, licensing for use, or leasing tangible personal property under circumstances which would render such transactions subject to the taxes imposed in Article IV if such transactions had occurred within this City.

**STORAGE (WITHIN THE CITY):** The keeping or retaining of tangible personal property at a place within the City for any purpose, except for those items acquired specifically and solely for the purpose of sale, rental, lease, or license for use in the regular course of business or for the purpose of subsequent use solely outside the City.

**USE (OF TANGIBLE PERSONAL PROPERTY):** Consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof, except the holding for the sale, rental, lease, or license for use of such property in the regular course of business.

5-10-601: (RESERVED) (2321)

5-10-602: (RESERVED) (2321)

5-10-610: USE TAX; IMPOSITION OF TAX; PREMPTION:

(A) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the City of tangible personal property for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector.

(B) The tax rate shall be at an amount equal to two percent (2.00%) of the: (3491,4553,5478)

1. Cost of tangible personal property, except jet fuel, acquired from a retailer upon every person storing or using such property in this City. (3729/Reso. 7458)

2. Gross income from the business activity upon every person meeting the requirements of Subsection 5-10 620(B) or (C) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.

3. Cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.

4. Cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.

5. Cost of food consumed by the owner or by employees or agents of the owner of a restaurant or bar subject to the provisions of Section 5-10-455 of this Chapter.
(C) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City until the contrary is established by the taxpayer.

(D) Exclusions. For the purposes of this Article, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the City:

1. Stocks, bonds, options, or other similar materials.

2. Lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.

3. Platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(E) (Reserved)

(F) Additional Imposition. The tax rate shall be at an amount equal to three (3) cents per gallon of jet fuel upon every person storing or using such property in this City. (3729/Reso. 7458)

5-10-620: USE TAX; LIABILITY FOR TAX:
The following persons shall be deemed liable for the tax imposed by this Article, and such liability shall not be extinguished until the tax has been paid to this City, except that a receipt from a retailer separately charging the tax imposed by this Chapter is sufficient to relieve the person acquiring such property from further liability for the tax to which the receipt refers:

(A) Any person who acquires tangible personal property from a retailer, whether or not such retailer is located in this City, when such person stores or uses said property within the City.

(B) Any retailer not located within the City selling, renting, leasing, or licensing tangible personal property for storage or use of such property within the City may obtain a license from the Tax Collector and collect the use tax on such transactions. Such retailer shall be liable for the use tax to the extent such use tax is collected from his customers.

(C) Every agent within the City of any retailer not maintaining an office or place of business in this City, when such person sells, rents, leases, or licenses tangible personal property for storage or use in this City, shall at the time of such transaction collect and be liable for the tax imposed by this Article upon the storage or use of the property so transferred, unless such retailer or agent is liable for an equivalent excise tax upon the transaction.

(D) Any person who acquires tangible personal property from a retailer located in the City and such person claims to be exempt from the City privilege or use tax at the time of the transaction and upon which no City privilege tax was charged or paid, when such claim is not sustainable.

(E) Every person storing or using tangible personal property under the conditions of a warranty, maintenance, or service contract.

5-10-630: USE TAX; RECORD KEEPING REQUIREMENTS:
All deductions, exclusions, exemptions, and credits provided in this Article are conditional upon adequate proof of documentation as required by Article III or elsewhere in this Chapter.
5-10-640: USE TAX; CREDIT FOR EQUIVALENT EXCISE TAXES PAID TO ANOTHER JURISDICTION:
In the event that an equivalent excise tax has been levied and paid upon tangible personal property which is acquired to be stored or used within this City, full credit for any and all such taxes so paid shall be allowed by the Tax Collector, but only to the extent use tax is imposed upon that transaction by this Article.

5-10-650: USE TAX; EXCLUSION WHEN ACQUISITION SUBJECT TO USE TAX IS TAXED OR TAXABLE ELSEWHERE IN THIS CHAPTER; LIMITATION:
The tax levied by this Article does not apply to the storage or use in this City of tangible personal property acquired in this City, the gross income from the sale, rental, lease, or license of which were included in the measure of the tax imposed by Article IV of this Chapter; provided, however, that any person who has acquired tangible personal property from a vendor in this City without paying the City privilege tax because of a representation to the vendor that the property was not subject to such tax, when such claim is not sustainable, may not claim the exclusion from such use tax provided by this Section.

5-10-660: USE TAX; EXEMPTIONS:
The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Article:

(A) Tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.

(B) Tangible personal property, the value of which does not exceed the amount of one thousand dollars ($1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.

(C) Charges for delivery, installation, or other customer services as prescribed by regulation.

(D) Charges for repair services as prescribed by regulation.

(E) Separately itemized charges for warranty, maintenance, and service contracts.

(F) Prosthetics.

(G) Income-producing capital equipment.

(H) Rental equipment and rental supplies.

(I) Mining and metallurgical supplies.

(J) Motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 9, Title 28, Arizona Revised Statutes.

(K) Tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid privilege license for engaging or continuing in the business of construction contracting and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
(L) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(M) Tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(N) Rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 5-10-410 or by a radio station, television station, or subscription television system.

(O) Food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 5-10-455, but not food consumed by owners, agents, or employees of such business.

(P) Tangible personal property acquired by a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (3476/Reso. 7209)

(Q) Sales of Food. (IN98-1/Election 3-14-00)

Definitions. (IN98-1/Election 3-14-00)

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply: (IN98-1/Election 3-14-00)

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other nonstaple foods. (IN98-1/Election 3-14-00)

2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs. (IN98-1/Election 3-14-00)

3. "Automatic retailer" means a coin-operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers. (IN98-1/Election 3-14-00)

4. "Caterer" means a person engaged in the business of serving meals, food, and drinks on the premises used by his customer, but does not include employees hired by the hour or day. (IN98-1/Election 3-14-00)

5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food, and grocery items kept under refrigeration. (IN98-1/Election 3-14-00)

6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle. (IN98-1/Election 3-14-00)
7. "Food." (IN98-1/Election 3-14-00)

(a) Food is defined as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages, or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax-exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the statute, and are therefore subject to the sales tax, shall be referred to herein as "taxable foods." (IN98-1/Election 3-14-00)

(b) "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the City does not consider food for human consumption: (IN98-1/Election 3-14-00)

   i. Pet food and supplies. (IN98-1/Election 3-14-00)
   ii. Cosmetics and grooming items. (IN98-1/Election 3-14-00)
   iii. Tobacco products. (IN98-1/Election 3-14-00)
   iv. Soaps and paper products and household supplies. (IN98-1/Election 3-14-00)
   v. Dietary supplements such as vitamins or protein supplements. (IN98-1/Election 3-14-00)
   vi. Medicines. (IN98-1/Election 3-14-00)
   vii. Fertilizer. (IN98-1/Election 3-14-00)

8. "Food for Consumption on the Premises." (IN98-1/Election 3-14-00)

(a) "Food for consumption on the premises" means the following: (IN98-1/Election 3-14-00)

   i. Hot prepared food, including products, items, or ingredients of food which are prepared and sold or intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer. (IN98-1/Election 3-14-00)
   ii. Hot or cold sandwiches including frozen sandwiches. (IN98-1/Election 3-14-00)
   iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and within parking areas (for in-car consumption). (IN98-1/Election 3-14-00)
   iv. Food served with trays, glasses, dishes, or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer. (IN98-1/Election 3-14-00)
v. Beverages sold in cups, glasses, or open containers. Beverages shall include items such as milk shakes and ice cream floats. (IN98-1/Election 3-14-00)

vi. Food sold by caterers. (IN98-1/Election 3-14-00)

vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction, food for consumption on the premises does not include sales of tax-exempt food by a qualified retailer within the premises of a full-time educational institution that charges tuition for a full course of studies. (IN98-1/Election 3-14-00)

(b) Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable. (IN98-1/Election 3-14-00)

9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption. (IN98-1/Election 3-14-00)

10."Home" means a natural person’s usual or habitual dwelling place, including rest homes, nursing homes, jails, and other such institutions. (IN98-1/Election 3-14-00)

11."Premises" means the total space and facilities, including buildings, grounds, and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer. (IN98-1/Election 3-14-00)

12."Qualified Retailer." (IN98-1/Election 3-14-00)

(a) A qualified retailer or qualified retail business is one that may be eligible to sell tax-exempt food without including the sale of tax-exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer. (IN98-1/Election 3-14-00)

(b) Qualified retailers are: (IN98-1/Election 3-14-00)

i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the Food Stamp Program. If a retailer is eligible to participate in the Food Stamp Program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Arizona Department of Revenue (and is approved by the State) to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include: (IN98-1/Election 3-14-00)

(1) Grocery stores; (IN98-1/Election 3-14-00)

(2) Convenience stores; (IN98-1/Election 3-14-00)

(3) Butcher shops; (IN98-1/Election 3-14-00)

(4) Bakeries; (IN98-1/Election 3-14-00)
(5) Dairy stores; (IN98-1/Election 3-14-00)

(6) Cheese stores; (IN98-1/Election 3-14-00)

(7) Farmer’s markets. (IN98-1/Election 3-14-00)

ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations. (IN98-1/Election 3-14-00)

iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups. (IN98-1/Election 3-14-00)

iv. Delicatessen business, if such retailer conducts his business so that the sale of tax-exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax-computing keys which are used to record taxable and tax-exempt sales. (IN98-1/Election 3-14-00)

v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include: (IN98-1/Election 3-14-00)

   (1) Snackmobile; (IN98-1/Election 3-14-00)

   (2) Chuck wagon; (IN98-1/Election 3-14-00)

   (3) Mobile hot dog stands. (IN98-1/Election 3-14-00)

vi. Vending machines and other automatic retailers. (IN98-1/Election 3-14-00)

13. "Staple food" means those food items intended for home preparation and consumption, which includes meats, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. (IN98-1/Election 3-14-00)

14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the sales tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises. (IN98-1/Election 3-14-00)

15. Tax-Exempt Foods. (IN98-1/Election 3-14-00)

   (a) "Tax-exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1998, to be purchased with food coupons issued by the United States Department of Agriculture. (IN98-1/Election 3-14-00)

   (b) Tax-exempt foods shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1998. (IN98-1/Election 3-14-00)
(c) The following are examples of items which the City will consider as tax-exempt food: (IN98-1/Election 3-14-00)

- Bread and flour products
- Vegetables and vegetable products
- Candy and confectionery
- Sugar, sugar products and substitutes
- Cereal and cereal products
- Butter, oleomargarine, shortening, and cooking oils
- Cocoa and cocoa products
- Coffee and coffee substitutes
- Milk and milk products
- Eggs and egg products
- Tea
- Meat and meat products
- Spices, condiments, extracts, and food colorings
- Fish and fish products
- Frozen foods
- Soft drinks and soda (including bottles on which a deposit is required to be paid)
- Fruit and fruit products
- Packaged ice cream products
- Dietary substitutes
- Ice cubes and bottled water including carbonated and mineral water
- Purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax-computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted. (IN98-1/Election 3-14-00)

(R) The following tangible personal property purchased by persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry, or ratites: (2977/Reso. 6722)

1. Seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.

2. Feed for livestock, poultry, or ratites, including salt, vitamins, and other additives to such feed. (2977/Reso. 6722)

3. Livestock, poultry, or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses. (2977/Reso. 6722)

4. (Reserved)

This exemption shall not be construed to include machinery, equipment, fuels, lubricants, pharmaceuticals, repair and replacement parts, or other items used or consumed in the running, maintenance, or repair of machinery, equipment, buildings, or structures used or consumed in the business of farming, ranching, or feeding of livestock, poultry, or ratites. (2977/Reso. 6722)

(S) Groundwater-measuring devices required by A.R.S. §45-604.
(T) Paintings, sculptures, or similar works of fine art, provided that such works of fine art are purchased from the
original artist and provided further that "art creations," such as jewelry, macramé, glasswork, pottery,
woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic
and utilitarian, are not exempt, whether purchased from the artist or from another.

(U) Aircraft acquired for use outside the State as prescribed by regulation. (2977/Reso. 6722)

(V) Sales of food products by producers as provided for by A.R.S. § 3-561, § 3-562, and § 3-563. (4616)

(W) (Reserved)

(X) Sales of food and drink to a person who is engaged in business that is classified under the restaurant
classification and that provides such food and drink without monetary charge to its employees for their own
consumption on the premises during such employees’ hours of employment. (5190)

(Y) (Reserved)

(Z) Tangible personal property used or stored by this City.

(AA) Tangible personal property used in remediation contracting as defined in Section 5-10-100 and Regulation 5-
10-100.5. (3420/Reso. 7134)

(BB) Materials that are purchased by or for publicly funded libraries including school district libraries, charter
school libraries, community college libraries, state university libraries, or federal, state, county, or municipal
libraries for use by the public as follows: (3476/Reso. 7209)

1. Printed or photographic materials. (3476/Reso. 7209)

2. Electronic or digital media materials. (3476/Reso. 7209)

(CC) Food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as
defined in A.R.S. §42-5061 (A) (49), that serves the food and beverages to its passengers, without additional
charge, for consumption in flight. For the purposes of this Subsection, "accessories" means paper plates,
plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or
other items which facilitate the consumption of the food. (3476,4616/Reso. 7209)

-DD) Wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to
enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470.
(3476/Reso. 7206)

(EE) (Reserved)

(FF) Alternative fuel as defined in A.R.S. §1-215, by a used oil fuel burner who has received a Department of
Environmental Quality permit to burn used oil or used oil fuel under A.R.S. §49-926 or §49-480. (3476/Reso.
7209)

(GG) Food, beverages, condiments and accessories to a public educational entity pursuant to any of the provisions
of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers
an educational program for grade twelve or under which may be attended in substitution for a public school
pursuant to A.R.S. 15-802; to the extent such items are to be prepared or served to individuals for
consumption on the premises of a public educational entity during school hours. For the purposes of this
subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws,
paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476,
5190/Reso. 7209)
(HH) Personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 5-10-444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy. (3476/Reso. 7209)

(II) The diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline. (3729/Reso. 7458)

(JJ) Food, beverages, condiments, and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks, or other disposable containers, or other items which facilitate the consumption of food. (3729/Reso. 7458)

(KK) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215. (3729,4616/Reso. 7458, 3921)

(LL) The storage, use or consumption of tangible personal property in the city or town by a school district or charter school. (5059)

(MM) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)

(NN) Sales of magazines or other periodicals or other publications by this state to encourage tourist travel. (5190)

(OO) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing. (5190)

(PP) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. (5190)

(QQ) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service. (5190)

(RR) Sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This Subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction. (5190)
ARTICLE VII. ACCESS TO CARE PROGRAM

SEC. 5-10-700. LEGISLATIVE INTENT. (5150)

This ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of the City of Mesa by:

(A) Establishing a funding source for the non-federal share of Arizona Health Care Cost Containment System (AHCCCS) payments to acute care hospitals within the City of Mesa that provide significant amounts of uncompensated care to uninsured and low income patients, pursuant to S.B. 1357; (5150)

(B) Establishing a funding source for the non-federal share of the cost of an expansion of coverage through the AHCCCS program to uninsured individuals, pursuant to S.B. 1357; (5150)

(C) Promoting access to health care for residents of the City of Mesa, including low-income, uninsured and otherwise vulnerable populations, by ensuring the financial stability and viability of acute care hospital systems in the City; and (5150)

(D) Promoting economic development and protecting and expanding jobs in the health sector and related fields within the City of Mesa. (5150)

SEC. 5-10-701. DEFINITIONS. (5150)

For the purposes of this Article only, the following definitions shall apply: (5150)

“Access to Care Fund” means the fund established pursuant to Section 5-10-705. (5150)

“Access to Care Fund Remainder (“ATC Fund Remainder”)” means the amount remaining in the Access to Care Fund after reservation of the administrative costs pursuant to Section 5-10-725 (A). (5150)

“Access to Care Tax (“ATC Tax”)” means the tax imposed pursuant to Section 5-10-710. (5150)

“Access to Care Program” means the program consisting of the ATC tax, the uncompensated care payments, and related expanded AHCCCS coverage, to be established by AHCCCS and approved by CMS. (5150)

“Administrative Costs” means the costs to the tax collector of the collecting, administering, enforcing and transferring the ATC tax, which may include: time, materials, overhead, and litigation costs. (5150)

“AHCCCS” means the Arizona Health Care Cost Containment System, an agency of the state, which administers the medicaid program in Arizona under Title XIX of the SSA. (5150)

“CFR” means the Code of Federal Regulations. (5150)

“CMS” means the Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services. (5150)
“Coverage Amount” means an amount specified by AHCCCS to pay for the non-federal share of the expanded coverage that is part of the Access to Care Program. (5150)

“Delinquency Date” means the day after the due date. (5150)

“Due Date” means that day that is 30 days prior to the end of each quarter during the UC payment period, unless otherwise specified pursuant to Section 5-10-715 (E). (5150)

“Effective Date” means 30 days after the date of passage of this ordinance. (5150)

“Inpatient Discharges” means the annual number of days of inpatient hospital care provided to patients, calculated pursuant to Section 5-10-710. (5150)

“Medicare Cost Report” means the hospital cost report required for hospitals participating in the Medicare Program under Title XVIII of the SSA, using CMS form 2552-96. (5150)

“Non-federal Share” means the portion of AHCCCS expenditures that are not reimbursed by the federal government pursuant to Section 1903 of the SSA and are required to be paid from state or local sources, pursuant to Section 1903 (A) (2) of the SSA. (5150)

“Participating Hospital” means a health care institution located in the City of Mesa that is licensed as a hospital by the Arizona Department of Health Services under Arizona Revised Statutes Title 36, Chapter 4, Article 2. (5150)

“Quarter” means a three month period from January to March, April to June, July to September, or October to December. (5150)

“S.B. 1357” means Senate Bill 1357, enacted by the Arizona Legislature, during its Fiftieth Legislature, First Regular Session of 2011. (5150)

“Safety Net Care Pool” means the funding pool established pursuant to the AHCCCS demonstration project authorized under Section 1115 of the SSA. (5150)

“Shortfall Amount” means the amount of any ATC tax payment that a participating hospital owes but does not pay by the due date. (5150)

“SSA” means the Social Security Act. (5150)

“Transfer Date” means the date that is 15 days prior to the end of each quarter during the UC payment period, unless AHCCCS specifies a different date, for transfer of funds from the City to AHCCCS pursuant to Section 5-10-725. (5150)

“Transfer Funds” means the funds to be transferred to AHCCCS as specified in Section 5-10-725 (B). (5150)

“Uncompensated Care Payments” means payments, to be administered by AHCCCS and approved by CMS, to participating hospitals to reimburse some or all of their uncompensated care costs of treating AHCCCS and uninsured patients. (5150)
“UC Payment Transfer Amount” means the ATC fund remainder minus the coverage amount, to be used to pay for the non-federal share of uncompensated care payments to participating hospitals for the current quarter, except that the UC payment transfer amount shall not exceed the amount specified by AHCCCS as required to fund uncompensated care payments for the quarter. (5150)

“UC Payment Period” means the period beginning on the first day of the period for which CMS approves uncompensated care payments for participating hospitals and ending on the last day of the period for which AHCCCS is authorized by state statute and CMS to make uncompensated care payments to participating hospitals. (5150)

SEC. 5-10-705. CREATION OF ACCESS TO CARE FUND. (5150)

(A) An Access to Care Fund is created as a restricted subfund within the City. The fund shall be sued to account for the Access to Care Program monies and shall contain only the following: (5150)

1. Proceeds from ATC tax payments; (5150)

2. Penalties and interest for late ATC tax payments; and (5150)

3. Monies repaid to the City by AHCCCS in connection with the ATC tax or the uncompensated care payments. (5150)

(B) No monies in the Access to Care Fund shall revert to, or lapse into any other fund, including the City General Fund, except the amounts for administrative costs as provided for in Section 5-10-720 (A) and amounts from penalties and interest as provided for in Section 5-10-720 (E). (5150)

SEC. 5-10-710. IMPOSITION OF ACCESS TO CARE TAX AND RATE. (5150)

(A) As of the effective date, there is hereby levied and imposed an ATC tax equal to $461.91 per inpatient discharge for each participating hospital. (5150)

(B) Inpatient discharges for each participating hospital is calculated as the sum of the following lines from Worksheet S-3, Part I, Column 15, of the participating hospital’s Medicare cost report lines 12, 14 & 14.01. (5150)

(C) All data required to calculate the ATC tax and its application shall be derived from each participating hospital’s Medicare cost reports for the hospital fiscal year ending between April 1, 2010 and March 31, 2011. (5150)

SEC. 5-10-715. COLLECTION OF TAX (5150)

(A) Except as specified in (E) and Section 5-10-735, the ATC tax shall be due and payable on the due date on a quarterly basis with a tax payment for each quarter within the UC payment period. Each tax payment shall equal one-fourth of the total amount calculated pursuant to Section 5-10-710 (A), except that the tax payment amount shall be prorated if the UC payment period begins on a day other than the first day of a quarter or ends on a day other than the last day of a quarter, based on the number of days in such quarter that are with in the UC payment period. (5150)
If the UC payment period is longer than one year, additional quarterly tax payments shall be due, calculated in the manner specified in (A). (5150)

Each participating hospital shall file an ATC tax form with the City in such form and on such date as the Tax Collector shall specify, providing the data required to determine the amount of the ATC tax payment due. The Tax Collector may require the tax form to be submitted prior to the date on which all conditions specified in Section 5-10-735 have occurred. (5150)

If any participating hospital fails to remit the full amount of the tax payment owed by the due date, the Tax Collector shall promptly notify the participating hospital of the shortfall amount. The participating hospital shall remit to the Tax Collector forthwith the shortfall amount along with penalties and interest due pursuant to Section 5-10-750. (5150)

The Tax Collector shall adjust the due date(s) for any ATC tax payments due within the UC payment period prior to CMS approval as necessary to implement the Access to Care Program as soon as practicable after CMS approval described in Section 5-10-735 and as agreed to with AHCCCS. The Tax Collector shall provide written notice to the participating hospitals indicating the due date(s) for the applicable tax payments at least 5 days prior to such due date(s). (5150)

The Tax Collector shall account for all ATC tax payments and all shortfall amounts remitted pursuant to Section 5-10-715 (D) in the Access to Care Fund. (5150)

SEC. 5-10-720. USE OF ACCESS TO CARE TAX FUND (5150)

Monies in the Access to Care Fund may be utilized for the following purposes: (5150)

Up to $6,250.00 of the collected tax payments each quarter may be used by the City to cover the administrative costs. Such amount may be increased by the City upon written notice to the participating hospitals 30 days prior to the next transfer date if the City incurs unanticipated costs including costs for administration, litigation or bankruptcy proceedings related to the tax. (5150)

To transfer funds to AHCCCS pursuant to Section 5-10-725 and an intergovernmental agreement for the purpose of providing local funding for the non-federal share of: (5150)

1. Uncompensated care payments to participating hospitals; and (5150)

2. Expanded health care coverage to individuals through AHCCCS. (5150)

To refund to participating hospitals any ATC tax overpayment or amounts otherwise collected in error; (5150)

To refund to participating hospitals pursuant to Section 5-10-745 any amounts repaid by AHCCCS to the Tax Collector after recoupment of uncompensated care payments funded by tax proceeds transferred by the City; (5150)

With respect only to penalties and interest collected pursuant to Section 5-10-750, to transfer to the City’s General Fund to be used for any City-authorized purpose or any budgeted purpose consistent with the General Fund rules. (5150)
SEC. 5-10-725. TRANSFER TO AHCCCS. (5150)

(A) From the ATC tax payments collected each quarter, the Tax Collector shall retain the administrative costs. (5150)

(B) From the ATC Fund Remainder, the Tax Collector shall transfer to AHCCCS each quarter on the transfer date the transfer funds, except as provided under Subsections (C) or (D). The transfer funds are equal to the sum of: coverage amount + UC payment transfer amount. (5150)

(C) Under no circumstances shall the Tax Collector be required to transfer a total amount of transfer funds greater than the ATC Fund Remainder. If the transfer funds required under Subsection (B) exceed the fund remainder, the UC payment transfer amount shall be reduced such that the amount of the transfer funds equals the ATC Fund Remainder. (5150)

(D) In the event that the ATC Fund Remainder is greater than the transfer funds such that there are amounts remaining in the fund after a quarterly transfer, the Tax Collector shall return to the participating hospitals within 15 days after the transfer date their pro rata share of the ATC Fund Remainder based on the ATC quarterly tax amounts paid under Section 5-10-715 (A). The pro-rata share shall be based on the prior quarter. Additionally, in the event a participating hospital owes the Tax Collector monies for the previous or current quarter, the Tax Collector shall offset that participating hospital’s pro-rata share by the amount owed. (5150)

(E) In the event that a participating hospital owes a shortfall amount pursuant to Section 5-10-715 (D), the Tax Collector shall not transfer to AHCCCS any such shortfall amounts paid until 95 business days after receipt of the shortfall amount from the participating hospital. The Tax Collector shall transfer shortfall amounts to AHCCCS on the next transfer date after the 95 day period along with the transfer funds for the then-applicable quarter. In the case of shortfall amounts from the last ATC tax payment owed before the ATC tax terminates, the Tax Collector shall transfer the shortfall amounts within 15 days after the 95 day period. (5150)

SEC. 5-10-730. NO IMPACT ON PATIENTS OR PAYERS (5150)

Participating hospitals shall not pass the cost of the tax on to patients or third party payers liable to pay for the care on a patient’s behalf. (5150)

SEC. 5-10-735. REQUIREMENTS FOR IMPLEMENTATION (5150)

The tax shall not be due or payable unless and until all of the following occurs: (5150)

(A) CMS approves the uncompensated care payments and the ATC tax; and (5150)

(B) AHCCCS agrees to return to the City the non-federal share of any uncompensated care payments recouped by AHCCCS from participating hospitals, unless such recouped payments are redistributed by AHCCCS to other participating hospitals pursuant to the terms and conditions of the federal approval of the uncompensated care payments; and (5150)

(C) The City enters into an intergovernmental agreement with AHCCCS. (5150)
SEC. 5-10-740. TERMINATION. (5150)

(A) The ATC tax shall terminate on September 30, 2013, unless the UC payment period extends beyond that date due to an extension of AHCCCS’ authorization to make uncompensated care payments to participating hospitals and AHCCCS’ authorization to accept City funds for the non-federal share of AHCCCS payments pursuant to S.B. 1357. In the event that the ATC tax extends beyond September 30, 2013, the ATC tax shall terminate on the earliest of:

1. The date on which AHCCCS’ authorization to make uncompensated care payments to participating hospitals ends; or (5150)

2. The date on which AHCCCS’ authorization to accept City funds for the non-federal share of AHCCCS payments pursuant to S.B. 1357 expires; or (5150)

3. December 31, 2013. (5150)

(B) The ATC tax shall terminate prior to the date in Subsection (A) upon any of the following conditions: (5150)

1. The ATC tax is determined not to be a permissible source of non-federal share funding; or (5150)

2. The ATC tax is otherwise determined to be unlawful under city, state or federal law; or (5150)

3. A statewide hospital tax or other assessment is adopted and takes effect. (5150)

SEC. 5-10-745. IMPACT OF TERMINATION OR RECOUPMENT. (5150)

(A) In the event that the AHCCCS refunds all or part of any transfers made to it pursuant to Section 5-10-725 (B), the City shall return to the participating hospitals, within 15 days of return of the funds from AHCCCS, their pro rata share of the returned funds based on ATC tax amounts paid under Section 5-10-710. (5150)

(B) In the event that the ATC tax terminates under Section 5-10-740, the Tax Collector shall refund to each participating hospital within 15 days of termination the pro rata portion of any monies remaining in the ATC fund that have not been spent or irrevocably allocated for their designated purposes. (5150)

SEC. 5-10-750. INTEREST AND PENALTIES. (5150)

(A) In the event a participating hospital owes a shortfall amount to the Tax Collector pursuant to Section 5-10-715 (D), the participating hospital must pay interest on such shortfall amount from the delinquency date until it is remitted to the Tax Collector. The interest rate shall be determined pursuant to Section 5-10-540. (5150)

(B) In addition to interest being assessed under Subsection (A), any participating hospital that fails to pay any of the ATC tax imposed by this Article which were due or found to be due before the delinquency date shall be subject to and shall pay two (2) percent civil penalties on the shortfall amount. (5150)

(C) Penalties provided for under Section 5-10-540 are not applicable. (5150)

(D) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector. (5150)
SEC. 5-10-755. EXAMINATION OF BOOKS AND RECORDS; FAILURE TO PROVIDE RECORDS.

(A) The Tax Collector and the participating hospitals shall have all the rights and obligations as stated in Section 5-10-510. (5150)

(B) Nothing in this ordinance may be read as a waiver of any rights the Tax Collector may have under the Code or by City Charter with regards to the ability to enforce and/or collect all monies owed by the participating hospitals except where expressly stated. (5150)

(C) All other provisions in the Code or City Charter are applicable unless expressly stated otherwise. (5150)
5-10-100.1: BROKERS:

(A) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall wherever necessary be treated as taxpayers for all purposes and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 5-10-405 relating to advertising commissions.

(B) Brokers for Vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf by reason of the activity being deemed a "casual" one. For example:

1. An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

2. A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(C) Brokers for Vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(D) The liability of a broker does not relieve the principal of liability, except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

(E) (Reserved) (2321)

(F) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "out-of-city sales"; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction. (2321)

5-10-100.2: DELIVERY, INSTALLATION, OR OTHER DIRECT CUSTOMER SERVICES:

(A) Delivery charges exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer’s books and records show the separate delivery charges.

1. Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge."

2. Freight-In. Charges for delivery from place of production or the manufacturer to the vendor, either directly or through a chain of wholesalers or jobbers or other middlemen, are deemed "freight-in" and are not considered delivery.
(B) "Installation," as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.

(C) Repair of tangible personal property is not included in this definition. See Regulation 5-10-465.1.

(D) "Direct customer services" are services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of Subsection (E) below are referred to by the words identify or identification.

1. A retailer sells a customer a one hundred-dollar ($100.00) "plug-in" appliance, with a twenty-five-dollar ($25.00) delivery and installation charge. If the retailer identifies the twenty-five-dollar ($25.00) delivery and installation charge, it is a charge for direct customer services.

2. A caterer charges his customer one thousand dollars ($1,000.00) for the food and drink served, three hundred dollars ($300.00) for setup and site cleanup, and five hundred dollars ($500.00) for bartender and waiters. If all charges are properly identified, only the three hundred dollars ($300.00) for setup and cleanup is a charge for direct customer services, and the one thousand five hundred dollars ($1,500.00) for food and service is restauranting gross income.

3. Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.

4. All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.

5. An equipment rental company charging twenty-five dollars ($25.00) for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.

6. Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.

(E) Record Keeping Requirements.

1. Any person who engages in transactions involving these services must:

   (a) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge and

   (b) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified to the satisfaction of the Tax Collector.

2. Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or a similar expression does not satisfy the requirements of this Subsection.
5-10-100.3: RETAILERS:
When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

5-10-100.4: OUT-OF-CITY/OUT-OF-STATE SALES; SALES TO NATIVE AMERICANS: (3729/RESO. 7458)
Sales to Native Americans or tribal councils by vendors located within the City shall be deemed sales within the City, unless all of the following conditions exist: (3729/Reso. 7458)

1. The vendor has properly accounted for such sales, in a manner similar to the record keeping requirements for out-of-City sales; and

2. All of the following elements of the sale exist:
   (a) Solicitation and placement of the order occurs on the reservation; and
   (b) Delivery is made to the reservation; and
   (c) Payment originates from the reservation. (2321)

5-10-100.5: REMEDIATION CONTRACTING:
The following activities are considered remediation contracting and are exempt: (3420/Reso. 7134)

1. Excavation, transportation, treatment, and/or disposal of contaminated soil for purposes of site remediation (rather than characterization); (3420/Reso. 7134)

2. Installation of groundwater extraction and/or injection wells for purposes of groundwater remediation; (3420/Reso. 7134)

3. Installation of pumps and piping into groundwater extraction wells for remediation purposes; (3420/Reso. 7134)

4. Installation of vapor extraction wells for the purpose of soil or groundwater remediation; (3420/Reso. 7134)

5. Construction of remediation systems, such as groundwater treatment plants, vapor extraction systems, or air injection systems; (3420/Reso. 7134)

6. Connection of remediation systems to utilities; (3420/Reso. 7134)

7. Abandonment of groundwater or vapor extraction wells; (3420/Reso. 7134)

8. Removal/demolition of remediation systems; (3420/Reso. 7134)

9. Capping/closure construction activities; and (3420/Reso. 7134)
10. Service or handling charges for subcontracted remediation contracting activities. (3420/Reso. 7134)

5-10-110.1: (REPEALED BY 2977/RESO. 6722)

5-10-110.2: (REPEALED BY 2977/RESO. 6722)

5-10-115.1: COMPUTER HARDWARE, SOFTWARE, AND DATA SERVICES:

(A) Definitions.

1. COMPUTER HARDWARE: (Also called computer equipment or peripherals.) The components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

2. COMPUTER SOFTWARE: (Also called computer program.) Tangible personal property, and includes:

   (a) OPERATING PROGRAM (SOFTWARE): (Also called executive program {software}.) The programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer’s processing capabilities.

   (b) APPLIED PROGRAM (SOFTWARE): The programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

3. STORAGE MEDIUM: Any hard disk, compact disk, floppy disk, diskette, disk pack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

4. TERMINAL ARRANGEMENT: (Also called on-line arrangement.) Any agreement allowing access to a remote central processing unit through telecommunications via hardware.

5. COMPUTER SERVICES AGREEMENT: (Also called data services agreement.) Any agreement allowing access to a computer through a third-party operator.

(B) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property, and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

1. Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee’s use of such hardware or storage media on the lessor’s premises.

2. Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:
(a) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(b) The entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer’s premises.

(c) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(d) The entire amount charged for transfer of a prewritten (canned) program by remote telecommunications from the transferor’s place of business to or through the customer’s computer.

(e) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

i. If such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

ii. If such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

iii. If such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program, and charges for consultation are deemed to be charges for professional services.

(C) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

1. Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in Subsection (E) below.

2. Additional copies of records, reports, manuals, tabulations, etc. "Additional copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(D) Charges for the use of communications channels in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(E) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 5-10-100.2(E):
1. "Custom (computer) programming," which is any computer software written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

   (a) Custom computer programming is deemed a professional service regardless of the form in which the programming is transferred. (3954/Reso.7756)

   (b) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

   (c) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

2. Training services related to computer hardware or software, provided further that:

   (a) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without a separately itemized charge for the materials provided.

   (b) Training deemed a direct customer service does not include:

      i. Training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.

      ii. Training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software or as part of a terminal arrangement or data services agreement.

3. The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer’s place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

4. Compiling and producing as part of a terminal arrangement or computer services agreement original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(F) The purchase, rental, lease, or license for use of computer hardware, storage media, or computer software which is not deemed custom programming is deemed the use or storage of tangible personal property for the purpose of this Chapter, and the amount which may be subject to Use Tax shall be determined in the same manner as the determination of the gross income from the sale, rental, lease, or license for use of such.

5-10-120.1: (RESERVED)

5-10-200.1: WHEN DEPOSITS ARE INCLUDABLE IN GROSS INCOME: (2977/RESO. 6722)

(A) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee. (2977/Reso. 6722)
(B) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt. (2977/Reso. 6722)

5-10-250.1: **EXCESS TAX COLLECTED:**
If a taxpayer collects taxes in excess of the combined tax rate from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. Tax paid on an activity that is not subject to tax or that qualifies for an exemption, deduction, exclusion or credit is not excess tax collected. (4582)

5-10-270.1: **PROPRIETARY ACTIVITIES OF MUNICIPALITIES ARE NOT CONSIDERED ACTIVITIES OF A GOVERNMENTAL ENTITY:**
The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 5-10-270:

(A) Rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

(B) Producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

(C) Sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

(D) Providing wastewater removal to consumers or ratepayers, by means of sewers or pipeline, or by any other method. (4990)

5-10-270.2: **PROPRIETARY CLUBS:**

(A) Equity Requirements. In order to qualify for exclusion under Section 5-10-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one (1) or more of its employees and it is not engaged in any business activity connected with the operation of the club.

(B) Gross Revenue Requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of Subsection 5-10-270(C)1,

1. The following shall be excluded:

   (a) Membership dues.

   (b) Membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.

   (c) Assessments.

   (d) Special fund-raising events, raffles, etc.

   (e) Donations, gifts, or bequests.
(f) Gate receipts, admissions, and program advertising for not more than one (1) tournament in any calendar
year.

2. The following must be included:

   (a) Green fees, court use fees, and similar charges for the actual use of a facility or part thereof.

   (b) Pro shop sales if the shop is owned by the club.

   (c) Golf cart rental if the carts are owned by the club.

   (d) Rentals, percentages, or commissions received for permitting the use of the premises or any portion
   thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing,
catering, food or beverage service, or instruction.

   (e) All receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and
   similar receipts.

   (f) Locker and locker room fees and attendants’ charges if paid to the club.

   (g) Tournament entry fees other than entry fees for the one (1) annual tournament exempt under Subsection
   (B)1(f) above.

5-10-405.1: LOCAL ADVERTISING EXAMPLES:

For the purposes of illustration only, and not by way of limitation, the following are provided as
examples of local advertising subject to the tax:

1. Retail sales and rental establishments doing business within the State when only one (1) commonly
designated business entity is identified by name in the advertisement.

2. Financial institutions doing business within the State, whether part of a national chain or local business only.
3. Sales of real estate located within the State.

4. Health care facilities located within the State.

5. Hotels, motels, and apartments, whether a national chain or local, so long as the advertisement identifies any location within the State.

6. Brokers doing business within the State, whether stockbrokers, real estate brokers, insurance brokers, etc.

7. Nonprofit organizations which even though tax exempt, have an office, whether national, local, or branch, within the State.


9. Restaurants or food service establishments which have one (1) or more branches, outlets, or franchises within the State, even though the local franchisee or licensee may not be responsible for the placement of the advertisement.

10. Services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling services, utilities, contractors, auction houses, etc.

11. Coupons redeemable only at a single commonly designated business entity within the State.

12. Theater, sports, and other entertainment events held at locations within the State.

5-10-405.2: ADVERTISING ACTIVITY WITHIN THE CITY:

(A) In General. Except as provided elsewhere in this Regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities, such as broadcasting studios, printing plants, or distribution centers, are located within the City limits. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City. (2321)

(B) Billboards and other outdoor advertising companies shall be considered to be doing business within the City to the extent they have billboards or similar displays within the City. (2321)

(C) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 5-10-405, and such tax shall be allocated in the manner prescribed by Subsection (E) of Section 5-10-435. (2321)
INVALID UNLESS COMPLETED IN FULL

VENDOR’S NAME ___________________________ Sales Invoice No. ___________________________

Customer’s Exemption Claim
City of Mesa Privilege License (Sales) Tax

Customer’s Business Name: ____________________________________________________________

Customer’s Business Address: __________________________________________________________

Specific Business Activity: (e.g., if retailer, lessor, or manufacturer, specify items leased, sold, or made, i.e., cars, computers, clothes, etc.)
_________________________________________________________________________________________

Customer’s License Nos: _________________________________________________________________
City: ____________________________ State: ________________________________

ITEMS CLAIMED AS EXEMPT FROM TAX

___________: All Items on this Invoice or Purchase Order
or
___________: Only Those Items Marked with an “E”

REASON FOR CLAIMED EXEMPTION:

___________: The items claimed as exempt are sold, rented, leased, or licensed by the above named customer in the normal course of its business activity
or
___________: The items claimed as exempt are exempt from the City of Mesa Privilege Tax for the following specific reason(s):

_________________________________________________________________________________________

CUSTOMER’S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under City Code Section 5-10-580.

Name ___________________________ Date ___________________________

Title ___________________________
5-10-407.1:  (RESERVED) (2321)

5-10-415.1:  DISTINCTION BETWEEN THE CATEGORIES OF CONSTRUCTION CONTRACTING:
For the purposes of this Chapter, transactions involving improvements to, or sales of, real property
are designated into one (1) of the following categories, and these categorizations shall apply whether or not a person
designates himself as a contractor, construction manager, developer, or otherwise:

(A) A person performing improvements to real property is one (1) of the following:

1. An "owner-builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-
builder" may also be a "speculative builder."

2. A "construction contractor" when performing work for the owner or lessor or lessee-in-possession of the real
property, unless that person has provided a written declaration stating that: (2535)
   (a) The owner-builder is improving the property for sale;
   (b) The owner-builder is liable for the tax for such construction contracting activity; and
   (c) The owner-builder has provided the contractor his City Privilege License number. (2535)

3. A "subcontractor" (as provided in Section 5-10-415(C). (2535)

(B) An owner or lessor ("owner-builder") of improved real property is one (1) of the following:

1. A "speculative builder" as provided in Section 5-10-100; or (2535)

2. An "owner-builder who is not a speculative builder" in all other cases.

(C) The terms "owner," "lessor," and "lessee-in-possession" shall be deemed to include any authorized agent for
such person.

5-10-415.2:  DISTINCTION BETWEEN CONSTRUCTION CONTRACTING AND CERTAIN
RELATED ACTIVITIES:

(A) Certain Rentals, Leases, and Licenses for Use in Connection with Construction Contracting. Rental, leasing,
or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity.
Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of
earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal
property. For example:

1. Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting.
   Rental of these items without an operator is rental of tangible personal property.

2. Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

3. Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with
   the equipment rented.

(B) Distinction Between Construction Contracting, Retail, And Certain Direct Customer Service Activities.
1. When an item is attached or installed on real property, it is a construction contracting activity, and any subsequent repair, removal, or replacement of that item is construction contracting.

2. Items attached or installed on tangible personal property are retail sales.

3. Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).

4. Demolition, earth moving, and wrecking activities are considered construction contracting.

(C) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint. (2977/Reso. 6722)

(D) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity. (2977/Reso. 6722)

1. "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service. (2977/Reso. 6722)

2. Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings. (2977/Reso. 6722)

3. Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges. (2977/Reso. 6722)

4. The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity. (2977/Reso. 6722)

5-10-415.3: CONSTRUCTION CONTRACTING; TAX RATE EFFECTIVE DATE: (4169/RESO. 8205)

(A) In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the "enactment date" as defined in this Section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax. (4169/Reso. 8205)

(B) In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the Tax Collector, to verify that a contract was entered into before the enactment date. (4169/Reso. 8205)

(C) For purposes of this Section, "enactment date" shall be: (4169/Reso. 8205)

1. In the event an election is held, the date of the election. (4169/Reso. 8205)

2. In the event no election is held, the date of final adoption by the Mayor and Council. (4169/Reso. 8205)

3. Notwithstanding the above, nothing in this Section shall be construed to prevent the City from establishing a later enactment date. (4169/Reso. 8205)
5-10-416.1: SPECULATIVE BUILDERS; HOMEOWNER’S BONA FIDE NONBUSINESS SALE OF A FAMILY RESIDENCE:

(A) A sale of a custom home, regardless of the stage of completion of such home, shall be considered a "homeowner’s bona fide nonbusiness sale" and not subject to the tax on speculative builders if: (2977/Reso. 6722)

1. The property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale;

2. The seller has not sold more than two (2) such residences (or if the residence is a vacation residence, two [2] such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and

3. The seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale. (2977/Reso. 6722)

(B) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner’s bona fide nonbusiness purpose, and all construction contractors shall be required to report and pay the tax imposed on all such improvements. (2977/Reso. 6722)

(C) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.

(D) "Owner" and "homeowner" as used in this regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings for the estate of a deceased or incompetent person or a minor may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

5-10-416.2: RECONSTRUCTION CONTRACTING:

(A) "Reconstruction (of real property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:

1. A structure existed on said real property prior to the reconstruction activity;

2. The "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure);

3. The total cost of all construction contracting activities performed on said real property in the twenty-four-(24-) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

4. The structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property and is included, in whole or in part, in the property sold.
(B) Except as provided in Subsection (C) below, "prior value" means the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where according to Title 42 of the Arizona Revised Statutes a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s). (3270/Reso. 6970)

(C) "Alternative prior value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, as a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved, which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long-term lending - not interim or construction financing-will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below. (2977/Reso. 6722)

(D) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty), whichever is earlier, to a purchaser or grantee of any single-residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single-residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further, in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens, or security interests) of a share or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases, a person shall include a husband and wife as a community or any co-occupants of a single unit as joint tenants.

5-10-425.1: DISTINCTION BETWEEN JOB PRINTING AND CERTAIN RELATED ACTIVITIES:

(A) Computerized Printing. Computerized versions of all items which would be taxable under Section 5-10-425 if performed without computerized assistance are considered taxable under that Section and therefore are not exempt services.

(B) Book Publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.

(C) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

5-10-435.1: DISTINCTION BETWEEN PUBLISHING OF PERIODICALS AND CERTAIN RELATED ACTIVITIES:

(A) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.
Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

**5-10-435.2: ADVERTISING INCOME OF PUBLISHERS AND DISTRIBUTORS OF NEWSPAPERS AND OTHER PERIODICALS:**
Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 5-10-405 and such tax shall be allocated in the manner prescribed by Subsection (E) of Section 5-10-435. (2321)

**5-10-445.1: WHEN THE RENTAL, LEASING, AND LICENSING OF REAL PROPERTY IS EXEMPT AS "CASUAL":**

(A) The person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased, or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is deemed not to be in the business of renting, leasing, or licensing real property and is therefore exempt from the tax imposed by Section 5-10-445 on such income. However, a person who has one (1) or more units of any other real property is deemed to be in the business of renting, leasing, or licensing real property, and subject to the tax imposed by Section 5-10-445 on rental, lease, and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than two (2) lodging spaces within the State. (2535, 2977, 4841/Reso. 6722)

(B) (Reserved)

**5-10-445.2: (REPEALED BY 2977/RESO. 6722)**

**5-10-445.3: RENTAL, LEASING, AND LICENSING OF REAL PROPERTY AS LODGING; ROOM AND BOARD; FURNISHED LODGING:**

(A) Room and Board.

1. Rooming houses, lodges, or other establishments providing both lodging and meals shall maintain a record of the separate charges made for the lodging and the meals.

2. The charge for lodging shall be subject to the tax imposed by Section 5-10-444 or Section 5-10-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 5-10-455. (2977/Reso. 6722)

(B) Furnished Lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property unless:

1. Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished;

2. The lessor separately charges tenants for lodging and for furnishings; and

3. The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.
If all of the above conditions are met, such person shall report both sources of income separately to the City.

5-10-447.1:  GROSS INCOME FROM RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY AS LODGING OR LODGING SPACE TO TRANSIENTS: (3175)

(A)  If the charge made by a hotel to a transient includes any charge for services or accommodations in addition to that of lodging and/or the use of lodging space, then such portion of the total charge as represents only the charge for the use of the room and/or lodging space shall be distinctly set out and billed to such transient by such hotel as a separate item, or the entire charge shall be deemed charge for use of lodging space subject to the tax imposed by Section 5-10-447. (3175)

(B)  A separately itemized charge for use of the furnishings contained in lodging or lodging space rented, leased, or licensed to a transient shall be deemed gross income from the business of renting, leasing, and licensing lodging to a transient. Furthermore, in regard to such tangible personal property, such person is deemed not in the business of rental, leasing, and licensing of tangible personal property for all purposes of this Chapter. (3175)

(C)  Complimentary Food and Drink. Persons engaged in the business of rental, leasing, and licensing of lodging to transients shall include charges for complimentary food and drink as gross income from the business of rental, leasing, and licensing of lodging to transients and shall not be deemed in the restaurant business for all purposes of this Chapter, unless such charges: (3175)

1. Are made only at the request of the transient or as a separate, optional charge for consuming specific food or drink (for example, "room service" charges); and (3175)

2. Are commensurate with charges for like quantity and type of food consumed by patrons of persons engaged in the restaurant business. (3175)

5-10-450.1:  DISTINCTION BETWEEN RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY AND CERTAIN RELATED ACTIVITIES:

(A)  Certain Rentals, Leases, and Licenses For Use in Connection With Construction Contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

1. Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.

2. Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

3. Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

(B)  Distinction Between Equipment Rental, Leasing, or Licensing for Use and Transporting for Hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.
5-10-450.2: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; MEMBERSHIP FEES; OTHER CHARGES:

(A) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.

(B) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.

(C) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is considered part of gross income from rental, leasing, or licensing of tangible personal property subject to tax. However, if the contract is optional and is a separate business transaction, the sale of a warranty, maintenance, or service contract is exempt from the tax imposed by Section 14-450.

5-10-450.3: RENTAL, LEASING, AND LICENSING FOR USE OF EQUIPMENT WITH OPERATOR:

In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

5-10-450.4: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; SEMI-PERMANENTLY OR PERMANENTLY INSTALLED TANGIBLE PERSONAL PROPERTY:

(A) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.

(B) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.

(C) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.

(D) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.

1. For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.

2. Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, fork lift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, towbars, sump pumps, arc welders.
(E) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one (1) of the other types of portable equipment or property described in Subsection (D) above.

5-10-450.5: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; DELIVERY, INSTALLATION, REPAIR, AND MAINTENANCE CHARGES:

(A) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 5-10-450, provided that the provisions of Regulation 5-10-100.2 have been met.

(B) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt. (3270/Reso. 6970)

(C) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property shall be exempt. (3270/Reso. 6970)

5-10-455.1: GRATUITIES RELATED TO RESTAURANT ACTIVITY:

Gratuities charged by or collected by persons subject to the tax imposed by Section 5-10-455 may be excluded from gross income if:

(A) Such charge is separately stated upon the bill, invoice, etc. provided the customer and such amounts are maintained separately in the books and records of the taxpayer and

(B) Such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

5-10-460.1: DISTINCTION BETWEEN RETAIL SALES AND CERTAIN OTHER TRANSFERS OF TANGIBLE PERSONAL PROPERTY:

(A) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 5-10-460:

1. Tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 5-10-415 through 5-10-418.

2. (Reserved)

3. Job printing per Section 5-10-425.

4. Mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground per Section 5-10-430.

5. Publication of newspapers, magazines, and other periodicals per Section 5-10-435.
6. Rental, leasing, and licensing of real or tangible personal property per Sections 5-10-445 or 5-10-450.

7. Restaurants and bars per Section 5-10-455.

8. Telecommunications services per Section 5-10-470.

9. Utility services per Section 5-10-480.

10. Wastewater removal services per Section 5-10-485. (4990)

(B) Distinction between construction contracting, retail, and certain direct customer service activities.

1. When an item is attached or installed on real property, it is a construction contracting activity, and any subsequent repair, removal, or replacement of that item is construction contracting.

2. Items attached or installed on tangible personal property are retail sales.

3. Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).

4. Demolition, earth moving, and wrecking activities are considered construction contracting.

(C) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(D) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(E) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

1. "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.

2. Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.

3. Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.

4. The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

5-10-460.2: RETAIL SALES; TRADING STAMP COMPANY TRANSACTIONS:

A trading stamp transaction is defined as follows: the trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale, and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.
The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any privilege or use tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

5-10-460.3: RETAIL SALES; MEMBERSHIP FEES OF RETAILERS:
Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

5-10-460.4: RETAIL SALES; PROFESSIONAL SERVICES:

(A) "Professional services" refers to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, work papers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.

(B) Creative ("idea") labor and design labor that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer’s books and records, are not includable in gross income.

(C) "Professional services" shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential."

1. Incidental transfers of tangible personal property shall be regarded as "inconsequential" if:

   (a) The purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction and

   (b) The tangible personal property transferred is not itself in a form which is subject to retail sale.

2. In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property and subject to all applicable taxes imposed by this Chapter upon such transfer.

(D) Examples:

1. The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public accountant is regarded as inconsequential to the charges for professional services.

2. An appraisal report issued by an appraiser, reflecting such appraiser’s efforts to appraise real estate, is regarded inconsequential.

3. Use of a hair care product on a client’s hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client’s use thereafter and without the professional’s assistance, the transfer of the bottle of hair care product is deemed not inconsequential.
4. If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

5-10-460.5: RETAIL SALES; MONETIZED BULLION; NUMISMATIC VALUE OF COINS:

(A) Monetized Bullion: Coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.

(B) Any coin shall be considered to have been transferred or acquired primarily for its "numismatic value" if the sale or acquisition price:

1. Is equal to or greater than twice (two \( \times 2 \) times) the value of the metallic content of the coin as of the date of transfer or acquisition and

2. Is equal to or greater than twice (two \( \times 2 \) times) its face value in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

5-10-460.6: RETAIL SALES; CONSIGNMENT SALES:

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

5-10-465.1: RETAIL SALES; REPAIR SERVICES:

(A) Fair Market Value of Parts and Labor Charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part which ordinarily sells to the customer at ten dollars ($10.00), at five dollars ($5.00) and including the difference as "service" or "labor." In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit to estimate the gross income subject to tax.

(B) Notwithstanding Regulation 5-10-350.1(E):

1. In the case where the taxpayer does not normally and regularly sell items of tangible personal property apart from a repair transaction, the taxpayer may determine the sale price of the tangible personal property transferred by means of a "computed charge." The "computed charge" shall be the sum of the cost of the item of tangible personal property transferred, plus a "reasonable markup." The "reasonable markup" shall be that amount needed to achieve a representative retail price for which such items of tangible personal property are normally sold at retail by comparable businesses within the State (not under circumstances involving the combination of such sale with the providing of repair services). The taxpayer shall have the initial responsibility of determining such reasonable markup and providing to the Tax Collector, if requested, the basis for his determination.
2. In the event that there is a disagreement between the Tax Collector and the taxpayer as to the proper
determination of the "computed charges," the burden shall be upon the taxpayer to satisfy the Tax Collector,
the Hearing Officer in the event of a hearing, or the court in any subsequent court action involving an
assessment of the validity of the taxpayer’s method of determination of such "computed charges." The
determination by the Tax Collector as to the proper "computed charge" shall be considered valid and shall be
sustained unless it is proven by the taxpayer that such determination is arbitrary and unreasonable.

5-10-465.2: RETAIL SALES; WARRANTY, MAINTENANCE, AND SIMILAR SERVICE
CONTRACTS:

(A) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by
Section 5-10-460.

(B) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance
agreement between a vendor and a vendee shall be subject to tax under Section 5-10-460 only to the extent of
gross income received from separately itemized charges made for the items of property transferred.

(C) The gross income derived from a maintenance insurance agreement, which agreement is entered into between
the purchaser and any person other than the seller, is not subject to tax imposed by Section 5-10-460. If the
provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured
in the performance of the agreement, such sales are subject to all applicable taxes imposed by this Chapter.

(D) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service
contract exempted under Section 5-10-465 are subject to tax as retail sales.

(E) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer’s
warranty is not taxable under Section 5-10-460.

5-10-465.3: RETAIL SALES; SALE OF CONTAINERS, PAPER PRODUCTS, AND LABELS:

(A) The sale of a container or similar packaging material which contains personal property and which is
transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such
nontaxable containers include, but are not limited to: (2977/Reso. 6722)

1. Packaging materials sold to a manufacturer of video equipment for containment of the product during
shipment.

2. Cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or
contained meat.

3. Bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where
such bags or containers are used to contain and measure the amount purchased by the customer. (2977/Reso.
6722)

4. Shopping bags and similar merchandising bags sold to grocery stores, department stores, or other retailers.
(2977/Reso. 6722)

5. Gift wrappings and gift boxes sold to department stores or other retailers. (2977/Reso. 6722)
(B) Sales of nonreturnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks, and other similar food accessories to a restaurant or others taxable under Section 5-10-455 for the transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink, or condiment are sales for resale and not taxable. (2977/Reso. 6722)

(C) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale. (2977/Reso. 6722)

(D) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made. (2977/Reso. 6722)

(E) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it and is not exempt as a sale for resale. (2977/Reso. 6722)

5-10-465.4: RETAIL SALES; AIRCRAFT ACQUIRED FOR USE OUTSIDE THE STATE:
"Aircraft acquired for use outside the State" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to: (2977/Reso. 6722)

(A) Any foreign government for use by such government outside of this State. (2977/Reso. 6722)

(B) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This Subsection also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State. (2977/Reso. 6722)

5-10-470.1: TELECOMMUNICATION SERVICES:

(A) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:

1. Charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 5-10-415, 5-10-416, or 5-10-417 (construction contracting); 5-10-445 (real property rental); 5-10-450 (tangible personal property rental); or 5-10-460 (retail sales); depending upon the nature of the work performed.

2. Separately billed advertising charges which are subject to the provisions of Section 5-10-405 or 5-10-435.

(B) Mobile Equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones; portable hand-held, two-way radios; paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider’s customers are "within this City" as follows:

1. By the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.

2. In all other cases, the business location of the telecommunications provider.
5-10-475.1: DISTINCTION BETWEEN TRANSPORTING FOR HIRE AND CERTAIN RELATED ACTIVITIES:
The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

5-10-520.1: REPORTS MADE TO THE CITY:
(A) Each taxpayer shall provide, as a minimum, all of the following when reporting taxes due as provided in this Chapter:

1. Legal business name of the taxpayer or his agent.

2. Mailing address of the taxpayer.

3. City privilege license number of the taxpayer.

4. Period of time for which the report is intended.

5. For each category of income to which the taxpayer is subject for the reporting period as provided on the official City tax return:

   (a) All amounts subject to, excluded from, exempt from, or deductible from the tax imposed upon that category of business activity, summarized in total as "gross receipts" of that category of business activity.

   (b) The total amount claimed as excludable, exempted, or deducted from such "gross receipts," itemized as provided on the official City tax return and summarized in total as "total deductions" for that category.

   (c) The difference between such "gross receipts" and "total deductions" as "net taxable" for that category.

   (d) The tax due and payable for that category.

6. That total amount subject to use tax, summarized as "net taxable," and the use tax due and payable for that reporting period.

7. Any excess tax collected which is due and payable.

8. Any claimed tax credits against taxes due and payable.

9. Total amount remitted with the return.

10. A statement verifying that the information provided on the return is accurate to the best of the preparer’s knowledge. Such statement must be accompanied by a dated signature of the preparer and also show the preparer’s title or relationship to the taxpayer.

11. The Tax Collector may prescribe and will notify taxpayers of alternative methods for signing, subscribing, or verifying any report or statement required to be filed, including but not limited to electronic signatures and/or security codes, and such methods shall have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe, or verify the return, statement, or other document. (4169/Reso. 8205)
5-10-520.2: CHANGE OF METHOD OF REPORTING:

(A) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving written approval of the Tax Collector. The approval shall state the effective date of the change.

(B) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.

(C) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the City. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.

(D) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a privilege license shall be deemed to have chosen the accrual method of reporting.

5-10-555.1: ADMINISTRATIVE REQUEST FOR THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS; SERVICE THEREOF; REMEDIES AND PENALTIES FOR FAILURE TO RESPOND:

(A) If a taxpayer refuses or fails to comply in whole or in part with a request to provide records authorized by Section 5-10-555, the Tax Collector may issue his written administrative request which shall:

1. Designate the individual to provide information.

2. Describe specifically or generally the information to be provided and any documents sought to be examined.

3. State the date, time, and place in which the individual shall appear before the Tax Collector to provide the information and to produce the documents sought.

4. Be directed to:

    (a) Any director, officer, employee, agent, or representative of the person sought to be examined;

    (b) Any independent accountant, accounting firm, or bookkeeping or financial service retained or employed by such person for any purpose connected with business activity subject to taxation; or

    (c) Any other person who, in the opinion of the Tax Collector, has knowledge of facts bearing upon any tax liability of the person or taxpayer from whom information is sought.

(B) The failure of a taxpayer to comply with reasonable requests for records without good reason or cause may, in the exercise of judicial discretion by a court, be held to constitute a failure to exhaust administrative remedies.
5-10-571.1: COLLECTION OF TAX IN JEOPARDY:
Evidence that collection of tax due is in jeopardy shall include documentation that:

(A) The taxpayer is going out of business.

(B) The taxpayer has no City privilege license or has no permanent business location in the State.

(C) The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.

(D) The taxpayer has remitted payment by check which has been dishonored.

(E) The taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 5-10-555.1.
CHAPTER 11

TEENAGE DANCE HALLS

SECTION:

5-11-1: DEFINITION

The term "teenage dance hall" whenever used in this Chapter shall, unless a different meaning appears from the context, mean an establishment open to persons under nineteen (19) years of age unaccompanied by adults where music is furnished for the purpose of dancing, at which an admission or minimum fee is charged, and includes the building or pavilion or other place provided for dancing, together with all surrounding premises used for parking or any other activity or purpose related to the dancing operation. This definition shall not include an establishment operated or conducted exclusively by and under the auspices of one (1) or more bona fide charitable, fraternal, or religious organizations or schools and the proceeds of which do not inure to the benefit of any private person or individual. (541,1188)

5-11-2: HOURS OF OPERATION

It shall be unlawful for a teenage dance hall to be operated except during the following hours:

Four thirty (4:30) P.M. to twelve (12:00) midnight on any day Monday through Thursday; (541,1188)

Four thirty (4:30) P.M. Friday to one (1:00) A.M. the following Saturday; (541,1188)

Four thirty (4:30) P.M. Saturday to one (1:00) A.M. the following Sunday. (541,1188)

5-11-3: AGE OF PATRONS

It shall be unlawful for a person under the age of fifteen (15) years to be admitted to or to be present at a teenage dance hall while it is in operation. The owner, manager, or other person operating a teenage dance hall shall be presumed to know the age of those seeking admission thereto and of those present thereat. (541)

5-11-4: ALCOHOLIC BEVERAGE OR TOBACCO

It shall be unlawful for any alcoholic beverage or tobacco in any form to be consumed, dispensed, or possessed by or to any person at a teenage dance hall. (541)
5-11-5: **PERSONS UNDER THE INFLUENCE OF ALCOHOL:**

It shall be unlawful for a person to be admitted to or be present at a teenage dance hall who is under the influence of alcohol or who has consumed any alcoholic beverage in any form within the twelve (12) hours immediately preceding or who is disorderly or boisterous. (541)

5-11-6: **LOITERING:**

It shall be unlawful for a person to loiter on or around the parking area or other premises of a teenage dance hall, except for persons who are then presently lawfully admitted thereto. (541)

5-11-7: **LIGHTING:**

Teenage dance halls shall at all times during the operation thereof be illuminated with the following minimum lighting: (541)

(A) On the dance floor or pavilion and in all places inside an enclosed structure which are used by patrons, at least one (1) footcandle per square foot. (541)

(B) On all outside premises, at least three (3) footcandles per square foot. (541)

5-11-8: **SUPERVISION AND SECURITY:**

The owner, manager, operator, or other person in charge of a teenage dance hall shall at all times during the operation thereof provide adequate security and adult supervision to keep all patrons thereof orderly. As a minimum, at least two (2) responsible persons over the age of twenty-one (21) years shall be present at all times, and one regular or reserve police officer of the City, approved in advance by the Chief of Police, shall be present at all times deemed necessary by the Chief of Police. (541,1188)

5-11-9: **POSTING REGULATIONS:**

A copy of Chapter 11 of Title 5 of this Code, printed in at least ten (10) point type, shall at all times be posted in a conspicuous place at each teenage dance hall. (541,1188)

5-11-10: **LICENSE:**

It shall be unlawful for any person to conduct, operate, or carry on a teenage dance hall without first procuring from the Finance Director a license to do so, which license shall be issued only upon approval of the Council. Each and every day or fractional part of a day that a teenage dance hall is conducted or carried on without such license shall constitute a violation of this Chapter. (541,1605,1195,2034)

(A) A person applying for a teenage dance hall license shall make payment of the application fee established in the current Schedule of Fees and Charges and shall make written application filed with the Finance Director on such form as he may prescribe, setting forth the following information: (541,1195,1605,4982)

1. The name and address of the applicant and of each owner, manager, and operator connected with the proposed teenage dance hall. (541,1195,2034)

2. The place where such proposed teenage dance hall is to be located. (541,1195,2034)
3. Whether the applicant or any owner, manager, or operator connected with the proposed teenage dance hall has ever previously been issued a teenage dance hall license which has been revoked, suspended, or forfeited. (541,1195,2034)

4. Any other information called for on the application to aid in determining the moral character of the applicant, owner, principal, agent, or their employees, relating to the proposed dance hall. (541,1195,2034)

A teenage dance hall license shall not be approved or issued unless the location for which it is to be issued is zoned "C-3" or less restrictive zoning and unless said location is a distance of more than three hundred feet (300') from any area having more restrictive zoning. (541,1195,2034)

A teenage dance hall license shall not be assignable or transferable from the person or place set forth in the application, and any attempted assignment or transfer thereof shall be void and shall work a forfeiture of such license and all license fees and taxes paid therefor. (541,1195,2034)

(B) A first year license fee as established by the current Schedule of Fees and Charges shall be paid at the time of application. Additionally, an annual renewal fee as established by the current Schedule of Fees and Charges shall be payable in advance by the applicant at the office of the Finance Director for subsequent years. Every license shall expire on December 31 of each year. Failure to pay the license renewal fee prior to the beginning of each calendar year shall automatically cause the license to be revoked. (541,1195,1605,2034,4982)

(C) Every person having a teenage dance hall license shall at all times keep it posted in a conspicuous place on the premises to which it applies. (541,1195,2034)

(D) The Finance Director shall have the power to revoke at any time a license granted in accordance with this Chapter for any of the following causes: (541,1195,1605,2034)

1. Fraud, misrepresentation, or false statement contained in the application for license; (541,1195,2034)

2. Fraud, misrepresentation, or false statement made in the course of carrying on his business; (541,1195,2034)

3. Any violation of this Chapter; (541,1195,2034)

4. Conviction of any crime or misdemeanor involving moral turpitude; (541,1195,2034)

5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public. (541,1195,2034)

(E) Within five (5) days, excluding weekends and legal holidays, a licensee may appeal to the City Manager from the revocation by the Finance Director of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (1195,2034,2383)
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5-12-1: PURPOSE; DEFINITIONS (5285)

(A) The purpose of this Chapter is to:

(1) Enhance the professionalism of the massage service industry, to protect the health and safety of the public by requiring massage therapists to have thorough knowledge of anatomy, physiology and an understanding of the relationship between the structure and the functions of the tissues being treated; and (4957, 5031)

(2) Assure the integrity of the massage service industry by reducing unprofessional and unlawful practices. (4957, 5031, 5285)

(B) The below words and phrases, wherever used in this Chapter, shall be construed as defined in Section 5-12-1 unless, from the context, a different meaning is intended. 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: (4957, 5031, 5285)
(1) **APPLICANT:** A person who applies for a massage establishment license who, upon approval of the application, will be the licensee. (4957, 5031, 5285)

(2) **CITY:** The City of Mesa, Arizona. (5285)

(3) **CLIENT:** An individual who enters into an agreement for massage therapy for a fee, income or compensation of any kind within the City. (4957, 5031, 5285)

(4) **CONTROLLING PERSON:** Means (A) any individual who has a ten percent (10%) or greater interest in the ownership or the earnings of the business and (B) any of the following persons for a licensee/applicant: (4957, 5031, 5285)
   
   (a) The president or other executive officers of a corporation; (5285)
   
   (b) Each general partner of a limited partnership or any partner of a non-limited partnership; (5285)
   
   (c) The managing members or officers of a limited liability company/corporation; or (5285)
   
   (d) A sole proprietor. (5285)

(5) **DESIGNATED AGENT:** The individual designated by the applicant who will be the responsible party to receive City notices pursuant to this Chapter. If an applicant is an individual (natural person) the applicant may name themselves as the designated agent. (4957, 5031, 5285)

(6) **EMPLOY:** To hire, engage, or authorize the services of any individual, on a full-time, part-time, or contract basis, without regard to compensation, whether or not the person employed, hired or engaged is denominated an employee or independent contractor. (4957, 5031, 5285)

(7) **EMPLOYEE:** Any person who performs any service at a massage facility on a full-time, part-time or contract basis, whether or not the person is designated an employee or independent contractor. Employee does not include a person exclusively at the massage facility for repair or maintenance of the massage facility or for the delivery of goods to the licensee. (4957, 5031, 5285)

(8) **HEARING OFFICER:** The Business Services Department Director or his/her designee. (5285)

(9) **KNOWINGLY:** With respect to conduct or a circumstance described herein, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission. (4957, 5031, 5285)

(10) **LICENSE:** A license issued pursuant to this Chapter. (5285)

(11) **LICENSEE:** The person who receives a massage establishment license, and in whose name a license has been issued by the Licensing Office pursuant to this Chapter. (4957, 5031, 5285)

(12) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Business Licensing and Revenue Collections Administrator. (5285)

(13) **MASSAGE ESTABLISHMENT:** Any place of business or establishment wherein any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16) are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16). (5285)
(14) **MASSAGE OR TOUCHING TECHNIQUES:** Any of the following named subjects and methods of treatment intended for use upon or in connection with the human body: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, table or cabinet baths; herbal wraps; and touching procedures upon the external parts of the body by use of the hands, forearms, elbows, knees or feet, or by any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement. (4957, 5031, 5285)

(15) **MASSAGE THERAPIST:** A person who is licensed pursuant to Chapter 42 of Title 32 of the Arizona Revised Statutes to engage in the practice of massage therapy. (4957, 5031, 5285)

(16) **MASSAGE THERAPY:** Includes any of the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits, including, but not limited to, stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage, tapotement, and any other non- incidental touching such as: (4957, 5031, 5285)

(a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head. (4957, 5031, 5285)

(b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical, electrical, water or vibratory devices. (4957, 5031, 5285)

(c) Any combination of range of motion, directed, assisted or passive movements of the joints. (4957, 5031, 5285)

(d) Hydrotherapy, including, but not limited to, tub, shower or cabinet baths, and the application of water, hot and cold packs or wraps. (4957, 5031, 5285)

(e) Any other therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin. (4957, 5031, 5285)

The following techniques and procedures are beyond the scope of a license issued pursuant to this Chapter: diagnosis, prescription of medicines or drugs, administering of injections, colon irrigation, performing minor surgery, and administering cranial, costal, or spinal adjustments as taught in medical, osteopathic, or chiropractic colleges. (Costal or spinal massage is permissible with a massage therapy license.) (4957, 5031, 5285)

(17) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. It includes a trustee, receiver, an assignee, or similar representative. (4957, 5031, 5285)

(18) **POLICE DEPARTMENT:** The City of Mesa Police Department. The Chief of Police refers to the Chief of the Mesa Police Department or his designee. (5285)

(19) **PRIVATE ANATOMICAL AREAS:** The genitals, perineum, and anal region of any person and the area of the breast that includes the areola and the nipple of any female person. (4957, 5031, 5285)

(20) **RESPONSIBLE PARTY:** Any person who violates a provision of this Chapter subject to a civil violation as set forth in Section 5-12-17. (5285)

(21) **SCHEDULE OF FEES AND CHARGES:** The then current adopted City of Mesa Schedule of Fees and Charges. (5285)
5-12-2: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS
ADMINISTRATOR; DUTIES, APPEALS: (4957, 5031, 5285)

(A) It shall be the duty and responsibility of the Business Licensing and Revenue Collections Administrator to
administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator or his/her designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (4957, 5031, 5285)

(B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee under this Chapter may appeal within ten (10) calendar days after being sent notice of such decision by mail. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the Business Services Director. The Business Services Director, or designated representative, shall schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. A hearing under Section 5-12-2(B) will occur in the same manner as set forth in Section 5-12-17 below. (4957, 5031, 5285)

5-12-3: NEW LICENSE APPLICATION; FEE: (4957, 5031, 5285)

(A) Any person desiring to obtain a license shall apply to the Licensing Office, who shall refer such application to
the Chief of Police or his/her designated representative for appropriate investigation. Each application shall
be accompanied by the fee required in accordance with the Schedule of Fees and Charges. (4957, 5031, 5285)

(B) Upon approval, and prior to the issuance of a license, the applicant shall pay a first year license fee in
accordance with the Schedule of Fees and Charges. (5031, 5285)

5-12-4: MASSAGE THERAPISTS; LICENSING OF MASSAGE ESTABLISHMENTS REQUIRED;
EXCLUSIONS. (4957, 5031, 5285)

(A) A person desiring to practice or in any manner to claim to practice massage therapy must first obtain and
maintain in effect a current, unrevoked and unsuspended massage therapist license as required by Arizona
Revised Statutes and as required by this Chapter. (4957, 5031, 5285)

(B) A person desiring to conduct or operate a massage establishment must first obtain and maintain in effect an
unrevoked and unsuspended massage establishment license as required by this Chapter. (4957, 5031, 5285)

(C) Any person licensed as provided in this Chapter must operate under the name or conduct business under the
designation specified in such license. (4957, 5031, 5285)

(D) Any massage establishment licensed as provided in this Chapter must only conduct business at the location(s)
specified in such license. (4957, 5031, 5285)

(E) The provisions of Section 5-12-4(B) shall not apply to a place of business or establishment wherein all
persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician,
cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of
that person’s license. (4957, 5031, 5285)
Each application for a license shall consist of the information set forth in this Section 5-12-5. Each applicant must provide the required information applicable to the applicant in order for a license to be processed.

(1) Applicant’s full legal name, business name, business phone number, legal form of applicant, current residential phone number, and current residence or legal address of the applicant.

(2) If applicant is a natural person or sole proprietorship, applicant’s physical description, and date and place of birth.

(3) Any other names by which the applicant is or has been known.

(4) The address at which the applicant desires to do business.

(5) The mailing address for the purpose of receiving City notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this Chapter.

(6) Business hours of the massage establishment. The business hours submitted pursuant to this Chapter must be in accordance with Section 5-12-8(P).

(7) If applicant is a natural person or sole proprietorship, applicant’s addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application.

(8) The name of the designated agent. The designated agent must be able to receive correspondence at the address set forth in Section 5-12-5(5) above.

(9) The name of all controlling persons for the applicant.

(10) If applicant is a natural person or sole proprietorship, applicant’s business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment.

(11) If applicant is a natural person or sole proprietorship, a current driver’s license with picture or other current picture identification document issued by a governmental agency, demonstrating applicant has reached the age of eighteen (18) years.

(12) The business license history of the applicant: whether the applicant, while operating under a business license issued by a governmental jurisdiction, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.

(13) Applicant’s felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, excluding those for civil traffic offenses, and the grounds for such convictions.

(14) The Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership, together with any amendments thereto, for an applicant that is a business entity.
(15) A schedule (list) of services to be offered at the massage establishment. (4957, 5031, 5285)

(16) A clearly legible sketch or diagram showing the configuration of the overall business premises of the massage establishment that includes, at a minimum, all of the following: (5285)

(a) The location of all interior doors, walls, curtains and room dividers. (4957, 5031, 5285)

(b) A description of the use of each interior space or room, including a designation, by type of use, of each room or space available for massage or touching techniques or massage therapy by a massage therapist. (4957, 5031, 5285)

(c) A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant and a description of its intended and actual use. (4957, 5031, 5285)

The sketch or diagram need not be professionally prepared, but shall be drawn on one (1) page measuring 8 ½ inches by 11 inches with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. For purposes of this Section 5-12-5(16) a “wall” shall include any interior barrier, including transparent glass, which extends more than fifty-four (54) inches from the level of the finished floor. (4957, 5031, 5285)

(17) Such other identification and information as the Licensing Office may require. (4957, 5031, 5285)

5-12-6: INFORMATION UPDATE: (4957, 5031, 5285)

Except as otherwise provided herein, any change in the information required to be submitted by this Chapter shall be submitted to the Licensing Office on the form prescribed by the Licensing Office for that purpose. (4957, 5031, 5285)

5-12-7: LICENSE APPLICATION INVESTIGATION: (4957, 5031, 5285)

(A) Any applicant for a license shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as prescribed in this Chapter. (5285)

(B) Each person applying for a license shall submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5285)

(C) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license. (5285)

(D) The Police Department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license in accordance with this Chapter. (4957, 5031, 5285)
5-12-8: MASSAGE ESTABLISHMENT LICENSE; SPECIAL REQUIREMENTS: (4957, 5031, 5285)

(A) No license shall be issued: (i) if the applicant or a controlling person has been convicted during the ten (10) year period immediately preceding the date of application of any felony or misdemeanor offense having a reasonable relationship to a massage establishment; (ii) if the application was falsified; (iii) if the applicant or a controlling person has an outstanding warrant for his or her arrest; or (iv) if the applicant or a controlling person is not in compliance with any provision of this Chapter. (4957, 5031, 5285)

(B) No license shall be issued if the applicant or controlling person was convicted during the ten (10) year period immediately preceding the date of the application of any offense: (i) prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes); (ii) prescribed by Mesa City Code, Title 6, Police Regulations; or (iii) any offense committed outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code. (4957, 5031, 5285)

(C) No license shall be issued if the applicant or controlling person has any felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment. A renewal license may be issued if the licensee or controlling person has a felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment; however, the issuance of such renewal license shall not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge. (5031, 5285)

(D) An applicant for a license, a controlling person for a licensee, or a licensee shall permit representatives of the Police Department, and any other federal, state, county, or local agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is lawfully occupied or open for business. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects and exit the room. Personal effects of a patron shall stay in the room within eyesight of the patron or, at the patron’s request, shall be placed in a locker to which the patron has the key. (4957, 5031, 5285)

(E) A licensee shall comply with the following requirements at all times: (4957, 5031, 5285)

1. A readable sign shall be permanently affixed to or immediately next to the main entrance of the massage establishment and shall identify the licensee’s trade name or business name as it appeared on the license application. (4957, 5031, 5285)

2. Lighting of ten (10) foot candles, measured at a height of thirty (30) inches at the approximate center of the room or enclosure, shall be provided in each room or enclosure where services are performed on patrons. (4957, 5031, 5285)

3. Ventilation shall be provided in accordance with Title 4 of the Mesa City Code. (4957, 5031, 5285)

4. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or (B)(16). (4957, 5031, 5285)
(5) Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times. (4957, 5031, 5285)

(6) Closed cabinets shall be provided and used for the storage of clean linens. (4957, 5031, 5285)

(7) Notwithstanding any other requirement of this Chapter, a minimum of one (1) shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps. (4957, 5031, 5285)

(8) Any pool or spa shall be issued a permit and inspected as required by Title 4 of the Mesa City Code or Maricopa County Code, as applicable. (4957, 5031, 5285)

(9) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use. (4957, 5031, 5285)

(10) Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron. (4957, 5031, 5285)

(11) All wash basins within an establishment shall: (i) have hot and cold running water, tempered by means of a mixing valve faucet; (ii) provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and (iii) provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps. (4957, 5031, 5285)

(12) A massage establishment shall not have any entrance or exit way providing a direct passageway to any type of sleeping or living quarters. (5285)

(13) A massage establishment must have a public entrance door or a window made of glass or transparent material with an unobstructed line of sight connected to the sales transaction area of the massage establishment, unless the establishment has no doors or windows on the exterior of the building in which the massage establishment is located. The line of sight may not be obstructed by any means including, but not limited to, the use of furnishings, window dressing, plywood, paper, or other opaque materials. (5285)

(a) The unobstructed line of sight must permit a view of and from the sales transaction area through all exterior windows and public entrance and exit doors located in the sales transaction area. (5285)

(b) The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground. (5285)

(c) Any substance or material in conjunction with glazing material (i.e. window tint) placed on a transparent door or window required under Section 5-12-8(E)(13) to be unobstructed must have a light transmission of more than thirty-three percent (33%) plus or minus three percent (3%) and a luminous reflectance no greater than thirty-five percent (35%) plus or minus three percent (3%). (5285)

(d) The requirements set forth in Section 5-12-8(E)(13) do not apply to doors and windows within a massage establishment adjoining rooms where massage therapy is performed. (5285)
(e) A licensee does not have to meet the requirements of Section 5-12-8(E)(13) if the licensee: (5285)

(i) Operates a massage establishment in which the licensee is the only massage therapist performing massage therapy at the massage establishment; and (5285)

(ii) The massage establishment consists of only one (1) room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)

(F) The name of any person provided to the Licensing Office pursuant to Section 5-12-8(O) whose employment at the massage establishment has terminated shall be reported to the Licensing Office, on the form prescribed by the Licensing Office for that purpose, within ten (10) calendar days after termination. (4957, 5031, 5285)

(G) An applicant and licensee shall be in compliance with Titles 4, 11, and 7 of the Mesa City Code. (5285)

(H) Notwithstanding any other provision of this Chapter, the Business Licensing and Revenue Collections Administrator or his/her designee may, in his or her discretion, delay the granting or denial of a license, upon the submission of a complete application, for a period of up to ninety (90) calendar days if there exists, or did exist within the sixty (60) calendar day period immediately prior to the date the application was first submitted, an active massage establishment license at the location for which the application was submitted and there also exists a Police Department report documenting a violation of this Chapter at that establishment or a criminal prosecution involving the existing establishment relating to compliance with any of the provisions of this Chapter or applicable state law. For purposes of this Section 5-12-8(H), an active massage establishment license includes a license that has been suspended or revoked, provided that a revoked license is no longer active after passage of the period of time for appeal with no appeal taken or, in the event an appeal is taken, after the Hearing Officer has rendered a decision and the decision is in the City’s favor. Notwithstanding any other provision of this Section 5-12-8(H), any license subject to a judicial stay or injunction is an active license. (4957, 5031, 5285)

(I) The applicant for a license for a location at which a massage establishment license was revoked or suspended within the previous six (6) months shall provide to the Licensing Office a sworn statement, in a form prescribed by the Licensing Office, verifying that no person who would be deemed a controlling person for the massage establishment whose license was revoked or suspended is involved in the ownership, control or management of the applicant. The Licensing Office may also request such documents as are reasonably believed necessary to verify any of the information in the sworn statement. The failure to provide this sworn statement or supporting information shall be cause for denial of the license application. (4957, 5031, 5285)

(J) A license shall not be issued for a physical space at which a licensed massage establishment is in operation. For purposes of this Section 5-12-8(J), there shall be a rebuttable presumption that a location with an active license has a massage establishment in operation. Section 5-12-8(J) shall not preclude a new applicant from initiating the application process for a physical space at which a licensed massage establishment is in operation however a license shall not be issued to a new licensee meeting the requirements of this Chapter until the previous license is surrendered, expired or revoked. (4957, 5031, 5285)

(K) Any massage establishment application that is not in full compliance with this Chapter sixty (60) calendar days after initial filing of the application shall be denied, provided the Licensing Office may grant an additional period of up to ninety (90) calendar days upon written request of the applicant, prior to the expiration of the sixty-day period, if applicant demonstrates the occurrence of circumstances that were beyond the applicant’s control or other, similar good cause. Nothing in this Section 5-12-8(K) shall be construed to prevent the Licensing Office from denying a license as soon as a legal basis exists to do so. (4957, 5031, 5285)

(L) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license. (5285)
(M) A licensee shall not conduct business at any location not specified on such license. (5285)

(N) A licensee shall not implement changes in the services offered by a massage establishment, change the use or configuration of the premises of the massage establishment, change the designated agent, or change the business hours of the massage establishment without providing written notice to the Licensing Office and receiving written approval or written acknowledgement from the Licensing Office of such change. (5285)

(O) A licensee shall not employ a massage therapist whose true name and Arizona state-issued massage therapist license number has not previously been provided to the Licensing Office on the form prescribed by the Licensing Office for that purpose. (5285)

(P) No massage establishment shall remain open for business, provide massage therapy services, dispatch massage therapists, or permit massage therapists to work off the premises on behalf of the massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M. Clients cannot be on the premises of the massage establishment after 10:30 P.M. All massage therapy must be concluded by 10:00 P.M., however other business activities related to the massage establishment may continue until 10:30 P.M. A massage establishment may only be open for business during hours that have been approved by the Licensing Office as required by this Chapter. (5285)

(Q) The ownership control of the licensee shall not change during the term of the license such that a person, other than those listed on the application, would be deemed a controlling person for the licensee and either: (i) the new controlling person was not reported to the Licensing Office within ten (10) calendar days after he/she became a controlling person; or (ii) the new controlling person fails to meet the requirements that must be met by a controlling person as set forth in this Chapter. (5285)

(R) The licensee must maintain in the records of the Licensing Office, the name of an individual as a designated agent. (5285)

5-12-9: APPLICATIONS; ADDITIONAL REQUIREMENTS: (4957, 5031, 5285)

Every license shall be issued in accordance with applicable law including, but not limited to, A.R.S. § 41-1080. No license shall be issued to an individual if the individual does not present one or more of the documents listed in A.R.S. § 41-1080, indicating the individual’s presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act. (4957, 5031, 5285)

5-12-10: DISPLAY OF LICENSE; IDENTIFICATION; RETENTION AND INSPECTION OF RECORDS: (4957, 5031, 5285)

(A) A licensee shall post their license in a conspicuous place upon the business premises of the massage establishment in a location that is clearly visible to the general public upon entry into the business. Every on duty person to whom an Arizona state-issued massage therapist license has been granted shall: (i) display the license or a clearly legible copy of the license in a conspicuous place upon the business premises in which they perform massage therapy that is clearly visible to the general public upon entry to the business; or (ii) maintain the license or a clearly legible copy of the license inside the massage establishment in a manner that allows for the license to be made readily available for inspection by the general public. The massage establishment licensee is responsible for ensuring all state-issued massage therapist licenses are properly displayed and current for any persons performing massage therapy on the premises of the massage establishment. (4957, 5031, 5285)
(B) A licensee shall maintain on the business premises of a massage establishment all of the following records for each massage therapist employed at the massage establishment from the day of first employment through a period of ninety (90) calendar days after the date of last employment: (4957, 5031, 5285)

(1) A copy of the state-issued massage therapist license. (4957, 5031, 5285)

(2) A copy of a government issued identification document with photo of the massage therapist. The copy of the government issued identification must clearly depict the photo of the individual and all information must be legible. (5031, 5285)

(C) A licensee shall maintain on the business premises of a massage establishment a copy of the most recent sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (4957, 5031, 5285)

(D) A licensee or employee of a massage establishment shall make the records required to be maintained by Section 5-12-10 available for inspection upon demand by any law enforcement officer or City regulatory license inspection official during any period of time that the massage establishment is open to the public or lawfully occupied. (4957, 5031, 5285)

5-12-11: REQUIRED LOGS: (4957, 5031, 5285)

A licensee shall ensure a log is maintained at the massage establishment of all massage therapy administered. The log shall contain the following information: date, time, therapist name, type of each massage therapy administered, and the address where each massage therapy was administered. The log shall be retained for a minimum of one (1) year following any massage therapy. The massage therapy log shall be subject to inspection upon request by an agent or representative of the City. The inspection of the massage therapy log will occur at the Police Department or other mutually agreeable location. (4957, 5031, 5285)

5-12-12: CHANGE OF LOCATION: (4957, 5031, 5285)

A change of location of a massage establishment shall be approved by the Licensing Office, provided that the licensee is in compliance with all City ordinances and regulations, completes the appropriate location change application and submits a fee in accordance with the Schedule of Fees and Charges. Notwithstanding any other provision of this Chapter, no massage establishment shall be operated or maintained at a location until approved by the Licensing Office and the establishment has a current unsuspended and unrevoked license with the correct name and address posted in a conspicuous place in the establishment as required in Section 5-12-10. (4957, 5031, 5285)

5-12-13: NON-TRANSFERABILITY OF LICENSE: (5031, 5285)

Licenses issued pursuant to this Chapter are non-transferable; upon the sale or transfer of a massage establishment from person to person, the establishment license shall become null and void. (5031, 5285)
5-12-14: TERM OF LICENSE; LICENSE RENEWAL: (4957, 5031, 5285)

(A) Any license issued pursuant to this Chapter shall be valid for a term of one (1) year from the date of issuance. Any license issued pursuant to this Chapter, unless revoked, may be renewed by a licensee in accordance with this Chapter and such renewal shall be valid for a term of one (1) year. The completed renewal application must be submitted by the licenses no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee as set forth in the Schedule of Fees and Charges. In addition, a current listing of massage therapists working at the establishment, including corresponding state-issued license numbers and dates of expiration, must be submitted with the renewal application. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. (4957, 5031, 5285)

(B) If a licensee fails to submit a complete renewal application with the applicable fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license shall expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license, who wish to continue operating a massage establishment, must file a new application for license and may not operate a massage establishment until a new license has been issued. (4957, 5031, 5285)

5-12-15: FEES (4957, 5031, 5285)

All fees are nonrefundable, are not prorated, and are set forth in the Schedule of Fees and Charges. (4957, 5031, 5285)

5-12-16: CRIMINAL VIOLATIONS: (4957, 5031, 5285)

(A) It is unlawful:

(1) For any person to knowingly conduct or operate a massage establishment on the same business premises, as established under Section 5-12-5(16), whereon is also conducted or operated a sexually oriented business (as defined in Title 6 of the Mesa City Code), bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater, or telephone answering service. (4957, 5031, 5285)

(2) For any person to fail or refuse to permit a lawful inspection authorized by this Chapter immediately upon request. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects and exit the room. (5285)

(3) For any person to conduct massage therapy behind a locked door. It is not a violation of Section 5-12-16(A)(3) for a licensee to perform massage therapy behind a locked door if the licensee either: (5285)

   (a) Utilizes a locking system approved in writing by the Police Department which provides the Police Department with the ability to unlock the doors during regular business hours of the massage establishment for the purpose of conducting a lawful inspection authorized by this Chapter. (5285)

   (b) Meets both of the following requirements: (5285)

      (i) Operates a massage establishment in which the licensee is the only massage therapist performing massage therapy at the massage establishment; and (5285)

      (ii) The massage establishment consists of only one room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)
(4) For any person to administer massage therapy for a gratuity or compensation of any kind to a person whose genital organs or anus are not covered by opaque material. (5285)

(5) For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service: (5285)

(a) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires. (4957, 5031, 5285)

(b) In such a manner that the person touches the private anatomical areas of the individual receiving the treatment. (4957, 5031, 5285)

(c) While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material. (4957, 5031, 5285)

(6) For any person on the premises of a massage establishment to intentionally view a completely or partially disrobed massage establishment client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031, 5285)

(7) For any person, while on the premises of a massage establishment, to knowingly ask or direct a person to:

(a) Touch his or her own anus, genitals or breasts. (4957, 5031, 5285)

(b) Touch the anus, genitals or breasts of any person on the premises; or (4957, 5031, 5285)

(c) Expose his or her genitals, anus or breasts to any person on the premises with the intention of appealing to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031, 5285)

(8) For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a patron in direct or indirect contact with the anus, genitals or breasts of any other person on the premises. (4957, 5031, 5285)

(9) For any person to knowingly operate or maintain a massage establishment at a location that has not been licensed by the Licensing Office. (4957, 5031, 5285)

(10) For any applicant for a license or renewal to fail to disclose all controlling persons on an application or, in the event controlling person(s) changes, to update said information with the Licensing Office. (4957, 5031, 5285)

(11) For any person to knowingly use a massage establishment as living or sleeping quarters. (4957, 5031, 5285)

(12) For any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage therapist license as required by the Arizona Revised Statutes and this Chapter. (5285)

(13) For any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a current, unrevoked and unsuspended license as required by this Chapter. The provisions of Section 5-12-16(A)(13) shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person’s license. (5285)
(14) For any person to knowingly employ any other person to offer massage therapy who does not hold a current, unrevoked and unsuspended massage therapy license issued by the State of Arizona. (5285)

(15) For any person to offer massage or touching techniques or massage therapy in any room or space of the business that has not been specifically identified as a room or space available for those services on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)

(16) For any person to offer massage or touching techniques or massage therapy in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)

(17) For any person to provide massage therapy services at a massage establishment or at any location on behalf of a massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M. (5285)

(18) For any person to photograph a massage establishment client while the client is on the premises of a massage establishment and located within any treatment room, restroom, locker room or dressing room, without the express, written permission of that client. For purposes of Section 5-12-16(A)(18) the word “photographed” shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image. (5285)

(19) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license. (5285)

(B) For purposes of Section 5-12-16, the word touch shall include physical contact that occurs through clothing or by means of any object. (4957, 5031, 5285)

(C). Whenever in this Chapter any act is declared to be unlawful, any person convicted of such a violation shall be guilty of a class one misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00), by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. (4957, 5031, 5285)

5-12-17: CIVIL VIOLATIONS (5285)

(A) A violation of any of the following sections of this Chapter shall be a civil violation subject to the provisions of this Section 5-12-17: (5285)

(1) Section 5-12-8(E)(1) [signage]; (5285)

(2) Section 5-12-8(E)(2) [lighting]; (5285)

(3) Section 5-12-8(E)(3) [ventilation]; (5285)

(4) Section 5-12-8(E)(4) [disinfecting and sterilizing equipment]; (5285)

(5) Section 5-12-8(E)(5) [hot and cold running water]; (5285)

(6) Section 5-12-8(E)(6) [linen storage]; (5285)

(7) Section 5-12-8(E)(7) [shower or tub requirement]; (5285)

(8) Section 5-12-8(E)(8) [pool or spa permit]; (5285)
(9) Section 5-12-8(E)(9) [repair and maintenance of facility]; (5285)

(10) Section 5-12-8(E)(10) [clean and sanitary sheets, towels, and head rest covering]; (5285)

(11) Section 5-12-8(E)(11) [wash basins]; (5285)

(12) Section 5-12-8(E)(13) [unobstructed line of sight]; (5285)

(13) Section 5-12-8(F) [employee information provided to Licensing Office]; (5285)

(14) Section 5-12-8(O) [employment of licensed massage therapists]; (5285)

(15) Section 5-12-10 [display of license; identification; retention and inspection of records]; (5285)

(16) Section 5-12-11 [massage therapy log]; (5285)

(17) Section 5-12-18(A)(1) [falsified application information]; (5285)

(B) Any responsible party, whether by admission, default, or after a hearing, is found responsible for a civil violation of this Chapter, shall pay a civil sanction of: (5285)

(1) $250 for the first violation in an eighteen (18) month period; (5285)

(2) $500 for the second violation in an eighteen (18) month period; and (5285)

(3) $750 for the third violation and each subsequent violation in an eighteen (18) month period. (5285)

(4) In applying the eighteen (18) month provision set forth in Section 5-12-17(B), the date of the commission of the offense shall be the determining factor. (5285)

(C) Each day in which a civil violation set forth in Section 5-12-17 continues shall constitute a separate civil offense. (5285)

(D) A civil action for violations of Section 5-12-17 may be commenced by issuance of a citation by any police officer or City employee designated by the City Manager. The citation will be substantially in the form established by the City Manager or designee. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5285)

(1) The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the Mesa City Code Section that was violated. The citation shall direct the responsible party to, within ten (10) calendar days of the issuance of the citation, pay the civil sanction or request a hearing before the Hearing Officer. (5285)

(2) The Hearing Officer may permit amendments to the citation to correct a technical defect made in good faith. (5285)

(E) If the responsible party pays the civil sanction, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If a responsible party served with a civil citation fails to pay the civil sanction, request a hearing, or the request for a hearing denied in accordance with Section 5-12-17(F), the violation in the civil citation shall be deemed admitted and the civil sanction may be collected as any other civil judgment, fine or fee due and payable to the City. (5285)
Upon receipt of a citation for a civil sanction, a person may request a hearing. The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the citation; and (ii) the request must set forth the grounds upon which the person is appealing the citation. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing. (5285)

All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5285)

If the City or responsible party is aggrieved by a decision of a Hearing Officer, the aggrieved party may file a complaint of special action in Superior Court to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the City and the responsible party, shall constitute a waiver of any right to judicial review. (5285)

**5-12-18: DENIAL, SUSPENSION, REVOCATION, NONRENEWAL OF LICENSE: (4957, 5031, 5285)**

(A) In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons: (4957, 5031, 5285)

1. Applicant submits an application with falsified information. (5285)

2. Applicant fails to pay the required fee in accordance with the Schedule of Fees and Charges. (5285)

3. Applicant or a controlling person for the applicant was convicted of a felony offense having a reasonable relationship to the functions of a massage establishment or a massage therapist during the ten (10) year period immediately preceding the date of application. (5285)

4. Applicant or a controlling person for the applicant was convicted of untrue, fraudulent, misleading, or deceptive advertising during the ten (10) year period immediately preceding the date of application. (5285)

5. Applicant or a controlling person for the applicant was engaged in the business of a massage therapist under a false or assumed name, or was found to be impersonating another therapist of a like or different name during the ten (10) year period immediately preceding application. (5285)

6. Applicant or a controlling person for the applicant is currently in violation of this Chapter. Section 5-12-18(A)(6) shall apply regardless of the location at which the violation occurred. (5285)

7. Any grounds for denial set forth in Sections 5-12-8(A), (B), (C), (I), (J), or (K) of this Chapter. (5285)

8. Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City. (5285)

(B) In addition to any penalties set forth in this Chapter, a license renewal application may be denied for any of the following reasons: (5285)

1. For any of the grounds for denial set forth in Section 5-12-18(A) above. (5285)

2. Applicant failed to submit the renewal application within the time frames prescribed by Section 5-12-14. (5285)
(C) In addition to any penalties set forth in this Chapter, a license shall be suspended if during the term of the license:

1. Licensee or a controlling person for the licensee is convicted of a felony or misdemeanor criminal offense:
   (a) Involving fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining the license;
   (b) Involving prostitution, indecent exposure, or pornography;
   (c) Involving untrue, fraudulent, misleading, or deceptive advertising; or
   (d) Having a reasonable relationship to the functions of a massage establishment or a massage.

2. The application upon which the license was awarded was found to contain false or misleading information, or the applicant failed to meet any of the requirements for the issuance of license set forth in this Chapter.

3. Licensee or a controlling person for the licensee knows or should have known that prostitution, indecent exposure, or pornographic acts are occurring or have occurred in the operation of the licensed massage establishment.

4. The licensee ceased to use the license for purposes of offering massage therapy. The failure to offer massage therapy at a massage establishment for thirty (30) consecutive calendar days shall create a rebuttable presumption that the licensee has ceased to use the license for purposes of offering massage therapy.

5. If on two (2) or more occasions within an eighteen (18) month period, the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee commits an offense on the premises of any massage establishment owned, controlled, or operated by the licensee or a controlling person:
   (a) Prescribed by Chapters 14 (Sexual Offenses), 32 (Prostitution), and 35.1 (Sexual Exploitation of Children) of the Arizona Criminal Code (Title 13, Arizona Revised Statutes);
   (b) Prescribed by Mesa City Code, Title 6, Police Regulations; or
   (c) Outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code.

   (d) For the purpose of Section 5-12-18(C)(5):
      (i) A person will be deemed to have committed an offense upon conviction;
      (ii) In applying the eighteen (18) month provision, the date of the commission of the offense shall be the determining factor; and
      (iii) The two (2) or more offenses subjecting the license to suspension do not have to be: (i) violations of the same statute or ordinance so long as they are offenses of the type listed in Section 5-12-18(C)(5), and (ii) committed by the same person so long as they are committed by the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee.
(6) Licensee or a controlling person for the licensee is found to be a responsible party for a civil violation set forth in Section 5-12-17 through a hearing, default, or admittance. (5285)

(7) The penalty for a suspension of any violation under Section 5-12-18(C) shall be: (5285)

(a) For the first suspension of a license during an eighteen (18) month period, the license will be suspended for up to fourteen (14) calendar days. (5285)

(b) For the second suspension of a license during an eighteen (18) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5285)

(c) For the third suspension of a license during an eighteen (18) month period, the license shall be revoked in accordance with Section 5-12-18(D). (5285)

(D) In addition to any penalty for a violation set forth in this Chapter, a license shall be revoked if the license was suspended in accordance with this Chapter on three (3) or more occasions during an eighteen (18) month period. (5285)

(E) Pursuant to Section 5-12-2, the Business Licensing and Revenue Collections Administrator or his/her designee has the authority to issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee may appeal the decision by requesting a hearing within ten (10) days of receipt of notice of the Business Licensing and Revenue Collections Administrator or his/her designee. (5285)

(1) The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision of the Business Licensing and Revenue Collections Administrator or his/her designee; and (ii) the request must set forth the grounds upon which the person is appealing the decision. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing. (5285)

(2) Any appeal hearing shall be subject to the rules set forth in Section 5-12-17(G). Any request for judicial review of a Hearing Officer’s decision shall be subject to the rules set forth in Section 5-12-17(H). (5285)

(3) The filing of an appeal will suspend the decision of the Business Licensing and Revenue Collections Administrator or his/her designee, or the Licensing Office until such time as the Hearing Officer has rendered their decision. (5285)

5-12-19: APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE: (4957, 5031, 5285)

No person may apply for a license under this Chapter within one (1) year from the denial of an application for a massage establishment to such applicant or from the revocation of a license issued pursuant to this Chapter. (4957, 5031, 5285)
EXEMPTIONS (4957, 5031, 5285)

The provisions of this Chapter shall not apply to:

1. Establishments whose employees are authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture, and who practice within the scope of that person’s license. (4957, 5031, 5285)

2. Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete. (4957, 5031, 5285)

3. Establishments whose employees are authorized by the laws of this state as barbers, cosmetologists, or aestheticians provided their activity is limited to the scope of their barber, cosmetology, or aesthetician license. (4957, 5031, 5285)

4. Establishments whose employees are providing colon irrigation only. (4957, 5031, 5285)

5. Businesses that are operating solely as a school approved by the Arizona State Board of Massage Therapy. (4957, 5031, 5285)

LICENSES; CUMULATIVE REGULATION: (4957, 5031, 5285)

A. The licenses required in this Chapter are in addition to any business or transaction privilege tax license required by the Mesa City Code or applicable law. (4957, 5031, 5285)

B. A state issued massage therapist license does not authorize one to operate a massage establishment in the City without first obtaining a license pursuant to this Chapter where applicable. (4957, 5031, 5285)

C. An applicant for a massage establishment license need not have a massage therapist license. However, massage establishments shall employ only Arizona state-licensed massage therapists to perform massage therapy. (4957, 5031, 5285)
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CHAPTER 13

RESIDENTIAL DEVELOPMENT FEE

SECTION:

5-13-1: DEFINITIONS
5-13-2: LEVY OF SOLID WASTE RESIDENTIAL DEVELOPMENT FEE
5-13-3: COLLECTION OF RESIDENTIAL DEVELOPMENT FEE
5-13-4: ESTABLISHMENT OF A CAPITAL IMPROVEMENT FUND AND USE OF FUNDS
5-13-5: VIOLATION; PENALTY

5-13-1: DEFINITIONS:

The following words and phrases, whenever used in this Chapter, shall have meanings respectively ascribed to them in this Section unless from the content a different meaning is clearly intended: (748, 756)

DWELLING UNIT: A room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes, exclusive of units designed to be used primarily for transient occupancy purposes. For purposes of this definition, transient occupancy shall mean occupancy by any one (1) person or group of persons for a period of less than thirty (30) calendar days. (748, 756, 1773, 3501)

MANUFACTURED HOME: Same as "mobile home." A structure transportable in one (1) or more sections which, (1) in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, (2) is built on a permanent chassis, (3) is designed to be used as a dwelling, with or without permanent foundation, when connected to utilities, and (4) is located on a manufactured home or recreational vehicle space, and not on a separate platted lot. This term shall not include a recreational vehicle as defined in this Chapter. (748, 756, 1773, 3501)

MULTI-RESIDENCE DWELLING: A dwelling unit in a building containing two (2) or more dwelling units, including units that are situated over one another, which are located within a Multiple Residence zoning district as outlined in Chapter 5, Title 11, Mesa City Code. (3501)

RECREATIONAL VEHICLE: A vehicle-type unit that is one (1) of the following: (1) a portable camping trailer mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold for camping; (2) a motor home designed to provide temporary living quarters for recreational, camping, or travel use, and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle; (3) a park trailer built on a single chassis, mounted on wheels, designed to be connected to utilities necessary for operation of installed fixtures and appliances, and having a gross trailer area of not less than three hundred twenty (320) square feet and not more than four hundred (400) square feet when it is set up, but excluding fifth wheel trailers; or (4) a travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, or a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle, and having a travel trailer area of less than three hundred twenty (320) square feet, and specifically including fifth wheel trailers. If a unit described in Subsection (5) requires a size or weight permit, it shall be manufactured to the standards of park trailers outlined in A119.5 of the American National Standards Institute Code. (3501)

SINGLE-RESIDENCE ATTACHED DWELLING: A one- (1-) family dwelling in a row of at least two (2) such units in which each unit is separated from any other unit by one (1) or more vertical common fire-resistant walls extending from ground to roof, each unit has its own front and rear access to the outside, and no unit is situated over another unit. (3501)

SINGLE-RESIDENCE DETACHED DWELLING: A building containing one (1) dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards on all four (4) sides. This term shall include a manufactured home situated on a separately platted lot. (3501)
PERSON: An individual, firm, corporation, partnership, joint venture, association, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number. (748,756)

5-13-2: LEVY OF SOLID WASTE RESIDENTIAL DEVELOPMENT FEE:
There is hereby levied and shall be collected by the Building Safety Director, for the purpose of defraying costs of solid waste collection equipment required by the City as a result of residential development, an occupations tax upon every person constructing any dwelling unit or units or establishing manufactured home spaces or lots or recreational vehicle spaces or lots both inside and outside the City limits where the City of Mesa is the solid waste service provider. The fees shall be in the following amounts: (748, 1773, 2081, 2442, 3501, 3902, 4851, 5223)

(A) The sum of two hundred twenty-seven dollars ($227.00) for each single-residence attached and detached dwelling unit hereafter constructed upon any lot or area. (748, 2081, 2209, 2442, 2908, 3501, 3902, 4713, 4851, 5223, 5286)

(B) The sum of sixty-two dollars ($62.00) for each manufactured home space or lot, each recreational vehicle space or lot, and each multi-residence dwelling unit established. (748, 1773, 2209, 2442, 2908, 3501, 3902, 4713, 4851)

5-13-3: COLLECTION OF RESIDENTIAL DEVELOPMENT FEE:

(A) The fee imposed by this Chapter shall be collected by the Building Safety Director, who shall be charged with the administration thereof. The fee for each unit listed in Section 5-13-2(A) and (B) shall be collected in conjunction with the issuance of a building permit for the construction of any of the listed units. The collection of fees for multi-residence dwelling units may be phased commensurate with the number of dwelling units approved for construction by means of a phased building permit. The fee for a manufactured home shall be collected in conjunction with the issuance of a building permit for the placement of that manufactured home in a manufactured home park or subdivision. The fee with respect to recreational vehicle spaces or lots shall be collected in conjunction with the issuance of a construction permit for the development of a recreational vehicle park or subdivision. The Building Safety Director shall not issue a building or construction permit until the fees required by this Chapter have been paid. (748, 756, 1266, 1773, 3041, 3501, 3902, 5223)

(B) If at the time of annexation to the City a current building permit has been issued by a jurisdiction other than Mesa, and is still valid for the construction of any dwelling unit or a current building permit has been issued and is still valid for the placing of a manufactured home in a manufactured home park or subdivision or a current construction permit has been issued and is still valid for the development of a recreational vehicle park or subdivision, the fee imposed by this Chapter shall not be collected. If a building permit for the construction of any dwelling unit has expired and has not been renewed at the time of annexation to the City, the developer of the dwelling unit shall be required to obtain a City of Mesa building permit and pay the fee imposed by this Chapter in conjunction with the issuance of said City building permit. (1266, 1773, 3041, 3501, 3902, 5223)

5-13-4: ESTABLISHMENT OF A CAPITAL IMPROVEMENT FUND AND USE OF FUNDS:
All funds collected by the Building Safety Director pursuant to this Chapter shall be deposited in a nonlapsing fund called "Solid Waste Development Fund." All funds deposited in the Solid Waste Development Fund shall be used exclusively for the purchase of solid waste collection equipment. (748, 3501, 3902, 5223)

5-13-5: VIOLATION; PENALTY:
Any person who shall construct a single-residence attached or detached dwelling unit or multi-residence dwelling unit(s) or place a manufactured home in a manufactured home subdivision or develop a manufactured home park or recreational vehicle park or subdivision without payment of the prescribed fee or who shall violate any of the provisions of the Mesa City Code as hereby amended shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000.00). Each violation continued shall be a separate offense, punishable as described above. (756, 1773, 2466, 3501)
CHAPTER 14

NATURAL GAS REGULATIONS

SECTION:

5-14-1: APPLICABLE TO
The following rules or guidelines shall be applicable to natural gas distribution by the City of Mesa, except to the extent this Council or its designated representative may hereafter authorize exceptions to these rules in particular instances due to special circumstances. The Council or its designated representative shall require an application for such variation with justification for same to be presented in writing for consideration. (1455)

5-14-2: DEFINITIONS:

ALTERNATE FUEL CAPABILITIES: A situation where an alternate fuel could have been utilized, whether or not the facilities for such use have actually been installed; provided however, where the use of natural gas is for plant protection, feedstock, or process uses and the only alternate fuel is propane or other gaseous fuel, then the consumer will be treated as if he had no alternate fuel capability. (1455)

BOILER FUEL: Natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity. (1455)

COMMERCIAL CUSTOMERS: Customers engaged primarily in the sale of goods or services, including institutions and local, state, and federal government agencies, for uses other than those involving manufacturing or electrical power generation. (1455)

ESSENTIAL AGRICULTURAL USER: Uses of natural gas certified by the Secretary of Agriculture in accordance with Section 401(C) of the Natural Gas Policy Act of 1978. (1455)

ESSENTIAL INDUSTRIAL USER: To be designated as essential industrial process and feedstock uses when certified by the Secretary of Energy in accordance with Section 402 of the Natural Gas Policy Act of 1978. (1455)

FEEDSTOCK GAS: Natural gas used as a raw material for its chemical properties in creating an end product. (1455)

GENERAL SERVICE CUSTOMERS: Customers not qualifying as residential whose consumption has been less than the minimum for large general service customers. (3012)
IGNITION FUEL AND FLAME STABILIZATION: Natural gas used directly in an industrial use for ignition, start-up, testing, flame stabilization, and shutdown. (1455)

INDUSTRIAL CUSTOMERS: Customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power. (1455)

INTERRUPTIBLE CUSTOMER: Any large nonresidential customer (commercial or industrial) using the City’s natural gas service hereunder for any purpose where interruptibility is established by the applicable service agreement or rate schedule or by Council authorization. (1455)

LARGE GENERAL SERVICE CUSTOMERS: Customers not qualifying as residential whose consumption through one meter is estimated by the City to be both at least twenty-five thousand (25,000) therms in any one (1) month of a twelve- (12-) month period and at least two hundred and fifty thousand (250,000) therms in any consecutive twelve- (12-) month period. (1455,3012)

LARGE RESIDENTIAL CUSTOMERS: Customers who utilize gas service in apartment houses, mobile home parks, hotels, motels, clubs, and other establishments providing dwelling accommodations where more than one (1) dwelling unit is serviced through the same meter. (1455)

MCF: Thousand (1,000) cubic feet. (1455)

PLANT PROTECTION GAS: Minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed but shall not include deliveries required to maintain plant production. For the purpose of this definition, propane and other gaseous fuels shall not be considered alternate fuels. The quantification of such load shall be a responsibility of the customer and must be to the satisfaction of the City in order to qualify for such classification treatment. (1455)

PROCESS GAS: Gas use for which alternate fuels are not technically feasible, such as in applications requiring precise temperature controls and precise flame characteristics. For the purpose of this definition, propane and other gaseous fuels shall not be considered alternate fuels. (1455)

RESIDENTIAL CUSTOMERS: Customers who utilize gas service in individually metered dwelling units for space heating, air conditioning, cooking, water heating, home compressor appliance for alternate use in motorized vehicles, and other residential uses. (1455,3834)

THERM: That amount of gas having a heating value of 100,000 BTU (British Thermal Units). (2985)

UNAUTHORIZED USE OF GAS: Unauthorized use of gas shall mean: (1455)

(A) For any customer, the taking of unmetered gas by bypassing the meter or willfully modifying the gas meter so as to cause loss or reduction of registration. (1455)
(B) For an interruptible gas service customer, the taking of gas on any day in excess of the maximum daily contract quantity specified in the gas service contract between the City and customer. (1455)

(C) For any customer subjected to curtailment during a curtailment period, the taking of gas in excess of a daily variable entitlement specified by the City and based upon the customer’s priority class and the curtailment imposed upon the City by its general gas supplier, El Paso Natural Gas Company. (1455)

(D) For any customer with a maximum monthly quantity specified in the gas service contract between the City and the customer, the taking of gas in any billing period in excess of the maximum monthly quantity. (1455)

5-14-3: SERVICE AND CURTAILMENT PRIORITIES:

(A) In times of shortages of gas deliveries on the El Paso System which have the effect of impairing the City’s ability to render service in satisfaction of all its customer requirements, interruption or curtailment of service by the City shall, to the extent feasible, be effected in inverse order of the following priorities: (1455)

1. Priority 1A: Residential customers. (1455)

2. Priority 1B: Large residential customers. (1455)

3. Priority 1C: Small commercial customers. (1455)

4. Priority 2A: Essential agricultural uses. (1455)

5. Priority 2B: Essential industrial uses. (1455)

6. Priority 2C: Large commercial uses and industrial uses for ignition fuel and flame stabilization, plant protection, feedstock, and process uses not specified in priority 2B. (1455)

7. Priority 3: Industrial customers and all industrial requirements not specified in priority 2. (1455)

8. Priority 3A: Interruptible customers. (1455)

(B) The customer during a curtailment period may utilize its allotted gas in the manner it desires as long as the requested load curtailment is met. Any gas taken in excess of two percent (2%) of its allotment shall be considered unauthorized use of gas. (1455)

(C) In establishing a procedure to effect curtailments in accordance with the terms of this Chapter, the City may develop a plan whereby it may on occasion administer curtailments to customers within a given priority class on any other than a strict pro rata basis, provided that the burden of such curtailments on an aggregate basis shall be as equitable as possible among such customers. (1455)

(D) In the event of a partial or total failure in gas supply or a partial or total failure in the facilities of the City which threatens to impair the ability of the City to maintain the integrity of its system, the City may, during such emergency period, apportion its available supply of gas or its deliverability capacity therefore among the demands of its customers or a portion thereof in the most reasonable and practical manner possible. In such event the City shall have the right to shut off, discontinue, re-establish, or continue service to one (1) or more classes of customers, or a portion thereof, irrespective of the priority of preference provisions hereinabove specified in Section 5-14-3(A). (1455)
5-14-4: CONDITION GOVERNING EXTENSIONS OF NATURAL GAS MAINS AND SERVICES:
The following policy governs the extension of distribution facilities to customers whose requirements are deemed by the City to be usual and reasonable in nature. (1455)

(A) Residential Gas Service. (1455)

1. Free extensions on a footage basis will be made if all the following conditions exist: (1455)

   (a) The service can be installed in a normal manner from an existing natural gas main adjacent to the service address. (1455)

   (b) The proposed extension is for service lines only, and such service line does not cross any street or highway pavement wider than seventy feet (70') or any freeway or railroad right-of-way. (1455)

   (c) The gas will be used for a minimum of two (2) of the following types of permanently installed appliances: home heating, water heating, cooking (must include the oven), clothes drying, pool heating, and spa heating or one (1) home compressor appliance used to compress natural gas for alternate fuel use in motorized vehicles. (1455,2985,3834)

   (d) The proposed extension does not exceed seventy feet (70') for two (2) gas appliances, one hundred fifteen feet (115') for three (3) gas appliances, or one hundred fifty feet (150') for four (4) gas appliances as measured from the property line to the meter set along the route of construction required. Appliances must be as specified in (A)1(c). (1455,2985)

2. A nonrefundable contribution in aid of construction over the free extension allowance will be required: (1455)

   (a) If the proposed service exceeds the seventy-foot (70') limit for two (2) gas appliances, one hundred fifteen-foot (115') limit for three (3) gas appliances, or one hundred fifty-foot (150') limit for four (4) gas appliances. (1455,2985)

   (b) For all footage beyond the shortest practical route to the nearest practical point of delivery on each customer’s premises as determined by the City. (1455,2985)

3. The currently effective cost of the service extension will be required for a service which does not comply with all of the foregoing provisions of (A)1(c). (1455,2985)

(B) Gas Service for Residential Subdivisions, Large Residential Customers, Commercial Customers, Essential Agricultural, and Industrial Users (Priorities 1A and 1B and Priorities 2A, 2B, and 2C). (1455)

1. Free extension of the gas facilities will be made by the City provided the customer's annual revenue, less the cost of the natural gas (as estimated by the City), is equal to or exceeds one-fifth (1/5) of the cost of the extension facilities, including meters, regulators, and allocated system costs. (1455,1946)
In the case of an extension for a group of residential customers, the developer or responsible party must agree to have a minimum number of residences as determined in the revenue study and in compliance with Section 5-14-4(A) connected to the City’s gas system. Failure to comply with this requirement will result in a penalty equal to the cost of a residential water service connection for each residence below the required number. (1455)

2. Extensions over the free limits will be made to customers provided such customers will sign an extension agreement and make a nonrefundable contribution cost so that the remainder satisfies the requirements of (B)1. (1455)

(C) Other Customers (Not Qualified Under A or B). (1455)

Customers requiring more than fifty (50) M.C.F. in any one day. (1455)

When the forecasted supply of natural gas is adequate, a customer who requires in excess of fifty (50) M.C.F. in any one (1) day may, at the City’s option, have distribution facilities extended provided such customer will sign an extension agreement and make a nonrefundable contribution in aid of construction equal to the total cost of the extension, including allocated system costs, required system improvements, and local costs including gas meters and service regulators. (1455)

In addition, the following general conditions will apply to all new gas main extensions: (1455)

1. Extensions of the City gas facilities, in all circumstances, are subject to the availability of adequate capacity and suitable pressure at the beginning point of an extension. (1455)

2. The extension must be designed and constructed for operation at standard pressures used by the City in the area in which the extension is located. (1455)

3. All easements or rights-of-way required by the City for any portion of the extension which is either on a customer’s premise or other private property, or both, shall be furnished to the City without cost. (1455)

4. All construction, including that for which customers have made contributions, will be owned, operated, and maintained by the City. (1455)

5. (a) Measurement must be made along the proposed route of construction. (1455)

(b) The extension must be a branch from, the continuation of, or an addition to one of the City’s existing distribution lines. (1455)

6. The City will not undertake the initiation of natural gas service to new areas which are within its existing area of service but which are separated from its existing distribution facilities by any substantial distance without due consideration of its ability to meet its forecasted load requirements based upon its present and anticipated gas supply and consideration of such other factors as may be approved in the circumstances. (1455)

(D) Any increase in load not in accordance with the above rules may be considered unauthorized use of gas. (1455,2985)
5-14-5: NO VIOLATION OF PUBLIC SERVICE OBLIGATIONS:
The foregoing rules applicable to the City of Mesa are adopted by order of the Mesa City Council. The City of Mesa shall have no liability or obligation arising out of any refusal or curtailment or interruption or cessation of service effectuated or refused in accordance with the foregoing rules. (1455)

5-14-6: NOTICE TO CUSTOMERS AND SAFETY RULES:
To the extent practicable, the City shall attempt to give notice of pending effectuating curtailments or interruptions of gas service and re-establishment or recommencement of gas service following curtailments or interruptions; the City shall comply with all applicable safety rules, regulations, standards, and procedures, including those in effect under the National Pipeline Safety Act. (1455)

5-14-7: EMERGENCY SITUATION; PRIORITIES:
In emergencies arising from unforeseen causes beyond the City’s reasonable control, including decrease or interruption of gas supply to or in the City’s system or any part thereof due to the line breaks, line freezes, equipment malfunctions, or other similar casualty, the City shall take whatever steps it deems necessary or appropriate to protect the public health and safety. Subject thereto, the City shall, when and to the extent feasible, attempt to follow the respective priorities hereinabove set out. (1455)

5-14-8: PENALTY FOR UNAUTHORIZED USE:
If unauthorized use of gas occurs under the terms contained herein, the customer shall be subject to the section and title "Unauthorized Use of Gas" in the Terms and Conditions for the Sale of Utilities in the ordinance setting utility rates. (1455)

CHAPTER 15

CHARITABLE SOLICITATIONS

(Repealed by 2383)

CHAPTER 16

USE TAX

(Repealed by 2175)
CHAPTER 17

DEVELOPMENT IMPACT FEES

(1471,1790,1838,2100,2241,2356,2596,2658,2786,2909,3003,3041,3100,4706,5071,5189)

SECTION:

5-17-1: FINDINGS AND PURPOSE
5-17-2: AUTHORITY AND APPLICABILITY
5-17-3: INTENT
5-17-4: DEFINITIONS
5-17-5: IMPOSITION OF IMPACT FEES
5-17-6: EXEMPTIONS FROM IMPACT FEES
5-17-7: IMPACT FEE FUNDS
5-17-8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID
5-17-9: CREDITS AGAINST IMPACT FEES
5-17-10: MISCELLANEOUS PROVISIONS
5-17-11: VIOLATION; PENALTY

5-17-1: FINDINGS AND PURPOSE:
The City Council of Mesa, Arizona, finds that:

(A) Both population and employment within the City continue to grow creating demands for new residential and nonresidential development.

(B) New development often overburdens existing public facilities, including water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems.

(C) The protection of the health, safety, and general welfare of the citizens of the City requires that the public facilities of the City be expanded and improved to meet the demands of new development.

(D) Under the City’s current laws, taxes, fees, utility charges, and other forms of revenue collected from new development do not generate sufficient funds to provide those public facilities required to serve the new development.

(E) An equitable development impact fee system, as established by this chapter, enables the City to impose a more proportionate share of the costs of required improvements to the water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems on those developments that create the need.

(F) All types of development that are not explicitly exempted from the provisions of this ordinance generate demand for the types of facilities for which impact fees are being imposed pursuant to this Chapter.
(G) The Impact Fee Study, as defined herein, sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City’s public facilities, and for determining the cost of acquiring land and the cost of acquiring or constructing facilities and equipment necessary to serve new development. (3502, 3875, 4706, 5071)

(H) The assumptions and service levels referenced in the Impact Fee Study were those in existence at the time the Impact Fee Study was completed. (3502, 3875, 4039, 4706)

(I) The Pledged Debt Analysis for Continuation of Impact Fees, as defined herein, sets forth the basis and analysis for the continuation of the City’s current impact fees (as determined in the Impact Fee Study) for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities until sufficient funds have been collected to repay all of the debt amounts for which the fees were pledged, as authorized by SB 1525, Fiftieth Legislature, First Regular Session (2011). (5189)

(J) The impact fees described in this Chapter are based on the Impact Fee Study and the Pledged Debt Analysis for Continuation of Impact Fees. (3502, 3875, 4039, 5189)

(K) The types of improvements to each type of public facility considered in the Impact Fee Study and the Pledged Debt Analysis will benefit all new development in the City, and it is therefore appropriate to treat the entire City as a single service area for purposes of assessing, collecting, and expending the impact fees for each type of facilities. (3502, 3875, 4039, 4706, 5189)

(L) There is both a rational nexus and a rough proportionality between the development impacts created by each type of new development covered by this Chapter and the impact fees that each such development will be required to pay. (3502, 3875, 4039, 4706, 5189)

(M) This Chapter allows for the continuation of development impact fees that the City adopted prior to January 1, 2012, and that were, and hereby are again, pledged to repay debt service obligations related to the construction of impact fee eligible facilities for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities as allowed by Arizona Revised Statutes (“A.R.S.”) § 9-463.05. (3502, 3875, 4039, 5189)

(N) This Chapter creates a system of impact fees in compliance with the requirements of A.R.S. § 9-463.05. (3502, 3875, 4039, 5189)

5-17-2: AUTHORITY AND APPLICABILITY:

(A) This Chapter is enacted pursuant to the City’s general police power, the authority granted to the City by the Arizona State Constitution, and A.R.S. § 9-463.05. (3502, 3875, 5189)

(B) The provisions of this Chapter shall apply to all of the territory within the corporate limits of the City, and within the City’s water and wastewater service areas. (3502, 3875)

(C) The City Manager or his designee is authorized to make determinations regarding the application, administration and enforcement of this Chapter. The application, administration, and enforcement of this Chapter shall comply with any applicable requirements of A.R.S. § 9-463.05. (4706, 5189)
5-17-3: INTENT:

(A) The intent of this Chapter is to ensure that new development bears a proportionate share of the cost of improvements to the City’s water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems as allowed by the Arizona State Constitution and A.R.S. § 9-463.05. (3502,3875,4039,4234,4239,4240,5071,5189)

(B) This Chapter provides for the continuation of development impact fees (adopted by the City prior to January 1, 2012) for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities until sufficient funds have been collected to repay all of the debt amounts for which the fees were pledged as identified in the Pledged Debt Analysis for Continuation of Impact Fees, at such time, the collection of the impact fee for such impact fee category (each impact fee category being treated separately) shall automatically cease until a new or updated development impact fee is adopted in compliance with A.R.S. § 9-463.05. (3502,3875,4039,5189)

(C) It is not the intent of this Chapter that any monies collected from any impact fee and deposited in an impact fee fund shall ever be commingled with monies from a different impact fee fund or ever be used for a type of public facility different from that for which the impact fee was paid. (3502,3875,4039,4706)

5-17-4: DEFINITIONS:

The following words and phrases, whenever used in this Chapter, shall have the meanings respectively ascribed to them in this Section unless from the context a different meaning is clearly intended: (3502,4039)

APPLICANT: A person who applies to the City for a permit. (4039)

BUILDING AREA: For fees assessed on the basis of square feet, building area shall be calculated as follows:

Building area shall include all areas within the surrounding exterior walls, measured to the outside of such walls, exclusive of vent shafts and courts. Building area shall also include areas of buildings within the horizontal projection of the roof or floor above, which do not have surrounding exterior walls but exceed three feet (3') in horizontal dimension. Building area shall also include basements, if provided, and outdoor patios without roofs for restaurants, bars or similar occupancies (per Title 4 Chapter 2 of the Mesa City Code). (4706,5189)

CHANGE IN USE: A development that modifies the housing type, meter size, or land use type applicable to the lot. (3547,3875,4039,5189)

CONNECTION: The physical tie-in of a private water or wastewater service or system to the City’s public water or wastewater system. (3502,3875)

DEVELOPMENT: Any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land. (3502,4039)

DWELLING UNIT: A room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes. The term dwelling unit shall include an apartment, but shall not include a hotel room, guest room in a boarding house, or other transient occupancy by any one (1) person or group of persons for a period of less than thirty (30) calendar days or accessory living quarters. (3502,4706)
**HOTEL/MOTEL:** A facility containing 6 or more commercial guest rooms utilized for short term transient occupancy which provides continuous on-site management. The term shall include those facilities subject to the Transient Lodging Tax provided in Sections 5-10-444 and 5-10-447 of the Mesa City Code, but shall not include nursing or convalescent homes, boarding houses, bed and breakfast establishments, or apartment buildings. (3875,5189)

**HOUSING TYPE:** The categories of housing types as set forth in Table 1 attached to this Chapter. (4039,4706)

**IMPACT FEES:** The water impact fee, wastewater impact fee, park impact fee, library impact fee, fire impact fee, public safety impact fee, and stormwater impact fee. (3502,4234,4239,4240,5071)

**IMPACT FEE FUNDS:** The water impact fee fund, wastewater impact fee fund, park impact fee fund, library impact fee fund, fire impact fee fund, public safety impact fee fund, and stormwater drainage impact fee fund. (3502,4234,4239,4240,5071)

**IMPACT FEE STUDY:** The Impact Fee Study for the City of Mesa, Arizona prepared by Duncan-Associates dated May, 2007. (3875,4039,4234,4239,4240,4706)

**IMPACT FEE TABLES:** Table 1 attached to this Chapter and included in this Chapter by reference. (3502,3875,5071)

**IMPROVEMENT:** Planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction, equipment purchases, and financing costs associated with new or expanded facilities, buildings, and equipment that expand the capacity of a key public facility. (3502)

**KEY PUBLIC FACILITY:** One (1) or more elements of the City’s water and wastewater systems, parks, libraries, fire facilities, public safety facilities, and stormwater drainage systems included in the calculations of the development impact fees in the Impact Fee Study. (3502,3875,4234,4239,4240,5071)

**LAND USE TYPE:** The categories of land use type as set forth in Table 1 attached to this Chapter. (4039,4359,4706)

**LOT:** A piece or parcel of land separated from other pieces or parcels by description, as in a subdivision or on a recorded survey map, or by metes and bounds, for purposes of sale, lease or separate use. (4039,5189)

**MANUFACTURED HOME:** Same as "mobile home." A structure transportable in one (1) or more sections which, (1) in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, (2) is built on a permanent chassis, and (3) is designed to be used as a dwelling, with or without permanent foundation, when connected to utilities. This term shall not include a recreational vehicle as defined in this Chapter. (3502,3875,4706)

**METER SIZE:** The category of meter size as set forth in Table 1 and Table 2 attached to this Chapter. (4039)

**MULTI-RESIDENCE DWELLING:** A dwelling unit in a building containing two (2) or more dwelling units, including units that are situated over one another. (3502,5189)

**NON-RESIDENTIAL:** All land uses (which includes commercial and industrial), except single residence detached dwellings, single residence attached dwellings, multi-residence dwellings, manufactured homes, recreational vehicles or similar uses. (4706,5189)
PERSON: Any person, partnership, firm, company, limited liability entity or corporation. (4039,5189)

PERMIT: Any permit authorized to be issued pursuant to the provisions of Chapter 1, of Title 4 and Chapters 6 and 8 of Title 9 of the Mesa City Code. (4039,4706)

PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES: The Pledged Debt Analysis for Continuation of Impact Fees for the City of Mesa, Arizona prepared by Duncan-Associates dated April 16, 2013. (5189)

RECREATIONAL VEHICLE: A vehicle-type unit that is one (1) of the following: (1) a portable camping trailer mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold for camping; (2) a motor home designed to provide temporary living quarters for recreational, camping, or travel use, and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle; (3) a park trailer built on a single chassis, mounted on wheels, designed to be connected to utilities necessary for operation of installed fixtures and appliances, and having a gross trailer area of not less than three hundred twenty (320) square feet and not more than four hundred (400) square feet when it is set up, but excluding fifth wheel trailers; or (4) a travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, or a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle, and having a trailer area of less than three hundred twenty (320) square feet, and specifically including fifth wheel trailers. (3502,4706)

SINGLE-RESIDENCE ATTACHED DWELLING: A one- (1-) family dwelling in a row of at least two (2) such units in which each unit is separated from any other unit by one (1) or more vertical common fire-resistant walls extending from ground to roof, each unit has its own front and rear access to the outside, and no unit is situated over another unit. (3502)

SINGLE-RESIDENCE DETACHED DWELLING: A building containing one (1) dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards on all four (4) sides. This term shall include a manufactured home situated on a separately platted lot. (3502)

STORMWATER DRAINAGE IMPACT FEE MAP: The Stormwater Drainage Impact Fee Map attached to this Chapter and included herein. (4706)

SQUARE FEET: Each unit of building area equal to one hundred and forty-four (144) square inches. (3875,4234,4706)

5-17-5: IMPOSITION OF IMPACT FEES:

(A) Impact Fees Required. Any person who obtains a building permit, a right-of-way permit, or any other permit, is required to pay the applicable water impact fee, wastewater impact fee, park impact fee, library impact fee, fire impact fee, public safety impact fee, and stormwater drainage impact fee unless the type of development described in the permit is specifically exempted by this Chapter. In addition, any person who seeks a connection to the City water system shall pay a water impact fee, and any person who seeks a connection to the City wastewater system shall pay a wastewater impact fee, regardless of whether the development to be connected requires a building permit or other permit. (3502,3875,4039,4234,4239,4240,4706,5071)
(B) Timing of Payment. Any person required by this Chapter to pay one (1) or more impact fees, shall pay each impact fee required by this Chapter to the City prior to, or in conjunction with, the issuance of any such permit, or prior to the completion of any connection to the City’s water and wastewater systems; and no such permits shall be issued and no such connections shall be made until each impact fee required by this Chapter has been paid. All impact fees paid pursuant to this Chapter shall be promptly deposited in the appropriate impact fee funds described in Section 5-17-7. (3502,3875,4039,4706)

(C) Calculation of Impact Fees from Impact Fee Tables.

1. The City Manager, or his designee, shall determine the amount of each required impact fee through the use of the impact fee table set forth in this Chapter. (3502,3875,4706,5189)

2. Land Use Type. The City Manager, or his designee, shall determine the land use type for each development based on the land use or land uses applicable to the lot to be developed in its entirety. If a lot consists of two (2) or more separate areas with different land uses applicable to each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each land use type in each separate area. Determinations of the land use type may be appealed to the City Manager or his designee. (3502,4039,4234,4706,5189)

3. Meter Size. The City Manager, or his designee, shall determine the meter size for each lot based on the actual meter size installed on each lot. If the exact meter size is not listed in a table, then the City shall use the next largest meter size in such table. If a lot consists of two (2) or more separate areas with separate meters in each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each meter size in each separate area. (3502,4039,4706,5189)

4. Calculation of Square Footage. In assessing the development impact fees for the nonresidential land use type, any determination of square footage shall be in whole units, with any fractions thereof being rounded up to the next square foot. (4234,4706)

5. Existing development credits. Impact fees for development projects involving an addition to or remodeling of an existing facility, change of use, change of housing type, change of meter size or other modification or redevelopment of a previously developed lot or building with a valid certificate of occupancy shall be calculated as follows:

The applicable impact fees for each proposed housing type, land use type and meter size as set forth in the current impact fee tables minus the applicable impact fees for each existing or previous housing type, land use type and meter size as set forth in the current impact fee tables. Calculated amounts equal to or less than zero dollars ($0.00) shall result in no additional impact fee for that specific impact fee or fees. Unused credit amounts shall not be refunded to the owner or applicant, but shall run with the land until utilized in full. (4706)

6. If a manufactured home housing type is located on a separately platted lot, the impact fees shall be calculated as for single residence detached dwelling. If a manufactured home housing type is located on a recreational vehicle park space, the impact fees shall be calculated as for manufactured home/recreational vehicle. (4706)
EXEMPTIONS FROM IMPACT FEES:

(A) General Exemptions. The following types of development shall be exempt from payment of specified impact fees otherwise due pursuant to this Chapter. Except for claim(s) resulting from unforeseen conditions, the City Manager, or his designee, shall evaluate every permit application for applicability of the exemption criteria as follows: (3502,3547,3875,4039,4359,4706,5189)

1. Facilities located within the City and owned by the City will be exempt from payment of impact fees if the proposed facility will produce no additional demand for a specific necessary public service. The City Manager, or his designee, will evaluate such proposed facilities for applicability of the demonstration of no additional demand pursuant to this Chapter. (3502,4706,5189)

2. Public schools, school districts and Charter Schools located within Mesa shall be exempt from payment of all impact fees in accordance with Arizona Revised Statutes, Section 9-500.18, except applicable water and wastewater impact fees. (4706,5189)

3. Water and wastewater impact fees shall not be charged for the installation of fire protection systems or lines, provided that such system or line is not served by a water meter. (3502,4039,4706)

4. Separate water meters installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee. (3502,4706)

5. Separate water meters installed for irrigation purposes only that meet one (1) of the following conditions shall not be included in the calculation of the water impact fee: (3502,4039,4706)

(a) Dwelling units for which applicable impact fees were assessed and paid on a dwelling-unit basis; or (3502,4039)

(b) Dwelling units for which first connection preceded the assessment of development fees; or (3502,4039)

(c) Residential subdivision developments where water meters are installed in common areas of said developments to provide landscape irrigation; or (4234)

(d) Commercial or industrial developments for which water development fees were assessed and paid prior to July 1, 1993; or (3502,4039,4234)

(e) Commercial or industrial developments for which first connection preceded the assessment of development fees. (3502,4039,4234)

6. Separate water meters installed in a residential subdivision development that is: (4234,4706)

(a) Used for common amenities (i.e., swimming pools, clubhouses, recreation buildings, etc.) and (4234)

(b) Solely dedicated for the noncommercial use of the subdivision residents shall not be included in the calculation of the water impact fees when applicable impact fees for dwelling units were assessed and paid on a dwelling/unit or space/lot basis. (4234)

7. A development shall be exempt from stormwater drainage impact fees if the development is located within the areas of the "Stormwater Drainage Impact Fee Map" designated either as "exempt" or "potentially exempt" from stormwater drainage impact fees. (4706,5189)
Demonstration of No Additional Demand for Facilities. A development may be exempted from payment of specific impact fees otherwise due pursuant to this Chapter if the proposed development will produce no additional demand for a specific key public facility than what was generated from such lot or location prior to the proposed development. The City Manager, or his designee, shall evaluate every permit application for applicability of the demonstration of no additional demand for facilities for the types of impact fees pursuant to this Chapter. (3502, 3875, 4039, 4359, 4706, 5189)

Exemption Determination. The City Manager, or his designee, shall determine the validity of any claim for exemption pursuant to the criteria set forth in this Section. (3502, 3766, 3875, 4039, 4706)

5-17-7: IMPACT FEE FUNDS:

Creation of Impact Fee Funds. The following impact fee funds are hereby created as interest-bearing accounts separate and distinct from the general fund of the City: (3502, 3875, 5189)

1. Water Impact Fee Fund. (3502, 5189)
2. Wastewater Impact Fee Fund. (3502, 5189)
3. Park Impact Fee Fund. (3502, 5189)
4. (RESERVED) (5071)
5. Library Impact Fee Fund. (3502, 5189)
6. Fire Impact Fee Fund. (3502, 4039, 5189)
7. Police Impact Fee Fund. (3502, 4234, 5189)
8. (RESERVED) (5071)
9. Stormwater Drainage Impact Fee Fund. (4240, 5189)

Each such impact fee fund shall contain only those impact fees collected pursuant to this Chapter for the types of key public facilities reflected in the title of the fund plus any interest which may accrue from time to time on such amounts. (3502, 3875, 4039, 4706)

The monies in each impact fee fund shall be used only: (3502, 3875)

1. To repay all of the debt amounts for which the fees have been pledged as described in the Pledged Debt Analysis for Continuation of Impact Fees; (5189)
2. As described in Section 5-17-8 (refunds); or (3502, 5189)
3. As described in Section 5-17-9 (credits). (3502, 5189)
5-17-8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:

(A) The City Manager, or his designee, is hereby authorized and directed to correct any error in the assessment and collection of impact fees detected within twenty-four months of the date of the payment of the impact fees, including assessing additional impact fee amounts or issuing a refund from the appropriate impact fee fund(s). (3502, 4706, 5189)

(B) If an applicant has paid an impact fee required by this Chapter and has obtained any of the types of permits listed in Section 5-17-5, and the permit for which the impact fee was paid later expires or is revoked, then the applicant who paid such impact fee shall be entitled to a refund of the impact fee paid. A refund will include interest to the extent required by A.R.S. § 9-463.05. In order to be eligible to receive such refund, the applicant who paid such impact fee shall be required to submit a request for such refund within thirty (30) days after the expiration or revocation of the permit for which the impact fee was paid. (3502, 3875, 4039, 4706, 5189)

(C) After an impact fee has been paid pursuant to this Chapter, no refund of any part of such impact fee shall be made if the development for which the impact fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development. (3502, 3875, 4039)

5-17-9: CREDITS AGAINST IMPACT FEES:

(A) Credits Against Impact Fees. (3502, 5189)

1. Impact Fee Credits. The City will provide a credit toward the payment of a development impact fee for a required or agreed upon dedication of public sites, improvements and other necessary public services or facility expansions included in the City's infrastructure improvement plan and for which the fee is assessed. The credit will be provided to the extent the public sites, improvements and other necessary public services or facility expansions are provided by the developer requesting the credits. The City will provide credits or reimbursements from development impact fees under A.R.S § 9-463.05(B)(7)(c)(i). The City will provide credits when required by A.R.S. § 9-463.05. Credits will only be provided if and to the extent such credits comply with A.R.S. § 9-463.05. (3502, 3875, 5189)

2. Oversized Water and Wastewater Improvements. Credits shall not be issued for water and wastewater oversize improvements. Oversized improvements may be handled using development agreements as outlined in Sections 9-6-4(F) and 9-8-3(I) of the Mesa City Code. (3502, 3547, 4706, 5189)

(B) Procedure. In order to obtain a credit against an impact fee otherwise due, an applicant must submit a written offer to dedicate to the City specific parcels of qualifying land or to acquire or construct specific key public facilities in accordance with all applicable State or City design and construction standards, identify the project in the City’s Infrastructure Improvement Plan for which the credit is sought and must specifically request a credit against such impact fee. Such written request must be made on a form provided by the City, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts, and must be filed not later than the time when an applicant applies for the first permit of a type listed in Section 5-17-5(A) that creates an obligation to pay the type of impact fee against which the credit is requested, or the applicant’s claim for the credit shall be waived. (3502, 5189)
(C) **Calculation of Credit.** The credit due to an applicant shall be calculated and documented as follows: (3502,5189)

1. The value of land dedicated or donated shall, at the applicant’s option, be valued at (a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) that fair market value based on the appraised land value of the parent parcel on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the City may engage another appraiser at the City’s expense, and the value shall be an amount equal to the average of the two (2) appraisals. If either party rejects the average of the two (2) appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the City. The third appraiser shall be selected by the first two (2) appraisers, and the third appraisal shall be binding on both parties. Credits may not exceed the cost identified in the Infrastructure Improvement Plan for which a development fee was assessed. (3502,5189)

2. In order to receive credit for qualifying acquisition or construction of eligible public facilities, the applicant shall comply with the public bidding process as required by Section 5-17-9(H) of the Mesa City Code. Credits may not exceed the cost identified in the Infrastructure Improvement Plan for which a development fee was assessed and may not exceed the actual costs the applicant incurred in acquisition or construction. (3502,3547,4706,5189)

(D) **Effective Date.** Approved credits shall become effective at the following times: (3502,5189)

1. Approved credits for land dedications shall become effective when the land has been conveyed to the City in a form acceptable to the City and at no cost to the City and has been accepted by the City. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available. (3502)

2. Approved credits for the acquisition or construction of key public facilities shall generally become effective when (1) all required construction has been completed and has been accepted by the City, (2) a suitable maintenance and warranty bond has been received and approved by the City, (3) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable City and State procedures. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available. (3502,3875)

(E) **Credits Used for Same Impact Fee Category.** Approved credits may be used only to reduce the amount of impact fees due from the applicant for the same impact fee category for which the applicant dedicated land or acquired or constructed a key public facility until the amount of the credit is exhausted. Approved credits shall not be paid to the applicant in cash or in credits against any impact fee for a different type impact fee category or against any other monies due from the applicant to the City, and shall not constitute a liability of the City, except as described in Section 5-17-9(G). Each time a request to use approved credits is presented to and approved by the City, the City shall reduce the amount of the applicable impact fee otherwise due from the applicant, and shall note in the City records the amount of credit remaining, if any. Upon request of the applicant, the City shall issue a letter stating the number of credits available. (3502,5189)
(F) Sale of the Development. In the event that the development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first. In the event that the impact fee tables are amended to increase the fees prior to completion of the development, the percentage reduction shall be applied only to the impact fees that were in place at the time the credits were issued, and the adjusted impact fee to be charged shall be the sum of the reduced original impact fee plus the amount by which the fees were increased. (3502,4039,5189)

(G) Rights to Credits. Except as provided below in this Subsection, the right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the key public facility of the same type was acquired or constructed. Credits issued for a particular development shall not be transferable or assignable to another development, except the City may agree to a transfer or assignment as allowed in A.R.S. § 9-463.05(B)(7)(c)(iii) in a signed development agreement between the City and the original developer. (3502,3547,3875,5189)

(H) Use of Public Bidding Process. In order to receive a credit for the acquisition or construction of eligible public improvements (other than land dedication), the developer shall comply with A.R.S. § 34-101 et seq. and the City of Mesa’s public bidding process as administered by the City. (3502,4706,5189)

5-17-10: MISCELLANEOUS PROVISIONS:

(A) Interest. Interest earned on monies in any impact fee fund shall be considered part of such fund, and shall be subject to the same restrictions on use applicable to the impact fees deposited in such fund. (3502)

(B) First-In/First-Out Accounting. Monies in each impact fee fund shall be considered to be spent in the order collected, on a first-in/first-out basis. (3502)

(C) Maintenance. Monies from any impact fee fund shall not be spent for periodic or routine maintenance of any facility of any type or to cure deficiencies in public facilities existing on November 1, 1998. (3502,3875,4039)

(D) No Restriction on Development Conditions. Nothing in this Chapter shall restrict the City from requiring an applicant to construct reasonable project improvements required to serve the applicant’s development, whether or not such improvements are of a type for which credits are available under Section 5-17-9. (3502,3875,4039)

(E) Records. The City shall maintain accurate records of the impact fees paid, including the name of the person paying such impact fees, the development for which the impact fees were paid, the date of payment of each impact fee, the amounts received in payment for each impact fee, and any other matters that the City deems appropriate or necessary to the accurate accounting of such impact fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice. (3502,4039)

(F) Temporary Rate Freeze for New and Increased Fees in the Future. If the City adopts new or increased development impact fees, the new impact fee or the increased portion of the modified impact fee shall not be assessed against a development for the period of the time as provided for and defined in A.R.S. § 9-463.05(F) and (T)(4). (3502,3875,4706,5189)
Mistake or Misrepresentation. If a development impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the City to the applicant within thirty (30) days after the City’s acceptance of the recalculated amount, with interest earned by the City since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the City within thirty (30) days after the City’s acceptance of the recalculated amount, with interest that would have been earned by the City from the date of such underpayment. In the case of an underpayment to the City, the City shall not issue any additional permits or approvals for the development for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty- (30-) day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then current owner of the land. (3502,4039,5189)

Discretion to Reduce Impact Fees. In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the City Council may agree to pay some or all of the impact fees imposed on a proposed development from other funds of the City that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the City Council and shall be made pursuant to goals and objectives expressed by the City Council to promote such development. (3502,4039,5189)

Appeals. Any determination made by any official of the City charged with the administration of any part of this Chapter may be appealed to the City Manager, or his designee. The determination of the City Manager, or his designee, may be appealed to the City Council committee that is designated by the City to hear such appeals. All appeals must include a written notice of appeal that contains an explanation of why the appellant feels that the determination was in error. The written notice of appeal must be filed with the City Clerk within thirty (30) days after the determination for which the appeal is being filed. The determination of the City Council committee shall be final. (3502,3547,3875,5189)

Biennial Audit. The City shall conduct a biennial certified audit in accordance with A.R.S. § 9-463.05(G)(2) if and to the extent applicable to the continuation of the impact fees for the payment of pledged debt amounts and as required for any future adopted impact fees. (3502,3875,5189)

Annual Report. Within 90 days of the end of each fiscal year, the City shall file with the City Clerk an annual report accounting for the collection and use of the fees for each service area and shall post the report on its website in accordance with A.R.S. § 9-463.05(N) and (O), as amended. (3502,3547,3875,4706,5071,5189)

Violation; Penalty: Furnishing false information to any official or agent of the City charged with the administration of this Chapter on any matter relating to the administration of this Chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this Chapter. Any person, firm, or corporation that violates any of the provisions of this Chapter shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500), or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000). Each violation shall be considered a separate offense, punishable as described above. (3502,3875)
# TABLE 1
## MESA DEVELOPMENT IMPACT FEES

<table>
<thead>
<tr>
<th>IMPACT FEE CATEGORIES</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>WATER</th>
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<th>FIRE</th>
<th>PUBLIC SAFETY</th>
<th>STORM WATER</th>
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<td>$2,659</td>
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<td>Single Residence Attached</td>
<td>dwelling</td>
<td>$1,265</td>
<td>$1,516</td>
<td>$230</td>
<td>$388</td>
<td>$195</td>
<td>$3,594</td>
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<td>$1,516</td>
<td>$230</td>
<td>$388</td>
<td>$195</td>
<td>$3,594</td>
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<td>Manufactured Home or Recreational Vehicle</td>
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<td><strong>NON-RESIDENTIAL LAND USES:</strong></td>
<td>Hotel/Motel</td>
<td>room</td>
<td>see water meter sizes</td>
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<td>$159</td>
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<td>3/4'' (water meter size)</td>
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<tr>
<td></td>
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<td>meter</td>
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<td>$6,648</td>
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<tr>
<td></td>
<td>1 1/2''</td>
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<td>$11,100</td>
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<td></td>
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<td>$42,544</td>
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<tr>
<td></td>
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CHAPTER 18

TRANSIENT OCCUPANCY TAX

(Repealed by 3175)

CHAPTER 19

FORTUNE TELLING

5-19-1: PURPOSE OF THIS CHAPTER:
The purposes of this Chapter shall be to protect the health, safety, and welfare of residents of the City by means of investigation and regulation of fortunetellers. (1846)

5-19-2: LICENSE REQUIRED:
It shall be unlawful for any clairvoyant, astrologer, seer, palmist, soothsayer, fortune teller, spiritualist, or spirit medium to engage in such business and charge or receive fees, rewards, or anything of value therefor without first obtaining a license therefor in compliance with the provisions of this Chapter. If more than one (1) person is associated in any of the above categories at the same place of business, each person so engaging shall be required to obtain a separate license. (1846)

5-19-3: APPLICATION:
Applicants for a license under this Chapter must file with the Finance Director a sworn application in writing on a form to be furnished by the Finance Director which shall contain, but not necessarily be limited to, the following information: (1846)

(A) Name and description of the applicant. (1846)

(B) Address (legal and local). (1846)

(C) If employed, the name and address of the employer, together with credentials establishing the exact relationship. (1846)
(D) The length of time for which the right to do business is desired. (1846)

(E) If a vehicle is to be used, a description of the same, together with license number or other means of identification. (1846)

(F) A photograph of the applicant taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2"), showing the head and shoulders of the applicant in a clear and distinguishing manner. (1846)

(G) The fingerprints of the applicant and the names of at least two (2) reliable property owners of the City who will certify as to the applicant's good character and business responsibility or in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility. (1846)

(H) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal laws, the nature of the offense, and the punishment or penalty assessed therefor. (1846)

(I) No license issued hereunder shall be transferable. (1846)

5-19-4: INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE:

Upon receipt of such application, the Finance Director shall cause an investigation to be made to determine whether the applicant or any officer, director, trustee, or partner or any agent, employee, or other person associated with the applicant:

(A) Has been convicted of a felony involving a transaction in securities or consumer fraud in any state of federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1846)

(B) Has been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, or theft by false pretenses, in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1846)

(C) Has been or is presently subject to an injunction, judgment, decree, or permanent order of any federal court entered within the seven- (7-) year period immediately preceding the filing of the application of such injunction, judgment, decree, or permanent order:

1. Involving the violation of fraud or registration provisions of the securities laws of that jurisdiction; or (1846)

2. Involving the violation of the consumer fraud laws of that jurisdiction. (1846)

(D) Has been convicted of a felony involving moral turpitude or burglary, robbery, or theft as defined in Arizona Revised Statutes or a crime of violence in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application. (1846)

If as a result of such investigation it is determined that any of the items set forth above as (A), (B), (C), and (D) are determined to exist, the Finance Director shall deny the application. If not, the license shall be issued by the Finance Director upon payment of the required fee. (1846)
5-19-5: **FEES:**
The license fee for any clairvoyant, astrologer, seer, palmist, soothsayer, fortune teller, spiritualist, or spirit medium shall be three hundred dollars ($300.00) per calendar year or part of a calendar year, and all annual fees shall be paid in advance. (1846)

5-19-6: **LICENSE TO BE POSTED:**
The license issued to the licensee hereunder by the Finance Director shall be posted in a conspicuous place if the licensee is using a vehicle or building in his business, and otherwise must be kept by the person and exhibited at any time upon request. (1846)

5-19-7: **RENEWALS:**
Licenses which are continually renewed shall pay the annual fee prescribed in Section 5-19-5. Licenses which are not continuously renewed shall be treated as an original application upon application for renewal. (1846)

5-19-8: **SUSPENSION AND REVOCATION:**
Whenever the Finance Director has reason to believe that any licensee is guilty of any of the following acts: (1846)

(A) Fraud, misrepresentation, or false statement contained in the application for license; (1846)

(B) Fraud, misrepresentation, or false statement made in the course of carrying on the business; (1846)

(C) Violation of any of the provisions of this Chapter; (1846)

(D) Conviction of any crime described in Items (A), (B), (C), and (D) of Section 5-19-4; (1846)

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; (1846)

The Finance Director shall immediately suspend the license and give the licensee notice by registered mail of the suspension and of a hearing to be held within ten (10) days to determine whether or not the permit should be revoked. The notice shall contain a statement of the purported reason for the suspension. At the hearing the licensee shall have the right to be represented by counsel, to introduce witnesses on his behalf and at his own expense, and to have the testimony given at the hearing transcribed. Within the next three (3) days after the hearing, excluding weekends and legal holidays, if the Finance Director determines that there is a good and sufficient reason for revocation of the licensee's license, the Finance Director shall enter an order revoking the license effective immediately and notify the licensee by registered mail. (1846)

5-19-9: **APPEAL:**
Within five (5) days, excluding weekends and legal holidays, an applicant for a license or a licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (2383)
CHAPTER 20

PAYMENTS IN LIEU OF THE RESIDENTIAL DEVELOPMENT TAX

(2210,2240,2443,2466,2908)

(Repealed by 3502)
CHAPTER 21

STRUCTURED SOBER LIVING HOME LICENSE

(5458)

SECTION:

5-21-1: PURPOSE AND INTENT
5-21-2: DEFINITIONS
5-21-3: ADMINISTRATION; LICENSE REQUIRED
5-21-4: LICENSE APPLICATION
5-21-5: LICENSE RENEWAL
5-21-6: LICENSE DENIAL OR REVOCATION
5-21-7: MINIMUM STANDARDS FOR THE OPERATION OF A STRUCTURED SOBER LIVING HOME
5-21-8: OPERATING RULES AND REGULATIONS FOR STRUCTURED SOBER LIVING HOMES
5-21-9: HOUSE MANAGER
5-21-10: REPORTING A VIOLATION
5-21-11: REASONABLE ACCOMMODATION
5-21-12: VIOLATION AND PENALTIES
5-21-13: APPEAL HEARING; JUDICIAL REVIEW

5-21-1: INTENT
   The intent of this Chapter is to protect the residents of structured sober living homes from operators who engage in abuse, neglect, mistreatment, fraud, or inadequate supervision of this vulnerable population as well as to protect the residents of structured sober living homes and the neighboring community from operators who fail to provide the supportive, residential family-like living environment necessary to achieve and maintain sobriety. (5458)

5-21-2: DEFINITIONS
   The terms of this Chapter have the below meanings unless the context otherwise requires. 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. (5458)

(A) APPLICANT: A person who applies for a license pursuant to this Chapter. (5458)

(B) BEHAVIORAL HEALTH SERVICE: Services that pertain to mental health and substance use disorders that are either: (5458)
   (1) Performed by or under the supervision of a professional who is licensed pursuant to Arizona Revised Statutes Title 32 and whose scope of practice allows for the provision of these services; or (5458)
   (2) Performed on behalf of patients by behavioral staff as prescribed by law. (5458)

(C) BUSINESS LICENSING ADMINISTRATOR: The Business Licensing and Revenue Collections Administrator of the City or his/her designee. (5458)

(D) CITY: City of Mesa, Arizona. (5458)
(E) **HEARING OFFICER:** The Business Services Department Director or his/her designee. (5458)

(F) **HOUSE MANAGER:** A staff member, regardless of title, whether live-in or on a shift basis, who is responsible for the day-to-day operation of the structured sober living home, maintaining and managing a sober living environment, keeping the house running smoothly, and maintaining a clean and sanitary environment. (5458)

(G) **LICENSE:** A license issued to a structured sober living home operator in accordance with this Chapter. (5458)

(H) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Business Licensing and Revenue Collections Administrator. (5458)

(I) **OPERATOR:** A business entity or individual (natural person) who owns or provides structured sober living home services including the placement of individuals in a residence, setting house rules, and governing behavior of the occupants as residents of the home. Operator does not include property owner or property manager that exclusively handles real estate contracting, property management, and leasing of the property and who does not otherwise meet the definition of operator. (5458)

(J) **SCHEDULE OF FEES AND CHARGES:** The current City schedule of fees and charges as approved by the City Council. (5458)

(K) **STRUCTURED SOBER LIVING HOME:** Any group residential/group home for the handicapped that provides alcohol-free or drug-free housing, promotes independent living and life skill development, and provides structured activities that are directed primarily toward recovery from substance use disorders in a supervised setting to a group of unrelated individuals, who are recovering from drug or alcohol addiction and who are receiving outpatient behavioral health services for substance abuse or addiction treatment while living in the home. Structured sober living home does not include: (1) a private residence in which a related family member is required to receive outpatient behavioral health services for substance abuse or addiction treatment as a condition of continuing to reside in the family dwelling; or (2) group home/group home for the handicapped that is licensed or otherwise subject to oversight by the State of Arizona. (5458)

**5-21-3: ADMINISTRATION; LICENSE REQUIRED**

(A) It is the duty and responsibility of the Business Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, or revoke a structured sober living home license in accordance with this Chapter. (5458)

(B) Any party aggrieved by a decision of the Business Licensing Administrator under this Chapter may appeal within ten (10) calendar days of issuance of the decision. The appeal must meet the requirements set forth in Section 5-21-13. (5458)

(C) All operators in the City must first obtain a license from the Licensing Office as provided in this Chapter. (5458)

(D) A separate license is required for each structured sober living home location in the City. (5458)

(E) A license is issued for a period of one (1) year and cannot be transferred. (5458)

(F) An operator must display its license in a conspicuous location at the structured sober living home location where the residents of the home can easily view the license. (5458)

(G) An applicant for a license may seek a reasonable accommodation as prescribed in Section 5-21-11 of this Chapter. (5458)
(A) An applicant must submit a licensing application on a form provided by the City and provide, at a minimum, all of the following documents: (5458)

(1) If the property is leased to an operator, a copy of the lease or other properly executed document stating that the property will be used as a structured sober living home. (5458)

(2) Supervision requirements in the structured sober living home for the residents during all hours of operation. (5458)

(3) Documentation for each house manager indicating the manager meets the minimum qualifications in Section 5-21-9. (5458)

(4) Operation plan that facilitates the rehabilitative process and addresses the maintenance of the property and noise abatement consistent with local ordinances. (5458)

(5) The structured sober living home’s rules and regulations, written intake procedures, relapse policy, and discharge plan. (5458)

(6) A copy of the structured sober living home good neighbor policy. (5458)

(7) A copy of the operator’s insurance policy for the structured sober living home. (5458)

(8) An affirmation by the operator that, except for house manager(s), only residents who have the disability of addiction to drugs and/or alcohol as defined by state and federal law are eligible to reside at the structured sober living home and the home will not admit residents who pose a direct threat to the health or safety of others such as persons on the sex offender registry. (5458)

(9) A blank copy of every form residents and potential residents are required to complete. (5458)

(10) A signed waiver by the operator agreeing to allow fire inspectors or code compliance officers entry into the common areas (including, but not limited to, the living room, kitchen, dining room, and back or side yard of a structured sober living home) upon demonstration that probable cause exists to believe that a violation of this Chapter exists. (5458)

(11) A signed and dated safety self-assessment checklist confirming the following safety devices are installed and fully functional, as well as a schedule for self-inspecting each device: (5458)

   (a) Functioning smoke detectors in the sleeping rooms. (5458)
   
   (b) Functioning fire extinguishers in plain sight or clearly marked locations. (5458)
   
   (c) Interior and exterior of the property is in a functional, safe and clean condition and free of fire hazards. (5458)

(12) A signed waiver by the operator agreeing to allow the City to conduct an annual fire inspection of the structured sober living home to ensure compliance with the City’s fire code and Section 5-21-4 (A)(11). (5458)
(13) A legible floor plan of the structured sober living home that includes the total square footage of the home; the layout, location, dimensions, and square footage of each bedroom or room occupied as a bedroom (excluding closet space); the number of beds in each bedroom or room occupied as a bedroom; and the maximum number of residents proposed to occupy the home now and in the future. (5458)

(B) As part of the license application process and prior to the issuance of a license, the operator must permit the City to perform a fire inspection of the structured sober living home. (5458)

(C) The Licensing Office will grant a license to an applicant unless it determines the application is subject to denial in accordance with Section 5-21-6. (5458)

(D) All required fees set forth in the schedule of fees and charges (including issuance, application, and renewal, as applicable) must be paid by the operator prior to the issuance of a license. (5458)

(E) An applicant who obtains a license is responsible for updating any information provided to the City in this Section, within ten (10) days of the change in information. (5458)

5-21-5: LICENSE RENEWAL

(A) A license, unless revoked, may be renewed and such renewal will be valid for a term of one (1) year. The completed renewal application must be submitted by the operator no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee set forth in the schedule of fees and charges, otherwise the renewal application will be denied. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed in accordance with the requirements of this Chapter. (5458)

(B) As part of the annual renewal process, a licensed structured sober living home must pass an annual fire inspection conducted by the City. (5458)

(C) If an operator fails to submit a complete renewal application and renewal fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license will expire at the end of the term of the license and will be deemed non-renewable; unless otherwise prohibited by this Chapter, an operator will still be eligible to apply for a new license. An operator may not operate a structured sober living home at a location with an expired license until a new license is issued. (5458)

(D) An application for renewal of a license must comply with Section 5-21-6. (5458)

5-21-6: LICENSE DENIAL OR REVOCATION

(A) In addition to any penalties set forth in the Chapter, the Licensing Office shall deny an application for a new license and may revoke a current license for any of the following reasons: (5458)

(1) Applicant failed to meet the requirements set forth in this Chapter for issuance of a license. (5458)

(2) Applicant or operator failed to pay the applicable fees set forth in this Chapter. (5458)

(3) Application contained materially false or misleading information or omitted any pertinent information. (5458)

(4) Applicant or operator is in violation of any provision of this Chapter, or any other law applicable to the operation of a structured sober living home. (5458)
(5) Applicant currently owes a debt to the City and therefore cannot be issued a license as set forth in Mesa City Code Title 1, Chapter 32. (5458)

(6) Applicant, operator or house manager refused entry into a structured sober living home upon request by a fire inspector or code compliance officer upon demonstration that probable cause exists to believe that a violation of this Chapter exists. (5458)

(7) Operator was convicted or pled nolo contendere to any of the following criminal offenses within five (5) years prior to the date of the application for the license or operator commits any of the following offenses while having the license: (5458)

(a) Any sex offense classified as a Level II or Level III community risk (intermediate to high risk). (5458)

(b) Any arson offense. (5458)

(c) Any violent felony which involved doing bodily harm to another person. (5458)

(d) An unlawful sale, transfer, production, delivery, or manufacturing drug offense under Arizona Revised Statutes Title 13, Chapter 34 (as amended) or similar law in another state. (5458)

(8) Operator is on parole or formal probation supervision on the date of the submittal of the application for the license or at any time thereafter. (5458)

(9) Excluding the house manager, operator allowed a person who is not in recovery from drug and/or alcohol addiction and not handicapped as defined by the Fair Housing Act and the Arizona Fair Housing Act to reside in the structured sober living home. (5458)

(B) In addition to any penalties set forth in this Chapter, the Licensing Office may deny an application for a license or may revoke a current license for any of the following reasons: (5458)

(1) Operator, who is in recovery from drug and/or alcohol addiction, has been clean and sober for fewer that two full years as of the date of the application for a license or the date of employment. (5458)

(2) Operator or house manager fails to take immediate measures to remove or isolate any resident, using alcohol or illegally using prescription or nonprescription drugs, from contact with all other sober residents in the structured sober living home. (5458)

(3) Operator or house manager fails to take immediate measures to remove or isolate any resident of the structured sober living home who fails to actively participate in a legitimate recovery program. (5458)

(4) More than three (3) violations of this Chapter have occurred within a twelve (12) month period. (5458)

(5) Repeated violations of the operating rules and regulations submitted as part of the application for the license, the supervision requirements in the structured sober living home for the residents during hours of operation, the structured sober living home’s rules and regulations, written intake procedures, relapse policy, or discharge procedure and policy. (5458)
5-21-7: MINIMUM STANDARDS FOR THE OPERATION OF A STRUCTURED SOBER LIVING HOME

(A) If the operator is not the property owner, the operator must obtain written approval from the property owner to operate a structured sober living home at the property as shown on the lease or other properly executed document. (5458)

(B) Like all properties in the City, the structured sober living home must be maintained in full compliance with all City building codes, the Mesa City Code, the Mesa Zoning Ordinance, and any other City regulations. (5458)

(C) An individual required to register under Arizona law as a sex offender and classified as a Level II or Level III community risk (intermediate to high risk) is not permitted to live in a structured sober living home. (5458)

(D) A structured sober living home shall provide a clean, safe, substance-free living environment in which:

1. Case management is provided to help residents receive substance abuse treatment, community-based recovery services, or both, for sustained recovery; (5458)

2. At least one (1) house manager is present at all times when residents are present at the structured sober living home; and (5458)

3. The operator or house manager is available on call at all times. (5458)

(E) A structured sober living home must have Naloxone (Narcan) available on the premises for use by the residents in the home, all of whom must have received training to administer Naloxone within one (1) week of admission to the home. (5458)

(F) A structured sober living home shall provide house managers with an understanding of substance use disorders, co-occurring substance use and mental health disorders, and recovery principles. (5458)

(G) The operator shall acquire and maintain commercial general liability insurance of at least one million dollars ($1,000,000.00) in coverage per occurrence and at least three million dollars ($3,000,000.00) aggregate or at least one million dollars ($1,000,000.00) general liability per occurrence and at least two million dollars ($2,000,000.00) general aggregate coverage with at least one million dollars ($1,000,000.00) umbrella coverage. (5458)

5-21-8: OPERATING RULES AND REGULATIONS FOR STRUCTURED SOBER LIVING HOMES

Each operator must establish and enforce operating rules and regulations that meet or exceed the following minimum standards: (5458)

(A) House rules and regulations that include all of the following: (5458)

1. Prohibits the use of alcohol at the home or by any recovering addict either on or off the premises. (5458)

2. Prohibits the use of non-prescription drugs at the home or by any recovering addict either on or off the premises. (5458)
(3) Prohibits theft by residents, staff or house manager(s). (5458)

(4) Addresses residents, staff, or house managers borrowing money from other residents, staff or house managers. (5458)

(5) Requires residents attend weekly household meetings and participate in self-help meetings and recovery programs, including a statement that refusal to actively participate in recovery programs may be cause for discharge. (5458)

(6) Requires residents to seek employment and the number of hours that must be devoted per day to that job search. (5458)

(7) Addresses residents completing household chores and adhering to the house curfew. (5458)

(8) Statement that violating the house rules and regulations will result in consequences and a description or listing of the consequences, up to and including immediate discharge from the home. (5458)

(B) The structured sober living home shall have one (1) or more house managers at the home, at least one (1) of whom is present at all times when residents are present at the structured sober living home. (5458)

(C) All residents, other than the house manager, must actively participate in recovery programs, such as Alcoholics Anonymous or Narcotics Anonymous, and must adhere to the program’s applicable prescribed schedule and requirements. (5458)

(D) The structured sober living home shall establish a protocol to assure that all residents have access to meals at the home whether the residents dine individually or as a group. Public, social, or charitable service-provided meals shall not be a substitute for these protocols. (5458)

(E) That structured sober living home shall establish a designated smoking area outside of the home that does not expose neighbors to secondhand smoke. If an adjacent resident is sensitive to secondhand smoke, the operator or house manager should take reasonable measures to accommodate that neighbor. A structured sober living home may ban smoking from the home and grounds. (5458)

(F) A structured sober living home shall develop protocols to prevent locking residents out of the home or otherwise preventing resident access to the home at any time unless the residents are at work or engaged in some other approved activity outside the home. The purpose of the protocol is to prevent a structured sober living home from simply locking its doors and leaving residents loitering outside the home. Part of maintaining a family-like living environment is enabling access to the home as in a biological family. (5458)

(G) A structured sober living home must establish a medication policy which shall be posted at a conspicuous site in a common area inside the home. The policy shall address, at a minimum, all of the following: (5458)

(1) Possession, use and storage of prescription medications. (5458)

(2) Individuals on medication-assisted treatment being permitted to continue to receive this treatment while living in the structured sober living home. (5458)

(3) Operator, house manager, and staff of the structured sober living home shall not dispense medications but must make them available to the resident to whom the medication is prescribed. (5458)
(4) Possession or use of prescription medications is prohibited except for the person to whom the medication(s) are prescribed and in the prescribed dose. (5458)

(5) Preventing a resident who violates the medication policy from having contact with other residents until the violation is resolved. (5458)

(H) The structured sober living home must establish and maintain an operation plan that facilitates the rehabilitative process, including discharge planning, and that addresses the maintenance of the property and noise abatement consistent with local ordinances. The structured sober living home’s relapse and discharge policy must include options for eviction of a resident to avoid forcibly evicting a resident onto the street including, but not limited to, a provision that an operator or house manager cannot discharge a resident who does not have alternative living arrangements. The options for eviction of residents may include, but are not limited to: (5458)

(1) Notice to resident and resident’s family of proposed eviction; (5458)

(2) Time limits on when eviction can occur where no immediate threat to other residents exist; (5458)

(3) Travel arrangements to the resident’s home of record; or (5458)

(4) Alternate living accommodation arrangements or referrals. (5458)

(I) The structured sober living home shall have a written visitation policy requiring house manager consent of all visitors and prohibiting any visitor who is under the influence of illegal drugs, excessive medication, or alcohol. (5458)

(J) The structured sober living home shall have a good neighbor policy directing residents to be considerate of neighbors, including refraining from engaging in behavior that would unduly interfere with a neighbor’s use and enjoyment of their home and property. The good neighbor policy shall establish a written protocol for the house manager or operator to follow when a neighbor complains to the staff, house manager, operator or to the City. The good neighbor policy shall address the following issues: (5458)

(1) Policies and procedures that, upon request, provide neighbors with full contact information for the structured sober living home’s operator and house manager(s). (5458)

(2) Policies and procedures that require the operator or house manager to respond to a neighbor’s concerns even if it is not possible to resolve the issue. (5458)

(3) New resident orientation to include how residents are to greet and interact with neighbors and concerned parties. (5458)

(4) Policies that are responsive or preemptive to neighbor’s reasonable complaints regarding: smoking, loitering, parking, noise, lewd or offensive language, and cleanliness of public space around the property. (5458)

(K) All rules and regulations for residents of a structured sober living home shall be posted in a visible location in the home. (5458)
5-21-9: HOUSE MANAGER
The purpose of this section is to ensure the house manager of a structured sober living home can perform the job in a safe and knowledgeable manner. (5458)

(A) Certification. A house manager, within thirty (30) days of being hired for the position, shall provide the Licensing Office a certification or similar proof of meeting the minimum qualifications set forth in Section 5-21-9(C). (5458)

(B) Duties. House manager is responsible for the day-to-day operation of the structured sober living home including, but not limited to: general oversight of the house; create a safe, supportive and caring home environment in which the residents continue their recovery; provide regularly scheduled opportunities for the residents to grow in their understanding of recovery; prevent disruptive residents and neighborhood activities; and provide basic first aid and CPR when necessary. The house manager may also coordinate aspects of the resident’s transportation, meals, activities and meetings. (5458)

(C) Minimum Qualifications. A house manager shall meet the following minimum qualifications: (5458)

(1) Possess at least a high school or general equivalency diploma; (5458)

(2) Be at least twenty-one (21) years old; (5458)

(3) Is not on formal probation supervision or parole; (5458)

(4) Be clean and sober for at least one (1) year as of the date of employment; (5458)

(5) Successfully complete training in first aid; and (5458)

(6) Successfully complete training and certification in cardiopulmonary resuscitation (CPR). (5458)

5-21-10: REPORTING A VIOLATION
A structured sober living home operator shall not terminate any staff or house manager, evict any resident (collectively “Reporting Party”), or take any other adverse action against a Reporting Party for disclosing a violation of any provision of the Mesa City Code, based upon the Reporting Party’s reasonable belief that the operator, staff or house manager has violated or is violating a provision of the Mesa City Code. This provision applies to: (1) disclosure to any person the Reporting Party reasonably believes is in a managerial or supervisory position at the structured sober living home or who has the authority to investigate the violation and take action to prevent further violations of the Mesa City Code; or (2) disclosure to an employee of any public body or political subdivision of this state or the federal government. (5458)

5-21-11: REASONABLE ACCOMMODATION

(A) Policy. It is the City’s policy to provide a reasonable accommodation in accordance with federal and state fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) for persons with disabilities seeking fair access to housing in the application of this Chapter. The term “disability” as used in this Chapter shall have the same meaning as the terms “disability” and “handicapped” as defined in the federal and state fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.). The purpose of this Section is to establish the procedure by which a person may request a reasonable accommodation and how the request is to be processed. (5458)

(B) Reasonable Accommodation. Any person seeking a permit to operate a structured sober living home that will substantially serve persons with disabilities may apply for a reasonable accommodation to obtain relief from a City regulation, policy, or condition that poses a barrier to equal access to housing. (5458)
(C) Procedure. (5458)

(1) Application Required. An application for a reasonable accommodation shall be filed and processed with the City Manager or designee. The application shall include the following information and be subject to the determinant factors required by this Section. (5458)

(2) Submittal Requirements. The application shall be made in writing, and shall include the following information: (5458)

(a) The specific City provision, regulation, policy, or condition from which the reasonable accommodation is being requested; (5458)

(b) The specific exception or modification sought from the application of the subject provision, policy, or condition of this Chapter that the applicant seeks; (5458)

(c) Documentation that the specific exception or modification requested by the applicant is necessary to provide one (1) or more individuals with a disability an equal opportunity to use and enjoy the residence; (5458)

(d) Any other information that the City Manager or designee reasonably determines is necessary to evaluate the request for a reasonable accommodation; (5458)

(e) Any other information that the City Manager or designee reasonably concludes is necessary to determine whether the findings required by Section 5-21-11(G) of this Section can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected. (5458)

(D) Fee. No application fee is required to request a reasonable accommodation. (5458)

(E) City Manager Action. Within sixty (60) days of receipt of a completed application, the City Manager or designee shall issue a written determination to approve, conditionally approve, or deny a request for the requested reasonable accommodation: (5458)

(F) Standards for Granting a Reasonable Accommodation. The following factors may be considered in determining whether to grant a reasonable accommodation: (5458)

(1) Whether a less drastic exception or modification to the applicable provision, regulation, policy, or condition that achieves the same end as the requested reasonable accommodation is available; (5458)

(2) Special needs created by the disability at issue; (5458)

(3) Potential benefit that can be accomplished by the requested modification; (5458)

(4) Physical attributes of the subject property and structures; (5458)

(5) Alternative accommodations that may provide an equivalent level of benefit; (5458)

(6) Whether the requested accommodation would impose an undue financial or administrative burden on the City; (5458)

(7) Whether the requested accommodation would require a fundamental alteration in the nature of a program of the City; (5458)
(8) Whether granting the request would be consistent with the City’s General Plan; and (5458)

(9) The property will be used by an individual with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.). (5458)

(G) Findings. The written decision to approve, conditionally approve, or deny a request for a reasonable accommodation shall be based on the following findings, all of which are required for approval. In making these findings, the City Manager or designee may approve alternative reasonable accommodations which provide the applicant with an equivalent level of benefit. (5458)

(1) The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.); (5458)

(2) The requested accommodation is necessary to provide one (1) or more individuals with a disability an equal opportunity to use and enjoy a dwelling; (5458)

(3) The requested accommodation will not impose an undue financial or administrative burden on the City, as “undue financial or administrative burden” is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law; (5458)

(4) The requested accommodation will not, under the specific facts of the application, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others; (5458)

(5) Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting; (5458)

(6) The requested accommodation will not result in a fundamental alteration in the nature of the requirements of City regulation, policy or condition. (5458)

(H) Any party aggrieved by a decision of the City Manager or designee may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the City Manager or designee; the failure of an appeal to meet the requirements of this Section will entitle the City Manager or designee to deny the appeal without further review. The appeal shall be processed in accordance with Section 5-21-13. (5458)

5-21-12: VIOLATION AND PENALTIES

(A) Nothing in this Chapter shall be construed as affecting the ability of the City to initiate or continue concurrent or subsequent criminal prosecution or civil code enforcement actions for any violation of the Mesa City Code or state law arising out of the circumstances necessitating the application of this Chapter. (5458)

(B) The remedies herein are cumulative, and the City may proceed under one (1) or more such remedies. Each violation of any provision of this Chapter shall constitute a separate offense and each day a violation remains unabated may constitute a separate offense. (5458)

(C) Any operator or other person who causes, permits, facilitates, aids, or abets any violation of any provision of this Chapter, or who fails to perform any act or duty this Chapter requires, is subject to a minimum civil sanction of not less than one hundred dollars ($100.00) and a maximum civil sanction of two thousand five hundred dollars ($2,500.00). Each day any violation of any provision of this Chapter exists shall constitute a separate violation. (5458)

(D) Any operator, house manager, or other person who knowingly causes, permits, facilitates, aids or abets any violation of any provision of this Chapter or who knowingly fails to perform any act or duty required by this Chapter is guilty of a class 1 misdemeanor. (5458)
5-21-13: APPEAL HEARING; JUDICIAL REVIEW

(A) Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director; the failure of an appeal to meet the requirements of this Section will entitle the Business Services Director to deny the appeal without further review. (5458)

(B) If an appeal meets the requirements of Section 5-21-13(A), the Business Services Director will schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Section 5-21-13(A) will suspend the decision of the Business Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Hearing Officer, will be reinstituted and dated as of the original date the decision was issued by the Business Licensing Administrator. (5458)

(C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony will be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery will be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5458)

(D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, will constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5458)

(E) The decision of the Business Licensing Administrator, if not appealed, will be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Business Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer will be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5458)
SECTION: 5-22-1: DEFINITIONS

(A) “Applicant” means the person who applies for a license pursuant to this Chapter. (5466)

(B) “Automated Kiosk” means an interactive device that is installed within a retail space at which used consumer electronic devices are sold, traded, recycled, or otherwise received by a person. (5466)

(C) “Automated Kiosk License” means a license issued pursuant to this Chapter authorizing a person to operate one or more automated kiosk(s) within the boundaries of the City. (5466)

(D) “Consumer Electronic Device” means any portable electronic or digital device designed to be purchased and used by end users or consumers for daily, non-commercial purposes; examples of consumer electronic devices include, but are not limited to, cellular telephones, touch screen tablets, laptop computers, smart watches, and digital media players. (5466)

(E) “Controlling Person” means a person who either (A) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (B) is any of the following: (5466)

1. An officer, director, or any stockholder who owns ten percent (10) or more, of a corporation licensee/applicant; (5466)

2. A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant; (5466)

3. An officer, president, or secretary of a limited liability company/corporation licensee/applicant; or (5466)

4. The sole proprietor of a sole proprietorship licensee/applicant. (5466)
(F) “Designated Agent” means the person designated by the applicant or licensee to receive notices from the City pursuant to this Chapter. (5466)

(G) “ESN” means a unique number assigned by the manufacturer to identify a mobile phone or device, commonly referred to as an electronic serial number. (5466)

(H) “IMEI” means a unique number used by wireless carriers and cell phone manufacturers to identify mobile phones and devices, commonly referred to as an international mobile equipment identity. (5466)

(I) “Licensee” means the person who applied for a license pursuant to this Chapter and in whose name such license was issued by the City pursuant to this Chapter. (5466)

(J) “MEID” means a unique identifier used by wireless carriers and cell phone manufacturers to identify a mobile phone, commonly referred to as a mobile equipment identifier. (5466)

(K) “Person” means an individual, partnership, corporation, association or any other entity of whatever kind or nature. (5466)

5-22-2: LICENSING AND OPERATION

(A) It shall be unlawful for a person to operate an automated kiosk at any location within the City without obtaining a license pursuant to this Chapter. (5466)

(B) A license issued pursuant to this Chapter is valid for a period of one (1) year from the date of issuance. (5466)

(C) The automated kiosk(s) shall operate only at the location(s) designated on the license. Each automated kiosk location to be operated by the licensee under the license must be approved by the City. Approval of an automated kiosk location will be determined at the best interest of the community based on the history for the past five (5) years of criminal activity at the proposed location. The license shall designate all locations where property belonging to the licensee is processed and stored. Property of the licensee may be processed and stored at locations not designated on the license only with the written and signed consent of the City. (5466)

(D) Any person desiring to obtain a new or renewal license must apply to the City by presenting a complete application, the applicable fee, and fingerprint records to the City Licensing Office. (5466)

1) The application shall include, but not be limited to, the following information: (5466)

   (a) The names, addresses, and contact information for all controlling persons and designated agents of the applicant. (5466)

   (b) All locations within the City at which the applicant intends to operate an automated kiosk and the number of automated kiosks that will be at each such location. (5466)

   (c) The location(s) where property obtained at the automated kiosk may be processed and stored. (5466)

2) Fingerprint records are required: (5466)

   (a) On all new applications, for all applicants and controlling persons; and (5466)

   (b) For renewal applicants, for any new controlling person(s) for the license. (5466)
(3) Fingerprints shall be submitted in a form approved by the City. The fingerprints shall be submitted the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the United States Federal Bureau of Investigation. (5466)

(E) Following receipt of the required documents and fees, all new applications shall be submitted to the City Police Department for investigation and criminal record review in accordance with this Chapter. The City Police Department, on behalf of the City Licensing Office, shall receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license. (5466)

(F) Complete renewal applications must be submitted to the City Licensing Office no later than forty-five (45) calendar days prior to the expiration of a license, otherwise the license shall be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee shall submit an application for a new license and provide all information and fees required for a new license application. (5466)

(G) A new or renewal license shall be issued to an applicant pursuant to this Chapter unless:

(1) The applicant failed to provide a completed application, the required fee, or the fingerprint records; (5466)

(2) The applicant or a controlling person has been convicted during the ten (10) year period prior to submission of the application of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moral turpitude; (5466)

(3) The applicant fails to pay the applicable license and reporting fee for a new license when the license is submitted for approval; (5466)

(4) The applicant or a controlling person is currently in violation of this Chapter or City Code; (5466)

(5) The application contains false or misleading information; or (5466)

(6) The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City. (5466)

(H) A licensee may operate an automated kiosk in the City only if the automated kiosk performs all of the functions set forth in this subsection: (5466)

(1) Uses a live representative to remotely monitor the automated kiosk during all hours of operation; (5466)

(2) Verifies a seller’s identity via a valid motor vehicle operator’s license, valid motor vehicle non-operating identification license, valid armed forces identification card or other valid government issued photo identification, including the serial or identification number of such valid document sufficient to verify the information required to be reported in Section 5-22-3(A); (5466)

(3) Secures storage of consumer electronic devices accepted by the automated kiosk and adheres to the storage and retention requirements pursuant to Section 5-22-4; (5466)
Captures and stores images during each transaction of (i) the seller, (ii) the identification required in Section 5-22-2(H)(2), and (iii) the consumer electronic device; (5466)

Electronically reports all transactions to law enforcement pursuant to Section 5-22-3; (5466)

Reads and records ESN, IMEI, or MEID, subject to Section 5-22-3(B)(7); and (5466)

Only buys consumer electronic devices. (5466)

The City shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license. The notice shall be personally served on the licensee or mailed to the licensee’s last known address. Service of the notice shall be deemed complete upon mailing or personal service on the licensee. (5466)

The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements of this Chapter by the date provided in the notice, the City may suspend or revoke the license as provided in this section. (5466)

The City may suspend a license for a period of time not to exceed thirty (30) calendar days if the City determines that the licensee or the designated agent or a controlling person of the licensee has violated or is not in compliance with any provision of this Chapter. During the suspension period, the licensee shall not transact any business through the automated kiosk(s) associated with the suspended license(s). If a fine is associated with the violation that is the basis for the suspension, the suspension may continue beyond the period set forth in this Subsection (K) until such time as the licensee pays the fine. (5466)

The City may revoke a license issued pursuant to this Chapter if the City determines: (5466)

1. A licensee or designated agent operated the business during a period of time when the license was suspended; (5466)

2. A licensee, designated agent or controlling person is convicted of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moreal turpitude; (5466)

3. The licensee or designated agent has operated, or has attempted to operate, an automated kiosk at a location that is unlicensed; (5466)

4. The City previously issued three (3) or more notices of suspension within an eighteen (18) month period; (5466)

5. The licensee or designated agent has not complied with a provision of this Chapter or has failed to provide information as required by this Chapter; (5466)

6. The application fee, annual license fee(s), reporting fee, or any transaction privilege tax has not been paid; or (5466)

7. The licensee fails to pay outstanding fines or resolve any violations. (5466)
(M) It is a violation of this Chapter for any person to provide false information on any license application. (5466)

(N) It is a violation of this Chapter for a person to operate an automated kiosk that either fails to meet all of the requirements in this Chapter or when the person does not have a license issued pursuant to this Chapter. (5466)

(O) If a license is revoked pursuant to this section, the licensee and its controlling person(s) may not apply for a license under this Chapter for a period of one (1) year from the date of revocation. (5466)

5-22-3: REPORTS TO LAW ENFORCEMENT

(A) At the time of each transaction whereby a consumer electronic device is received at an automated kiosk, a licensee shall prepare a true, complete, legible and accurate report of the transaction, including a description of the consumer electronic device received. The report shall be submitted to the City within twenty-four (24) hours after receipt of the consumer electronic device. The report shall be in a form designated by the City Police Department. Submission of the report to the City is deemed accepted when the report is delivered in person to the address designated by the City Police Department, or when the report is sent electronically to the City Police Department utilizing software approved by the City Police Department. The reporting party shall retain a copy of the report for a minimum of two (2) years from the date of the transaction. (5466)

(B) Each report shall, at a minimum, contain for each consumer electronic device received all the following information: (5466)

1) The name, current address and date of birth of the seller as shown on the identification requirements pursuant to Section 5-22-2(H)(2). (5466)

2) A legible color copy of the photo identification used to verify the seller’s identity in Section 5-22-2(H)(2). (5466)

3) A digital color photograph of the consumer electronic device purchased by the licensee. (5466)

4) A digital color photograph of the seller. (5466)

5) An electronic signature and fingerprint of the seller. (5466)

6) An accurate and legible description of each consumer electronic device item purchased or received, including, as applicable, the manufacturer’s name, model number and serial number. (5466)

7) The ESN, IMEI or the MEID of the consumer electronic device purchased. If the ESN, IMEI or MEID is not available at the time of purchase or receipt, the report filed pursuant to this subsection must be updated with the ESN, IMEI or MEID as soon as known by the licensee, but no later than fifteen (15) calendar days after the transaction. The hold requirement outlined in Section 5-22-4(A) shall not begin until all required contents of the report are complete and submitted to the City Police Department. (5466)

8) The amount paid for the consumer electronic device. (5466)

9) The date and time when the consumer electronic device was received. (5466)

10) The location of the automated kiosk where the consumer electronic device was sold or collected; and (5466)

11) Require the seller to agree to a statement, using verbiage provided to the licensee by the City, in which the seller attests to the accuracy of the information provided as a part of the sale and the authority of the seller to sell the consumer electronic device. (5466)

(C) It is a violation of this Chapter for any person to provide false information on reports required by this section. (5466)
5-22-4: STORAGE, RETENTION AND RETRIEVAL

(A) A licensee shall retain consumer electronic devices received at an automated kiosk at a secure location designated on the license for at least thirty (30) calendar days after submitting the complete report to the City required under Section 5-22-3. Any consumer electronic device held in custody pursuant to this section shall not be altered or transformed in any way, but shall be held in the same condition in which it was received by the automated kiosk. (5466)

(B) Consumer electronic devices retained at a designated location(s) under this section are subject to return and inspection by the City during regular business hours of the location or, at a minimum, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. (5466)

(C) Within twenty-four (24) hours of a request by the City Police Department or other law enforcement agency, the licensee shall comply with a request to open the automated kiosk during the automated kiosk’s regular operating hours to allow the law enforcement agency the opportunity to inspect the accessory bin and review any data that records transactions. (5466)

(D) Upon being advised by a representative of the City Police Department or other law enforcement agency that there is probable cause to believe a consumer electronic device in the possession of the licensee is stolen or was used in the perpetration of a crime, the licensee operating the automated kiosk shall, upon request by the City Police Department or other law enforcement agency: (5466)

   1) Within three (3) calendar days, surrender such consumer electronic device to the law enforcement agency and the law enforcement agency shall provide a seized property receipt for the consumer electronic device; or (5466)

   2) At the sole discretion of the requesting law enforcement agency, the consumer electronic device may be retained within the place of business on an investigative hold for a period not to exceed ninety (90) calendar days. During that time period, law enforcement may seize the consumer electronic device upon providing the licensee appropriate notification of the seizure and making arrangements to take physical custody of the consumer electronic device. The licensee shall produce the consumer electronic device at reasonable times and places, or may deliver the consumer electronic device to a representative of the law enforcement agency. (5466)

(E) The investigative hold shall be effective immediately upon oral or written notice to the licensee. If the hold is placed orally, it shall be followed by a written notice mailed to the licensee operating the automated kiosk within five (5) calendar days. (5466)

(F) A licensee shall not sell, transfer, exchange or otherwise dispose of any consumer electronic devices in violation of this section. (5466)

5-22-5: FEES

The following licensing and reporting fees shall be paid in amounts approved by the City Council as set forth in the City’s then current schedule of fees and charges: (5466)

(1) Initial application fee. (5466)

(2) Annual license and reporting fee for each automated kiosk location. (5466)
(A) Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense, except when the violation is from a bona fide error that occurred provided that the licensee maintains adopted procedures reasonably anticipated to avoid the occurrence of bona fide errors. (5466)

(B) A violation of this Chapter that is not a bona fide error, whether or not specifically designated as being unlawful, shall be a class one misdemeanor and upon conviction shall be punished as provided in Title One, Chapter 26 of the City Code. (5466)

(C) For the purposes of this section, “bona fide error” includes clerical, calculation, computer malfunction, programming, and printing errors and other, similar errors. (5466)

(D) A licensee or designated agent who does not comply with a request by a law enforcement agency to inspect an automated kiosk pursuant to Section 5-22-4(C), or refuses to return a consumer electronic device to law enforcement that is identified as stolen or involved in the perpetration of a crime pursuant to Section 5-22-4(D) shall be issued a notice stating that the licensee or designated agent shall comply with the request by the law enforcement agency within five (5) calendar days of receipt of the notice. (5466)

(E) The notice issued pursuant to Subsection (D) above shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of how a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in revocation of the license. (5466)

(F) A licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements under Subsection (A) of this section by the date provided in the notice, the City Police Department may: (1) disable the automated kiosks by removing the automated kiosks from the power source and placing a notice on the machines that the automated kiosk is not operational; and (2) revoke the license pursuant to Section 5-22-2(L). The licensee is responsible for the cost incurred by law enforcement to disable the automated kiosks in accordance with this subsection and any fines or fees assessed by the court. (5466)

(G) Once an automated kiosk is disabled, the City shall issue a notice to the licensee or its designated agent by certified mail that describes the action taken pursuant to this section. The notice shall include a description of the violation, the statutory or code reference, a description of how a hearing may be requested, and the time limit for requesting a hearing. A person receiving the notice under this subsection may request a hearing pursuant to Section 5-22-7. If a licensee or designated agent fails to request a hearing, the automated kiosks shall remain disabled. (5466)

(H) The City Police Department shall take every reasonable precaution in the event the City finds it necessary to disable the automated kiosks and the City shall incur no liability by such action. (5466)
5-22-7: APPEALS

(A) It is the duty and responsibility of the Business Licensing Administrator or his/her designee (“Licensing Administrator”) to administer the provisions of this Chapter. Pursuant to this duty, the Licensing Administrator will issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (5466)

(B) Any party aggrieved by a decision of the Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal shall be in writing, state the grounds for the appeal, and be sent to the Business Services Director or his/her designee (“Director”); the failure of an appeal to meet the requirements of this subsection will entitle the Director to deny the appeal without further review. (5466)

(C) If an appeal meets the requirements of Subsection (B), the Director shall schedule a hearing with a hearing officer who will be the Director or a person designated by the Director (“Hearing Officer”). The hearing will be held within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (B) will suspend the decision of the Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Licensing Administrator, if upheld by the Hearing Officer, shall be reinstated and dated as of the original date the decision was issued by the Business Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter. (5466)

(D) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5466)

(E) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with the proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, shall constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5466)

(F) The decision of the Licensing Administrator, if not appealed, shall be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer shall be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5466)
CHAPTER 1

GENERAL OFFENSES

SECTION:

6-1-1: AID TO AN OFFENSE AND ATTEMPT

6-1-2: BARBED WIRE, CONCERTINA WIRE, RAZOR WIRE, AND ELECTRIC FENCES
(REPEALED BY 2568)

6-1-3: CONDUCT OF PERSONS WITHIN CITY OF MESA CEMETERY

6-1-4: EXPECTORATING ON SIDEWALK OR IN PUBLIC BUILDINGS

6-1-5: KEEPING OF JUNK RESTRICTED (REPEALED BY 2568)

6-1-6: LUG WHEELS PROHIBITED

6-1-7: WILLFUL FAILURE TO RETURN LIBRARY PROPERTY

6-1-8: NUISANCE DEFINED (REPEALED BY 2568)

6-1-9: DESTRUCTION OF BUILDINGS (REPEALED BY 2568)

6-1-10: PROPERTY OWNER OR OCCUPANT TO ABATE (REPEALED BY 2568)

6-1-11: CITY TO ABATE (REPEALED BY 2568)

6-1-12: UNLAWFUL ACT

6-1-13: OBSCENE CONDUCT

6-1-14: WATER FLOWING UPON STREETS (REPEALED BY 4145)

6-1-15: WEAPONS

6-1-16: OBSCENITY; LIVE SHOWS

6-1-17: PROHIBITED USE OF PUBLIC RIGHT-OF-WAY

6-1-18: PENALTY

6-1-19: PROBATION

6-1-20: UNLAWFUL POSSESSION OF FIREARMS BY MINOR

6-1-21: SALE AND DISPLAY OF PSEUDOEPHEDRINE PRODUCTS

6-1-1: AID TO AN OFFENSE AND ATTEMPT:

(A) It shall be unlawful to aid, counsel, agree to aid, or attempt to aid another person or persons in planning or engaging in the commission of any offense set forth in Title 6 of the Mesa City Code. (1635)

(B) It shall be unlawful for a person to: (1635)

1. Intentionally engage in conduct which would constitute an offense pursuant to said Title 6 if the attendant circumstances were as such person believes them to be; or (1635)

2. Intentionally do or omit to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense pursuant to said Title 6. (1635)

(C) It is no defense that it was impossible for the person to aid the other party’s commission of the offense, provided such person could have done so had the circumstances been as the person believed them to be. (1635)

6-1-2: BARBED WIRE, CONCERTINA WIRE, RAZOR WIRE, AND ELECTRIC FENCES:
(1480,1635)

(Repealed by 2568)
6-1-3: CONDUCT OF PERSONS WITHIN CITY OF MESA CEMETERY:

(A) Automobiles. Automobiles shall not be driven through the cemetery at a greater speed than fifteen (15) miles per hour and shall be kept on the right side of the roadway. (971,1635)

(B) Bicycles and Motorcycles. Bicycles and motorcycles are not permitted in the cemetery except when in attendance at funerals or on cemetery business. (971,1635)

(C) Children. Children under twelve (12) years of age shall not be permitted within the cemetery or its buildings unless accompanied by persons responsible for them. (971,1635)

(D) Dogs. Dogs shall not be permitted on the cemetery grounds. (971,1635)

(E) Flowers and Plants. No person shall gather flowers or damage or remove shrubbery or plants. (971,1635)

(F) Rubbish. Depositing of rubbish on the walkways, roads, grounds, graves, or gravesites or in the buildings is prohibited. (971,1635)

(G) Desecration of Marker or Burial Place. No person shall willfully or maliciously deface, break, destroy, disturb, or remove a tomb, monument, or grave stone erected for a dead person or mark, deface, injure, destroy, disturb, or remove any fence post, rail, or wall of the cemetery. (971,1635)

(H) Loitering and Boisterousness. No person shall congregate within the cemetery; no automobiles shall be driven in the cemetery except for purposes directly associated with the cemetery; and no persons shall congregate within the cemetery except for such purposes. (971,1635)

6-1-4: EXPECTORATING ON SIDEWALK OR IN PUBLIC BUILDINGS:

It shall be unlawful for any person to expectorate upon any of the sidewalks or upon the floor of any theatre, public building, church, or room used for public assemblies. (1957 Code,1635)

6-1-5: KEEPING OF JUNK RESTRICTED: (1635,1952)

(Repealed by 2568)

6-1-6: LUG WHEELS PROHIBITED:

It shall be unlawful for any vehicle with wheels injurious to pavement to be permitted upon the public thoroughfares. (1957 Code,1635)

6-1-7: WILLFUL FAILURE TO RETURN LIBRARY PROPERTY:

It shall be unlawful for any person to willfully fail to return any book, pamphlet, record, magazine, or other property of the City of Mesa Public Library within five (5) days after the receipt of notice from the library demanding return of such property. (1635)

6-1-8: NUISANCE DEFINED: (1635,1952)

(Repealed by 2568)
6-1-9: DESTRUCTION OF BUILDINGS: (1957 CODE, 1635)  
(Repealed by 2568)

6-1-10: PROPERTY OWNER OR OCCUPANT TO ABATE: (1957 CODE, 1635, 1952)  
(Repealed by 2568)

6-1-11: CITY TO ABATE: (1957 CODE, 1635, 1952)  
(Repealed by 2568)

6-1-12: UNLAWFUL ACT:  
It shall be unlawful for any person to create or maintain any nuisance or cause the same to exist or to knowingly permit a nuisance to be created or maintained on the premises or property owned, leased, occupied, maintained, used, or controlled by such person. (1957 Code, 1635, 1952)

6-1-13: OBSCENE CONDUCT:  
It shall be unlawful for any person to urinate or stool in any place open to public view. (1635)

6-1-14: WATER FLOWING UPON STREETS: (1065, 1635)  
(Repealed by 4145)

6-1-15: WEAPONS:  
It shall be a misdemeanor for any person to negligently or purposely discharge any firearm, BB gun, or slingshot within the corporate limits, except: (394, 1635)  

(A) In necessary self-defense. (394, 1635)  

(B) A law enforcement officer in necessary performance of his duty. (394, 1635)  

(C) For the purpose of target shooting or practice on a range operated by qualified personnel. Qualified personnel shall consist of either a certified firearms safety instructor, rifle or pistol marksmanship instructor certified by the National Rifle Association, or person designated by a rifle or pistol club, public or private school, or military agency. (394, 1635)  

(D) Target shooting on private premises with air or CO2-operated BB or pellet guns or slingshots, providing: (394, 1635)  

1. The target area is enclosed in such manner and with materials that will stop the projectiles. (394, 1635)  

2. Such target shooting is supervised by an adult at all times. (394, 1635)
3. Any safety precautions recommended by the Police Chief are complied with. (394,1635)

(E) In an area recommended as a hunting area by the Arizona Game and Fish Commission and approved by the Police Chief. Such area must be posted as required by the Police Chief and may be closed at any time by the Police Chief or the Director of the Game Department. (394,1635)

(F) Where a permit is issued by the Police Chief. (394,1635)

(G) In defense of property from damage by animals or birds, providing the property owner obtains a permit from the Arizona Game Department or U.S. Fish and Wildlife Service and the taking of such animals or birds is properly supervised by the Game Department or the Fish and Wildlife Service or a person designated by either of those agencies to assure the safety of surrounding property owners. (394,1635)

(H) Definition. For the purpose of this Section, a firearm is defined as any device that expels a projectile or projectiles by means of expanding gases. (394,1635)

6-1-16: OBSCENITY; LIVE SHOWS:

(A) Legislative Finding and Purpose. The City Council finds that the crass commercial exploitation of explicit sexual conduct through the public exhibition of obscene films, live obscene shows, and the sale of obscene publications and devices constitutes a debasement and distortion of sensitive key relationships of human existence central to family life, community welfare, and the development of human personality; is indecent and offensive to the senses and to the public morals; and interferes with the comfortable enjoyment of life and property in that such interferes with the interest of the public in the quality of life and total community environment, the tone of commerce in the City, property values, and public safety; that the State Legislature has heretofore adopted Title 13, Chapter 35, Arizona Revised Statutes; that the provisions contained therein prohibit obscenity and should be diligently enforced by the administration of the City; that such enactments by the State Legislature do not prohibit live obscene productions, and the live obscene productions should be prohibited; and that the carrying on of any of the activities prohibited by those portions of the laws of the State of Arizona hereinabove referred to and in this Section hereafter referred to is detrimental to the best health, safety, convenience, good morals, and general welfare of the City of Mesa and the residents, citizens, inhabitants, and businesses thereof. Accordingly, the City Council hereby declares that the activities prohibited in those portions of Title 13 above set forth and hereinafter set forth are, and are hereby declared to be and constitute, a public nuisance. (1129,1635,3740)

(B) Definitions. In this Section the following definitions shall apply: (1129,1635)

**OBSCENE:** That which is determined as obscene, applying the following guidelines: (1129,1635)

1. The average person, applying contemporary State standards, would find that the subject matter, taken as a whole, appeals to the prurient interest; and

2. The subject matter depicts or describes patently offensive sexual activity; and (3740)
3. The subject matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

**KNOWINGLY:** Having knowledge of the character and content of the material involved or failure on notice to exercise reasonable inspection which would disclose the content and character of same. (1129,1635)

**PATENTLY OFFENSIVE SEXUAL ACTIVITY:** So offensive on its face as to affront current standards of decency and shall be deemed to include any of the following described forms of sexual activities, if they are depicted, represented, or described so as to affront current standards of decency: (1129,1635,3740)

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, directly and not through clothing. (3740)

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy. (3740)

3. Masturbation, actual or simulated. (3740)

4. Flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed. (1129,1635, 3740)

5. Excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above. (3740)

(C) Participation in Obscene Performance Prohibited. No person shall knowingly produce, present, or direct any obscene performance or participate in the portion thereof which is obscene. (1129,1635,3740)

(D) Obscene Performance on Premises Prohibited. No person being the owner of any premises or having control thereof shall knowingly permit within or upon said premises any obscene performance. (1129,1635,3740)

**6-1-17:** **PROHIBITED USE OF PUBLIC RIGHT-OF-WAY:**

It shall be unlawful for any person to use a public street, highway, alley, lane, parkway, sidewalk, or other right-of-way, whether such right-of-way has been dedicated to the public in fee or by easement, for lying, sleeping, or remaining in a sitting position thereon, except in the case of a physical emergency or the administration of medical assistance. (1659)

**6-1-18:** **PENALTY:**

Any person convicted of a violation of any provision of Title 6, Chapter 1, Mesa City Code, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,1659,2466)
**6-1-19: PROBATION:**

If a person convicted of a violation of any section of Title 6, Mesa City Code, is found eligible for probation by the City Police Court, the Court may suspend the imposition of execution of sentence for a period of time not to exceed three (3) years and if so, shall without delay place such person on supervised or unsupervised probation. If the court imposes probation, it may also impose a fine not to exceed two thousand five hundred dollars ($2,500.00) and may require the convicted person to make restitution to the victim of the crime in such amount and manner as the court may order. (1635, 1659, 2466)

**6-1-20: UNLAWFUL POSSESSION OF FIREARMS BY MINOR:**

(A) Definitions. (2750)

1. **FIREARM:** Any loaded or unloaded pistol, revolver, rifle, shotgun, or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or expanding gases; except that it does not include an air rifle, air pistol, BB gun, or firearm in permanently inoperable condition. (2750)

2. **MINOR:** A person who is under the age of eighteen (18) years. (2750)

3. **WRITTEN CONSENT:** Written approval or permission to possess a firearm which is on a form prescribed by the Police Department, signed by the child's parent or legal guardian and notarized, which specifically describes the firearm by (a) type, (b) manufacturer, (c) caliber, and (d) serial number. (2750)

(B) Unlawful Possession of Firearm.

It shall be unlawful for a minor to possess any firearm within the City limits without written consent of the minor's parent or legal guardian. (2750)

(C) Possession of Consent Form; Keeping of Records. (2750)

1. The original written consent form shall be carried by the minor any time the minor is in possession of a firearm outside the minor's residence. (2750)

2. The Police Department shall not maintain a file or register of executed written consent forms. (2750)

(D) Forfeiture of a Firearm.

Any firearm possessed by a minor in violation of this Section may be subject to forfeiture in the same manner as authorized by Chapter 39 of Title 13, Arizona Revised Statutes. (2750)

**6-1-21: SALE AND DISPLAY OF PSEUDOEPHEDRINE PRODUCTS:**

Definitions. (4558)

In this article, unless the context otherwise requires:
1. "Pseudoephedrine product" means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product. (4558)

2. "Retail establishment" means any place of business that offers any pseudoephedrine product for sale at retail. (4558)

3. "Pharmacist" means a person registered pursuant to Title 32, Chapter 18, of the Arizona Revised Statutes to dispense medicinal substances. (4558)

(A) No retail establishment shall sell any pseudoephedrine product unless staffed with a pharmacist on the premises at the time of the sale except as exempted by order of the Attorney General of the United States or his designee, pursuant to federal law. (4558)

(B) A person making a retail sale of a product containing pseudoephedrine shall only complete such a transaction upon display by the purchaser of a government-issued photo identification, and shall record the purchaser's name, quantity of pseudoephedrine product purchased, transaction date and the identity of the seller. At the discretion of the retail establishment, the information may be recorded in written tabulation or by electronic means. (4558)

(C) The information required to be obtained by paragraph B will be retained by the retail establishment for a period of two (2) years, and will be considered a confidential document that will only be available to the operator of the retail establishment and certified Arizona peace officers. (4558)

(D) Display of pseudoephedrine products. (4558)

1. The operator of a retail establishment shall keep all pseudoephedrine products in a manner that is inaccessible to customers without the assistance of a pharmacist or employee acting under the direct supervision of a pharmacist; (4558)

2. Any pseudoephedrine product displayed in violation of this ordinance shall constitute a nuisance which, if not abated, shall subject the pseudoephedrine products to forfeiture; (4558)

3. Upon an initial discovery of any pseudoephedrine product displayed in violation of this ordinance, the operator of the retail establishment, upon written notification by any law enforcement officer of the nuisance, shall immediately remove the pseudoephedrine products and thereby avoid their forfeiture; (4558)

4. Any pseudoephedrine products displayed in violation of this ordinance within one year of written notice of the nuisance shall be immediately seized by any law enforcement officer discovering them; (4558)

5. Upon the seizure of any pseudoephedrine products for violation of this ordinance, the law enforcement officer shall give written notice of the intent to forfeit the seized products. The notice shall include the date and time of the seizure, an inventory of the items seized, and directions on how a post-seizure hearing may be demanded to challenge the forfeiture of the items. (4558)

6. Within fifteen (15) days of the seizure, the operator of a retail establishment may request the appointment of a hearing officer to preside over the post-seizure hearing in accordance with Mesa City Code Title 1, Chapter 27, Section 8. If no written demand for a post-seizure hearing is filed, the items seized shall be forfeited and destroyed. If a demand for a post-seizure hearing is timely filed, a hearing shall be held pursuant to the procedures set forth in Mesa City Code 8-6-8 (E) to determine if the seized pseudoephedrine products were displayed in violation of this ordinance. If it is determined that the pseudoephedrine products were displayed in violation of this ordinance, the items shall be ordered forfeited and destroyed. (4558)
CHAPTER 2

GRAFFITI

SECTION:

6-2-1: GRAFFITI

(A) For purposes of this Section, the term "graffiti" shall mean the etching, scratching, painting, covering, drawing upon, or otherwise placing of a mark, symbol, figure, inscription, word, design, drawing, or name upon public or private property. (2920)

(B) For purposes of this Section, the term "graffiti implements" shall mean an aerosol paint container, a felt tip marker, a paint stick, an etching tool, or any article, substance, solution, or other compound designed or commonly used to make graffiti. (2920)

(C) For purposes of this Section, the term "invitee" shall mean a person on land of another if (1) he enters by invitation, express or implied, (2) his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and (3) there is mutuality of benefit or benefit to the owner. (2920)

(D) It is unlawful to make graffiti of any type on any building, public or private, or any other property, real or personal, owned by any person, firm, or corporation or any public agency or instrumentality without the express permission of the owner, manager, or other person responsible for said property. (2920)

(E) It is unlawful to possess graffiti implements with the intent to place graffiti upon any building, public or private, or any other property, real or personal, owned by any person, firm, or corporation or any public agency or instrumentality without the express permission of the owner, manager, or other person responsible for said property. (2920)

(F) Possession of any graffiti implement in any public place, including any building, park facility, or alley or on any private property, unless an invitee, gives rise to an inference of intent to use the graffiti implement in violation of this Chapter. (2920)
CHAPTER 3

AIRCRAFT REGULATIONS

SECTION:

6-3-1: DEFINITIONS
6-3-2: MINIMUM HEIGHT LIMITS FOR AIRCRAFT; EXEMPTIONS
6-3-3: LANDING OTHER THAN AT AN ESTABLISHED AIRPORT PROHIBITED
6-3-4: LIGHTS FOR NIGHT OPERATION OF AIRCRAFT
6-3-5: DROPPING OBJECTS FROM AIRCRAFT PROHIBITED; EXCEPTION
6-3-6: SPECIAL REGULATIONS PERTAINING TO HELICOPTERS
6-3-7: PENALTY

6-3-1: DEFINITIONS:

AIRCRAFT: As used in this Chapter means any aeroplane, airplane, gas bag, flying machine, balloon, or any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance used primarily as safety equipment. (1520)

6-3-2: MINIMUM HEIGHT LIMITS FOR AIRCRAFT; EXEMPTIONS:

(A) Subject to the exemptions set forth in paragraph (B) below, no person shall fly or permit any aircraft to be flown within the corporate limits of the City of Mesa except at a height sufficient to permit a reasonably safe emergency landing, which in no case shall be less than one thousand feet (1,000'). (2370)

(B) Situations exempted from the minimum height limits established in paragraph (A) above include: (2370)

1. Takeoffs or landings at an established landing field or airport; (2370)

2. Operation of helicopters pursuant to Section 6-3-6 of this Chapter; (2370)

3. When special circumstances render a deviation necessary to avoid immediate danger or when such deviation is required because of stress of weather conditions or other unavoidable causes; (2370)

4. Operation of aircraft being used on agricultural lands for agricultural dusting or spraying; (2370)

5. Contemporaneous flight of five (5) or more hot air balloons operating from an established airport or landing field pursuant to a Federal Aviation Administration (F.A.A.) permit. (2370)
6-3-3: LANDING OTHER THAN AT AN ESTABLISHED AIRPORT PROHIBITED:
Except in case of emergency and except for special provisions pertaining to helicopters contained in Section 6-3-6 hereof, no person shall land any aircraft within the corporate limits of the City except upon a regularly established airport field or landing place. (1520)

6-3-4: LIGHTS FOR NIGHT OPERATION OF AIRCRAFT:
All aircraft when flying within or over the corporate limits of the City at night shall have lights and other equipment required by the rules, regulations, or orders of the Federal Aviation Administration for such flying. (1520)

6-3-5: DROPPING OBJECTS FROM AIRCRAFT PROHIBITED; EXCEPTION:
No person in any aircraft shall cause or permit to be thrown out, discharged, or dropped within the corporate limits of the City any dust, spray, object, or thing, except loose water or loose sand ballast when absolutely essential to the safety of the occupants and except as herein provided; excepting that aircraft used for dusting or spraying on agricultural lands for agricultural purposes may dust or spray agricultural crops. (1520)

6-3-6: SPECIAL REGULATIONS PERTAINING TO HELICOPTERS:

(A) Except as provided in Subsections (B), (C), and (D) of this Section, no person shall take off or land on any area within the limits of the City in a helicopter except on a regularly established heliport or landing place without first obtaining a permit to do so from the Chief of Police or his designee. The Chief of Police or his designee may issue such a permit if the following conditions are met: (1520, 2653)

1. The pilot is duly licensed by the F.A.A. (1520)
2. The helicopter to be used is licensed by the F.A.A. (1520)
3. The safety of lives of the inhabitants of the City will not be endangered by the proposed flight or landing. (1520)
4. The noise attendant upon the flight or landing will not be detrimental to the neighborhood. (1520)
5. Public liability and property damage insurance in limits of not less than one hundred thousand dollars ($100,000.00) for each person injured or three hundred thousand dollars ($300,000.00) for each occurrence and fifty thousand dollars ($50,000.00) for property damage has been obtained and is in effect. (1520)

(B) Helicopter takeoffs and landings for the purposes hereafter enumerated may be made without a permit issued by the Chief of Police provided all other conditions of Subsection (A) of this Section have been met. (1520)

1. A takeoff or landing by an authorized representative of a news media. (1520)
2. A takeoff or landing to assist in investigating an accident or to remove persons or property from the scene of an accident. (1520)
3. A takeoff or landing to assist the Police Department in any investigation being conducted by the Police Department. (1520)

(C) The provisions of Subsection (A) of this Section shall not apply to helicopter takeoffs or landings made necessary by an emergency. (1520)

(D) Helicopters may take off from and land on private property for pesticide application purposes without a permit issued by the Chief of Police provided that: (2653)

1. The pesticide applicator is properly licensed by the F.A.A. and the Arizona Department of Agriculture; and (2653)

2. The property owner of the landing site has given permission for the landing and takeoff; and (2653)

3. The landing and takeoff do not endanger people's safety and do not occur within five hundred feet (500') of a residence, unless the occupants of all residences within five hundred feet (500') consent to the landing and takeoff. (2653)

6-3-7: PENALTY:
Any person who shall violate any of the provisions of this Ordinance or of the Mesa City Code as amended herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed three (3) months, or by both such fine and imprisonment. (1520,2466)
CHAPTER 4

ANIMAL CONTROL ORDINANCE WITH LEASH LAW (4845)

SECTION:

6-4-1: DEFINITIONS
6-4-2: POWERS AND DUTIES OF ENFORCEMENT AGENT
6-4-3: LICENSE FEES FOR DOGS; ISSUANCE OF DOG TAGS; RECORDS; PENALTIES
6-4-4: KENNEL PERMIT; FEE; VIOLATION; CLASSIFICATION
6-4-5: ANTI-RABIES VACCINATION; VACCINATION AND LICENSE STATIONS
6-4-6: RABIES CONTROL FUND
6-4-7: DOGS NOT PERMITTED AT LARGE; WEARING LICENSES
6-4-8: IMPOUNDING AND DISPOSING OF DOGS AND CATS; RECLAIMING IMPOUNDED DOGS AND CATS; POUND FEES
6-4-9: HANDLING OF BITING ANIMALS; RESPONSIBILITY FOR REPORTING ANIMAL BITES; AUTHORITY TO DESTROY ANIMALS
6-4-10: UNLAWFUL INTERFERENCE WITH ENFORCEMENT AGENT
6-4-11: REMOVING IMPOUNDED ANIMALS
6-4-12: UNLAWFUL KEEPING OF DOGS
6-4-13: DOGS; LIABILITY
6-4-14: PROPER CARE, MAINTENANCE, AND DESTRUCTION OF IMPOUNDED ANIMALS
6-4-15: RESPONSIBILITY
6-4-16: DETERMINATION OF A VICIOUS DOG
6-4-17: CONTROL OF A VICIOUS DOG
6-4-18: PENALTIES
6-4-19: POLICE DOGS

6-4-1: DEFINITIONS:

As used in this Chapter, unless the context otherwise indicates, the following terms shall have the meanings herein ascribed to them. (1980)

ANIMAL: Any animal of a species that is susceptible to rabies, except man. (1980)

AT LARGE: On or off premises of owner and not under control of owner or other persons acting for the owner. Any dog in a suitable enclosure which actually confines the dog shall not be considered to be running at large. (1980)

ATTACK: A violent or aggressive physical contact or violent or aggressive behavior that confines the movement of a person or domestic animal. An attack on a domestic animal must include biting or an attempt to bite. (2287)


ENFORCEMENT AGENT: That person or persons designated by the City who is responsible for the enforcement of this Chapter and any regulations promulgated thereunder. (1980)

IMPOUND: The act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound in accordance with the provisions of this Chapter. (1980)
KENNEL: An enclosed controlled area, inaccessible to other animals, in which a person keeps, harbors, or maintains five (5) or more dogs under controlled conditions. (1980)

OWNER: Any person or legal entity having a possessory property right in an animal or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them. (2287)

POUND: Any establishment authorized for the confinement, maintenance, safekeeping, and control of dogs and other animals that come into custody of the enforcement agent in the performance of official duties. (1980)

RABIES QUARANTINE AREA: Any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area. (1980)

RABIES VACCINATION CERTIFICATE: A method of recording and duplicating rabies information that is in compliance with the County enforcement agent’s licensing system and/or County enforcement agent’s prescribed forms. (2259)

STRAY DOG: Any dog four (4) months of age or older running at large that is not wearing a valid license tag. (1980)

VACCINATION: The administration of an anti-rabies vaccine to animals by a veterinarian or in authorized pounds by employees properly trained by a veterinarian. (1980)

VETERINARIAN: Unless otherwise indicated, veterinarian means licensed to practice in this State or any veterinarian employed in this State by a governmental agency. (1980)

VETERINARY HOSPITAL: Any establishment operated by a veterinarian licensed to practice in this State that provides clinical facilities and houses animals or birds for dental, medical, or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it or as an integral part of it pens, stalls, cages, or kennels for quarantine, observation, or boarding. (1980)

VICIOUS ANIMAL: Any animal, excluding a dog, of the order Carnivore that has a propensity to bite human beings without provocation and has been so declared after a hearing before a Justice of the Peace or City Magistrate. (2287)

VICIOUS DOG: Any dog, except one assisting a peace officer engaged in law enforcement duties, which:

(A) When unprompted, in a vicious or terrorizing manner approaches any person or domestic animal in an apparent attitude of attack upon the streets, sidewalks, or any public or private grounds or places; or

(B) The owner thereof knows, or should reasonably know, possesses a propensity, tendency, or disposition to attack unprompted, to cause injury, or to otherwise endanger the safety of human beings or domestic animals; or

(C) Bites, inflicts injury, assaults, or otherwise attacks a human being or domestic animal without provocation on public or private property; or

(D) Is owned or harbored primarily or in part for the purpose of dog fighting; or any dog trained for dog fighting.
Notwithstanding the definition of a vicious dog above, no dog may be declared vicious if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, had entered upon the premises of another without license, invitation, or other right. (2287)

6-4-2: **POWERS AND DUTIES OF ENFORCEMENT AGENT:**

(A) The enforcement agent shall:

1. Enforce the provisions of this Chapter and the regulations promulgated thereunder. (1980)

2. Issue citations for the violation of the provisions of this Chapter and the regulations promulgated thereunder. The procedure for the issuance of notices to appear shall be as provided for peace officers in A.R.S. 13-3903, except that the enforcement agent shall not make an arrest before issuing the notice. (1980)

3. Be responsible for declaring a rabies quarantine area within an area of jurisdiction. When a quarantine area has been declared, the enforcement agent shall meet with the State veterinarian and representatives from the Department of Health Services and the Game and Fish Department to implement an emergency program for the control of rabies within an area. Any regulations restricting or involving movements of livestock within an area shall be subject to approval by the State veterinarian. (1980)

(B) The issuance of citations pursuant to this Section shall be subject to the provisions of A.R.S. 13-3899. (1980)

(C) The enforcement agent may designate deputies. (1980)

6-4-3: **LICENSE FEES FOR DOGS; ISSUANCE OF DOG TAGS; RECORDS; PENALTIES:**

(A) A license fee shall be paid for each dog four (4) months of age or over that is kept, harbored, or maintained within the boundaries of the City for at least thirty (30) consecutive days of the calendar year. The license fee shall be established and collected by the Maricopa County Animal Control Services with approval by the Maricopa County Board of Supervisors. An applicant for a license for a dog claimed to be incapable of procreation shall furnish a proof-of-surgical-sterilization certificate signed by a licensed veterinarian as proof that the dog has been surgically altered to be permanently incapable of procreation. License fees shall be paid within ninety (90) days. A penalty not to exceed four dollars ($4.00) shall be added to the license fee in the event that application is made subsequent to the date on which the dog is required to be licensed under the provisions of this Chapter. This penalty shall not be assessed against applicants who furnish adequate proof that the dog to be licensed has been in their possession less than thirty (30) consecutive days. (1980,2113,2552,2986,3831)

(B) Each dog licensed under the terms of this Chapter shall receive at the time of the licensing such a tag on which shall be inscribed the name of the county, the number of the license, and the date on which it expires. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this Chapter. Whenever a dog is lost, a duplicate tag shall be issued upon application by the owner and a payment of one dollar ($1.00) to the enforcement agent. (1980)

(C) Any person who fails within fifteen (15) days after written notification from the enforcement agent to obtain a license for a dog required to be licensed; counterfeits or attempts to counterfeit an official dog tag; removes such tag from any dog for the purpose of willful and malicious mischief; or places a dog tag upon a dog, unless the tag was issued for that particular dog, is guilty of a misdemeanor. (1980)
6-4-4: KENNEL PERMIT; FEE; VIOLATION; CLASSIFICATION:

(A) A person operating a kennel shall obtain a permit issued by the Board of Supervisors of the county where the kennel is located, except if each individual dog is licensed. (1980)

(B) The annual fee for the kennel permit is seventy-five dollars ($75.00). (1980)

(C) A dog remaining within the kennel is not required to be licensed individually. A dog leaving the controlled kennel conditions shall be licensed, except if the dog is only being transported to another kennel which has a permit issued under this Section. (1980)

(D) A person who fails to obtain a kennel permit under this Section is subject to a penalty of twenty-five dollars ($25.00) in addition to the annual fee. (1980)

(E) A person who knowingly fails within thirty (30) days after written notification from the enforcement agent to obtain a kennel permit is guilty of a misdemeanor. (1980)

6-4-5: ANTI-RABIES VACCINATION; VACCINATION AND LICENSE STATIONS:

(A) Before a license is issued to any dog, the owner must present a vaccination certificate signed by a veterinarian stating the owner’s name and address and giving the dog’s description; date of vaccination; type, manufacturer, and serial number of the vaccine used; and the date re-vaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the enforcement agent on or before the tenth day of the month following the month during which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(B) A dog vaccinated in any other state prior to entry into Arizona may be licensed in Arizona provided that at the time of licensing, the owner of such dog presents a vaccination certificate, signed by a veterinarian licensed to practice in that state or a veterinarian employed by the governmental agency in that state, stating the owner’s name and address and giving the dog’s description; date of vaccination; and type, manufacturer, and the serial number of the vaccine used. The vaccination must be in conformity with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(C) The enforcement agent shall make provisions for vaccination clinics as deemed necessary. The vaccination shall be performed by a veterinarian. (1980)

6-4-6: RABIES CONTROL FUND:

(A) The enforcement agent or his authorized representative shall place the monies collected by him under the provisions of this Chapter in a special fund to be known as the rabies control fund to be used for the enforcement of the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(B) Any unencumbered balance remaining in the rabies control fund at the end of a fiscal year shall be carried over into the following fiscal year. (1980)

6-4-7: DOGS NOT PERMITTED AT LARGE; WEARING LICENSES:

(A) In a rabies quarantine area, no dog shall be permitted at large. Each dog shall be confined within an enclosure on the owner’s property or secured so that the dog is confined entirely to the owner’s property or on a leash not to exceed six feet (6’) in length and directly under the owner’s control when not on the owner’s property. (1980)
(B) Any dog over the age of four (4) months running at large shall wear a collar or harness to which is attached a valid license tag. Dogs used for the control of livestock or while being used or trained for hunting, dogs while being exhibited or trained at kennel club events, or dogs while engaged in races approved by the Arizona Racing Commission, and such dogs while being transported to and from such events, need not wear a collar or harness with a valid license attached provided that they are properly vaccinated, licensed, and controlled. (1980)

(C) If any dog is at large on the public streets, public parks, or public property, then said dog’s owner or custodian is in violation of this Chapter. (1980)

(D) Any person whose dog is at large is in violation of this Chapter. A dog is not at large:

1. If said dog is restrained by a leash, chain, rope, or cord of not more than six feet (6') in length of sufficient strength to control the actions of said dog or is confined entirely to the owner’s property by adequate fence or other method. (1980)

2. If said dog is used to control livestock or while being used or trained for hunting or being exhibited or trained at a kennel club event or while engaged in races approved by the Arizona Racing Commission. (1980)

3. While said dog is actively engaged in dog obedience training, accompanied by and under the control of his owner or trainer, provided that the person training said dog has in his possession a dog leash of not more than six feet (6') in length of sufficient strength to control said dog; and further, that said dog is actually enrolled in or has graduated from a dog obedience training school. (1980)

4. If said dog, whether on or off the premises of the owner or person acting for the owner, is controlled as provided in Subsection (D)1 of this Section or within a suitable enclosure which actually confines the dog. (1980)

(E) Any dog(s) at large shall be apprehended and impounded by an enforcement agent. (1980)

1. Said agent shall have the right to enter upon private property when it becomes necessary to do so in order to apprehend any dog that has been running at large. Such entrance upon private property shall be in reasonable pursuit of such dog(s) and not include entry into a domicile or enclosure which confines a dog unless it is at the invitation of the occupant. (1980)

2. Said agent may issue citation(s) to the dog owner or the person acting for the owner when the dog is at large. The procedure of the issuance of notice to appear shall be provided for peace officers in A.R.S. 13-3903, except the enforcement agent shall not make an arrest before issuing the notice. The issuance of citation(s) pursuant to this Chapter shall be subject to the provisions of A.R.S. 13-3899. (1980)

3. In the judgement of the enforcement agent, if any dog at large or any other animal that is dangerous or fierce and a threat to human safety cannot be safely impounded, it may be slain. (1980)

6-4-8: IMPOUNDING AND DISPOSING OF DOGS AND CATS; RECLAIMING IMPOUNDED DOGS AND CATS; POUND FEES:
(A) Any stray dog or cat shall be impounded. All dogs and cats impounded shall be given proper care and maintenance. (1980)

(B) Each stray dog or cat impounded shall be kept and maintained at the pound for a minimum of seventy-two (72) hours unless claimed by the owner. Any person may purchase such dog or cat upon expiration of the impoundment period, provided such person pays all pound fees and complies with the licensing and vaccinating provisions of the Chapter. If the dog or cat is not claimed within the impoundment period, the enforcement agent shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. If such dog or cat is used for medical research, no license or vaccination is required. The enforcement agent may destroy impounded sick or injured dogs or cats whenever such destruction is necessary to prevent such dog or cat from suffering or to prevent the spread of disease. (1980)

(C) Any impounded licensed dog or any cat may be reclaimed by its owner or such owner’s agent, provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all pound fees. If the dog or cat is not reclaimed within the impound period, the enforcement agent shall take possession and may place the dog or cat for sale or dispose of the dog or cat in a humane manner. Any person purchasing such a dog or cat shall pay all pound fees. (1980)

6-4-9: HANDLING OF BITING ANIMALS; RESPONSIBILITY FOR REPORTING ANIMAL BITES; AUTHORITY TO DESTROY ANIMALS:

(A) An unlicensed or unvaccinated dog or cat that bites any person shall be confined and quarantined in an authorized pound or, upon request of and at the expense of the owner, at a veterinary hospital for a period of not less than ten (10) days. A dog properly licensed and vaccinated pursuant to this Chapter that bites any person may be confined and quarantined at the home of the owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the enforcement agent. (1980,3830)

(B) Any animal, other than a dog or cat, that bites any person shall be confined and quarantined in an authorized pound or, upon the request of and at the expense of the owner, at a veterinary hospital for a period of not less than fourteen (14) days, provided that livestock shall be confined and quarantined for the fourteen- (14-) day period in a manner regulated by the Arizona Livestock Board. If the animal is a caged rodent, it may be confined and quarantined at the home of the owner or where it is harbored or maintained for the required period of time with the consent of and in a manner prescribed by the enforcement agent. (1980)

(C) Any wild animal which bites any person may be killed and submitted to the enforcement agent or his deputies for transmission to an appropriate diagnostic laboratory. (1980)

(D) Whenever an animal bites any person, the incident shall be reported to the enforcement agent immediately by any person having direct knowledge. (1980)

(E) The enforcement agent may destroy any animal confined and quarantined pursuant to this prior to the termination of the minimum confinement period for laboratory examination for rabies if: (1980)

1. The animal shows clear clinical signs of rabies. (1980)

2. The owner of such animal consents to its destruction. (1980)

(F) Any animal subject to licensing under this Chapter found without a tag identifying its owner shall be deemed unowned. (1980)
(G) The enforcement agent shall destroy a vicious animal, except a dog found to be vicious under Section 6-4-16, upon an order of a Justice of the Peace or a City Magistrate. A Justice of the Peace or City Magistrate may issue such an order after notice to the owner, if any, and a hearing. (2287)

6-4-10: UNLAWFUL INTERFERENCE WITH ENFORCEMENT AGENT:
It is unlawful for any person to interfere with the enforcement agent in the performance of his duties. (1980)

6-4-11: REMOVING IMPOUNDED ANIMALS:
No person may remove or attempt to remove an animal which has been impounded or which is in the possession of the enforcement agent except in accordance with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

6-4-12: UNLAWFUL KEEPING OF DOGS:
It is unlawful for a person to keep, harbor, or maintain a dog within the City except as provided by the terms of this Chapter. (1980)

6-4-13: DOGS; LIABILITY:
Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted. (1980)

6-4-14: PROPER CARE, MAINTENANCE, AND DESTRUCTION OF IMPOUNDED ANIMALS:
(A) Any animal impounded in a county, city, or town pound shall be given proper and humane care and maintenance. (1980)

(B) Any dog or cat destroyed while impounded in a county, city, or town pound shall be destroyed only by the use of one of the following: (1980)

1. Sodium pentobarbital or a derivative of sodium pentobarbital. (1980)


3. T-61 euthanasia solution or its generic equivalent. (1980)

(C) If an animal is destroyed by means specified in Subsection (B)1 or 3 of this Section, it shall be done by a licensed veterinarian or in accordance with procedures established by the State veterinarian pursuant to A.R.S. 24-153. (1980)

6-4-15: RESPONSIBILITY:
An owner whose dog fits the definition of a vicious dog in Section 6-4-1 must comply with this ordinance, register the dog with the Police Chief or his designee, confine and control the dog in accordance with Section 6-4-17, and post warning signs. (2287)

6-4-16: DETERMINATION OF A VICIOUS DOG:
(A) In the event that the Police Chief or his designee has reasonable grounds to believe that a dog may be vicious, a hearing may be convened. Dog owners are guaranteed due process hearings in the initial determination and in the completion of any appeal process with regard to said determination that their animal is a vicious dog as defined by this ordinance. (2287,4027)
(B) Written notice informing the owner of the charged viciousness and of the hearing shall be served by the Police Chief or his designee pursuant to the Rules of Civil Procedure. A hearing date shall be held not later than ten (10) calendar days from the date notice was served to the owner. (2287)

(C) Hearing Officer. The due process hearing will be conducted by a City Magistrate or Hearing Officer. The City Magistrate or Hearing Officer will make findings of fact and conclusions of law. The City Magistrate or Hearing Officer shall provide the owner with a written copy of the findings. (2287, 4027)

(D) The hearing shall be informal and shall be open to the public. At the hearing, both oral and documentary evidence may be taken from any interested person and considered in determining whether the dog is vicious. Any owner who fails to appear after notice is given without obtaining a continuance from the appointed Hearing Officer or City Magistrate may be deemed to have waived any right to introduce evidence or object to any order made by the City Magistrate or Hearing Officer. The City Magistrate or Hearing Officer’s decision shall be based on the preponderance of evidence. (2287)

(E) Notice. If the animal is deemed to be a vicious dog, the City Magistrate or Hearing Officer will advise the owner of the decision at the hearing or send a registered letter advising the owner of such within ten (10) days. (2287)

(F) In the event that the enforcement agent or law enforcement officer has probable cause to believe that the dog in question is vicious and may pose a threat of serious harm to human beings or other domestic animals, the enforcement agent or law enforcement officer may require the seizing and impoundment of the dog pending the hearing. (2287)

6-4-17: CONTROL OF A VICIOUS DOG:
Once a dog is declared vicious, the following steps will be required to continue ownership of such an animal: (2314)

(A) Immediate steps that must be completed within one (1) calendar day upon completion of notification of a determination of viciousness: (2314)

1. Leash and muzzle. No person shall permit a vicious dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet (6’) in length. No person shall permit a vicious dog to be kept on a chain, rope, or other type of leash outside confinement unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all vicious dogs on a leash outside the animal’s kennel must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals. Any kennel or pen must meet the requirements of Section 6-4-17(B)1. (2314)

2. Confinement Indoors. No vicious dog may be kept on a porch, patio, or in any part of a house or structure that would allow the dog to exit such building on its own volition. (2314)

(B) Reporting Requirements. The following types of information must be reported by the owner of the dog to the Police Chief or his designee within ten (10) calendar days of occurrence: (2314)

1. Death of dog. A written notice from a veterinarian confirming the death of the dog must be provided to the Police Chief or his designee. (2314)

2. Yearly renewal of liability insurance. (2314)
3. The new address of a registered vicious dog owner should the owner move within the City limits. (2314)

4. The new address of a registered vicious dog that has been moved permanently outside the City limits. (2314)

(C) A time schedule for completion of the following steps is to be set by the Hearing Officer, but in no case will it be longer than thirty (30) calendar days from the date of the City Magistrate or Hearing Officer’s decision. (2314)

1. Confinement. All vicious dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled. Such pen, kennel, or structure must have secure sides and a secure top attached to the sides. (2314)

(a) All structures used to confine vicious dogs must be locked when such animals are within the structure. Such structure must have a secure bottom or floor attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet (2'). (2314)

(b) The pen or kennel may not share common fencing with the area of perimeter fence. (2314)

(c) All structures erected to house vicious dogs must comply with all zoning and building regulations of the City. All such structures must be adequately lighted, ventilated, and kept in a clean and sanitary condition and any other condition that provides for humane care. (2314)

2. Registration. A declared vicious dog shall not only be routinely licensed yearly but shall also be permanently registered as a vicious dog with the Mesa Police Department. (2314)

3. Signs. All owners of vicious dogs within the City shall display in a prominent place on their premises a sign in three-inch (3") letters, easily readable by the public, using the words "Vicious Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal. (2314)

4. Insurance. All owners of vicious dogs must obtain public liability insurance in a single incident amount of one hundred thousand dollars ($100,000) for bodily injury to or death of any person or persons or for damage to property or animals owned by any persons resulting from the ownership of a dog. All owners must provide proof of insurance and effective dates to the Police Chief or his designee. Cancellation of liability insurance by the dog’s owner is allowed only in the event that the dog dies. The owner of a dog must notify the Police Chief or his designee within ten (10) days if insurance coverage is cancelled by the insurance carrier and provide proof that substitute insurance coverage has been obtained. (2314)

5. Failure to Comply. The purpose of complying with these guidelines for a dog declared vicious is to prevent attacks, injuries, or deaths by mandating the use of control methods. Owners have the opportunity to keep their dogs if this article is complied with. (2314)

(a) It shall be unlawful for the owner of a vicious dog registered in the City of Mesa to fail to comply with the requirements and conditions set forth in this ordinance. Any dog determined to be a vicious dog pursuant to Section 6-4-15 or Section 6-4-16 that is found to be in violation of this ordinance shall be subject to immediate seizure and impoundment and may be destroyed upon order of a City Magistrate. (2314)

(b) Any dog that has been determined to be a vicious dog pursuant to Section 6-4-15 or Section 6-4-16 that injures or kills a human being or a domestic animal and is in violation of this ordinance shall be destroyed. (2314)
6-4-18: PENALTIES:

(A) Any owner of a dog that has been declared vicious pursuant to Section 6-4-15 or Section 6-4-16 who violates or permits the violation of any provision of this article shall, upon conviction in the City of Mesa Court, be fined a sum of not less than two hundred fifty dollars ($250.00) and not more than two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (2314,2466)

(B) In addition, the Court may order the vicious dog impounded and destroyed. (2314)

(C) The Court may order any person who violates this article to pay all expenses related to the impounding of the vicious dog, including shelter, food, handling, and veterinary care, to the City. (2314)

(D) The Court may also order any person who violates this article to pay restitution to any victim or victims whose person or animal was injured or killed or property damaged. (2314)

(E) In the event that the owner of the vicious dog is a minor, the parent or guardian in physical control of such minor at the time of the acts giving rise to the determination of viciousness shall be liable: (1) for all injuries and property damage sustained by a person or domestic animal caused by an unprovoked attack by said vicious dog; and (2) all violations of this Chapter. (2314)

6-4-19: POLICE DOGS:

Dogs utilized by the Mesa Police Department are exempt from the requirements of this ordinance. (2287)
CHAPTER 5
GENERAL REGULATIONS RELATING TO ANIMALS

SECTION:

6-5-1: UNLAWFUL FOR ANIMALS TO RUN AT LARGE
Any person owning, keeping, possessing, harboring, or maintaining any cattle, horses, mules, swine, sheep, goats, or other livestock commits an unlawful act if such animal is at large within the corporate limits. (1505,1635)

6-5-2: PLACE WHERE BIRDS AND ANIMALS ARE KEPT FOR SALE AND EXHIBITED TO BE KEPT SANITARY
No person shall keep, operate, or conduct any place of business at which birds, pigeons, dogs, cats, or other animals are kept for exhibition or sale or are offered for sale, unless such place shall be kept in a clean and sanitary condition and subject at all times to the inspection of the Board of Health, and the Board of Health is hereby authorized and empowered to close such place of business if the same shall not be kept clean and sanitary and keep the same closed until the same shall be placed in a clean and sanitary condition. (1957 Code,1635)

6-5-3: UNLAWFUL TO TAKE ANY ANIMAL FROM PERSON IN CHARGE
It shall be unlawful for any person to take his own animal or that of any other person out of the custody of the person holding the same for any damage done by it or out of the pound by stealth or by force or to interrupt or hinder the pound master in the discharge of his duties. (1957 Code,1635)

6-5-4: CONVEYANCE OF LIVESTOCK
All livestock shall be conveyed in motor vehicles within the City, and it shall be unlawful for any person to drive any domestic animal or animals through or upon any public thoroughfare of the City. (1957 Code,1635)

6-5-5: SELLING CHICKENS, DUCKS, OR RABBITS THAT HAVE BEEN ARTIFICIALLY COLORED
(3877)

(A) It is unlawful for any person: (3877)

1. To sell, offer for sale or barter, or to give away chickens, ducks, or rabbits that have been dyed, colored, stained, or whose natural color has been artificially changed; or (3877)
2. To bring or transport these artificially colored animals into the City. (3877)

(B) This Section does not apply to a person who finds abandoned animals that have been artificially colored, or who is given such animals that the owner no longer wants and such person tries to find a new home for the abandoned or unwanted animal. (3877)

6-5-6: **PENALTY:** (3877)

Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635, 2466, 3877)
CHAPTER 6

CURFEW

SECTION:

6-6-1: CURFEW FOR MINORS
6-6-2: RESPONSIBILITY OF PARENTS (REPEALED BY 2585)
6-6-3: PENALTY

6-6-1: CURFEW FOR MINORS:

(A) It is unlawful for a minor under the age of sixteen (16) years to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in the City between the hours of ten (10:00) P.M. and five (5:00) A.M. It is unlawful for a minor between the ages of sixteen (16) years and eighteen (18) years to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in the City between the hours of twelve (12:00) midnight and five (5:00) A.M. (2585, 2825)

(B) It is unlawful for a parent, guardian, or other person having legal care and custody of a minor to knowingly allow or permit the minor to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in violation of the provisions of this Section, except as expressly provided herein. (2585)

(C) The provisions of this Section do not apply: (2585)

1. To legally emancipated minors, whether the emancipation be through marriage, military service, or other legally sufficient grounds. (2585)

2. To minors who are accompanied by a parent, guardian, or other person having legal care and custody of the minor. (2585)

3. To minors who would otherwise be in violation of the terms of this Section when: (2585)

   (a) Their presence is reasonably required in the pursuit of a lawful trade, occupation, work, business, or profession in which the minor is then engaged, with the permission of a parent, guardian, or other person having legal care or custody of the minor; or (2585)

   (b) Their presence is necessitated by an emergency, medical or otherwise, involving themselves or another; or (2585)
(c) Their presence is occasioned by their attendance at or return from functions sponsored by or related to religious, school, civic, or nonprofit organizations, including but not limited to, services, classes, meetings, dances, social events, dramatic or musical performances, and sporting events, with the permission of a parent, guardian, or other person having legal care or custody of the minor. (2585)

4. To a minor, if it is established that a parent, guardian, or other person having legal care or custody of a minor gave permission to the minor, prior to the date and time of the offense, authorizing the minor to be at a specific location or authorizing the minor to perform a legitimate errand or activity, and the minor was at that location, was traveling to or from that location, or was performing that errand or activity. (383,1635,2585)

6-6-2: RESPONSIBILITY OF PARENTS:

(Repealed by 2585)

6-6-3: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466,2585)
CHAPTER 7

REGISTRATION OF CONVICTED PERSONS

SECTION:

6-7-1: REGISTRATION REQUIRED
Every person who, subsequent to January 1, 1950, has been or who is hereafter convicted of a felony under the laws of the United States, of the State of Arizona, or of any other state or any other government or country; who has violated any national or state law relating to the possession, sale, or transportation of any narcotic; who is a habitual user of narcotics and who is residing in the City on the effective date of this Chapter; or who comes into the City from any point outside the City, whether in transit through the City or otherwise, shall report to the Chief of Police of the City within five (5) days of the effective date of this Chapter if residing in the City on said effective date or within forty-eight (48) hours after his arrival within the City if coming into the City after said effective date and shall furnish to the Chief of Police a written statement signed by such person, giving the following information: (365,1635)

(A) His true name and all aliases which he has used or under which he may have been known. (365,1635)

(B) A full and complete description of his person. (365,1635)

(C) The kind, character, and nature of each crime of which he has been convicted. (365,1635)

(D) The place where such crime was or crimes were committed and the place of conviction of the same. (365,1635)

(E) The name under which he was convicted in each instance and the date thereof. (365,1635)

(F) The name, if any, and the location of each prison, reformatory, jail, or other penal institution in which he was confined or to which he was sentenced. (365,1635)

(G) The location and address of his residence, stopping place, living quarters, or place of abode in the City. If he has more than one (1) residence, stopping place, or place of abode, that fact must be stated and the location and address of each given. (365,1635)
(H) A statement of the kind of residence, stopping place, or place of abode in which he resides, whether the same is temporary or permanent, and whether the same is a private residence, hotel, apartment house, or other building or structure. (365,1635)

(I) The length of time he has occupied each such place of residence, stopping place, or place of abode and the length of time he expects or intends to remain in the City. (365,1635)

(J) Such other information as the Chief of Police shall find reasonably necessary to carry out the intent of this Subsection. (365,1635)

6-7-2: FULL PAROLEES EXCEPTED:
This Chapter shall not be construed to apply to any person who has received a full pardon for each crime whereof he shall have been convicted. (365,1635)

6-7-3: PHOTOGRAPHS AND FINGERPRINTS:
At the time of furnishing such information as required above, the person registering shall be photographed and fingerprinted by the Chief of Police, and photographs and fingerprints shall be made a part of the permanent record herein provided for. (365,1635)

6-7-4: FALSE INFORMATION:
It shall be unlawful for any person required by any provision of this Chapter to furnish any such report to furnish in such report any false or fictitious address or any address other than a true address or intended address or to furnish in making any such report any false, untrue, or misleading information or statement relating to any information required by any provision of this Chapter to be made or furnished. (365,1635)

6-7-5: RECORDS CONFIDENTIAL:
The statements herein required shall at all times be kept by the Chief of Police in a file separate and apart from other files and records maintained and kept by the Police Department of the City and shall not be open to inspection by the public or by any person other than a regular member of the Police Department of the City. (365,1635)

6-7-6: RECORDS AVAILABLE TO POLICE OFFICIALS:
The Chief of Police shall have the authority to transmit copies of records required herein to the Sheriff of any county of the State, to the head of any organized police department of any municipality in the State, to the head of any department of the State engaged in the enforcement of any criminal law of the State, to the head of any federal law enforcement agency, to any sheriff or chief of police of a municipality, or to the head of any other law enforcement agency of any state in any state or territory outside of the State when request is made in writing by such sheriff or other head of a law enforcement agency asking for the record of a certain person named therein and stating that such record is deemed necessary for the use of such law enforcement officer or agency for the investigation of any crime, any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose. (365,1635)

6-7-7: DISCLOSURE OF INFORMATION ILLEGAL:
It shall be unlawful for any police officer or employee of the Police Department to disclose to any person any information contained in a statement required hereunder. (365,1635)

6-7-8: CHANGE OF ADDRESS:
Whenever any person who is required by this Chapter to register shall move and change his address within the City of Mesa, such person shall report such change of address and location of his residence to the Chief of Police within forty-eight (48) hours. (365,1635)

6-7-9: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466)
CHAPTER 8

PREVENTION AND SUPPRESSION OF RIOTS

SECTION:

6-8-1: GOVERNMENT BY PROCLAMATION
6-8-2: ESTABLISHMENT OF A CURFEW
6-8-3: SALE OF ALCOHOLIC BEVERAGES
6-8-4: PENALTY

6-8-1: GOVERNMENT BY PROCLAMATION:
In the event of the threat of or occurrence of acts of riot, rout, or affray sufficient to constitute great danger to the City and its residents, the Mayor shall take command of the Police Force of the City and govern by proclamation. (580,1635)

6-8-2: ESTABLISHMENT OF A CURFEW:
In such areas of the City as shall be designated by the Mayor by proclamation under the conditions set forth in Section 6-8-1 of this Chapter and within the area within all or any part of the City so designated by the Mayor, a curfew shall be in effect the hours of each day designated in the proclamation. All persons living or residing within any such designated area shall go immediately to their homes and remain there until the curfew is lifted by order of the Mayor, and all other persons not residing within the designated area shall immediately leave. (580,1635)

6-8-3: SALE OF ALCOHOLIC BEVERAGES:
During the imposition of any curfew as set forth in Section 6-8-2, all business establishments in the designated curfew area having on their premises intoxicating beverages shall be closed during the state of emergency and until the curfew is lifted. (580,1635)

6-8-4: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466)

CHAPTER 9

BANNERS AND SIGNS ON POLES

(Repealed by 1654)
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CHAPTER 10
PUBLIC PARK REGULATIONS (5054)

SECTION:

6-10-1: DEFINITIONS (5054)
6-10-2: HOURS AND OPERATIONS (4271, 5054)
6-10-3: PROHIBITED AND/OR RESTRICTED USES AND ACTIVITIES (4271, 5054)
6-10-4: VENDING/SOLICITATION WITHIN A PARK AND RECREATION FACILITY, SPECIAL EVENT AREA, OR RETENTION BASIN (4271, 5054)
6-10-5: URBAN CAMPING (4271, 5054)
6-10-6: SPIRITOUS LIQUOR; PROHIBITIONS; PERMITS (4271, 5054)
6-10-7: MULTI-USE PATH (4271, 5054)
6-10-8: UNLAWFUL REMAINDER IN OR RETURN TO PARK (4271, 5054)
6-10-9: ENFORCEMENT AND PENALTY (4271, 5054)

6-10-1: DEFINITIONS:
For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein: (786, 1635, 5054)

CITY: The City of Mesa. (786, 1635)

PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT DIRECTOR: The Parks, Recreation & Commercial Facilities Department Director or designee responsible for any park and recreation facility or special event or retention basin area and for the activities conducted therein and to whom all park rangers of such area are responsible. (786, 1635, 2763, 3212, 4271, 5054)

PARK AND RECREATION FACILITY: A playground, park, retention basin within the boundary of a park, cemetery, golf course, multi-use path, recreation or community center, public open space, land designated for future park development, swimming pool, athletic stadium or venue, or any other area that is City owned, leased, licensed to, or used by the City and that accommodates active or passive recreation, and entertainment, including all internal and adjacent public roadways, parking lots, sidewalks, and pathways which are established or maintained by the City. (786, 1635, 2455, 3212, 4271, 5054)

RETENTION BASIN: An open space set aside for retention or runoff of water from adjacent lands; whether detaining or retaining; not located inside the boundary of parks that are owned or maintained by the City of Mesa. (3212, 4271)

SPECIAL EVENT AREA: A City-approved or sponsored fair, circus, parade, carnival, march, procession, festival, street dance, concert performance, rodeo, race, organized sports event of one or more teams, vendor sales lot or activity, or any other temporary activity using outdoor or indoor spaces and inviting public participation and patronage (with or without charge) whether held on public or private property. (4271, 5054)

SPIRITOUS LIQUOR: Includes alcohol, brandy, whisky, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, or absinthe, or compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, and any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half (1/2) of one percent (1%) of alcohol by volume. (2455, 5054)
6-10-2: HOURS AND OPERATIONS: (4271, 5054)

(A) Hours. Except for unusual and unforeseen emergencies, park and recreation facilities shall be open to the public every day of the year during designated hours. The opening and closing hours for each park and recreation facility shall be posted therein as authorized by the Parks, Recreation & Commercial Facilities Department Director or designee. It shall be unlawful for a person to remain in a park and recreation facility or to enter a park and recreation facility except during the designated hours, unless a permit is obtained pursuant to Subsection (C) of this Section. (4271, 5054)

(B) Closed Areas. Any section or part of any park and recreation facility may be declared closed to the public by the Parks, Recreation & Commercial Facilities Department Director or designee at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses, as the Parks, Recreation & Commercial Facilities Department Director or designee shall find reasonably necessary. No person shall enter any closed area of a park and recreation facility if such entry is prohibited, nor shall any person utilize any portion of a park and recreation facility if such utilization is prohibited. (4271, 5054)

(C) Permit. Any person desiring to remain in a park and recreation facility or enter a park and recreation facility other than during designated hours shall obtain a permit from the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

6-10-3: PROHIBITED AND/OR RESTRICTED USES AND ACTIVITIES: (4271, 5054)

It shall be unlawful to utilize or engage in any activities within any park and recreation facility, special event area, or retention basin in violation of the following, except when a permit is requested and approved in advance by the Parks, Recreation & Commercial Facilities Department Director or designee for conducting such activities as outlined in this Section: (4271, 5054)

(A) Pollution of Waters. No person shall throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, swimming pool, or other body of water in or adjacent to any park and recreation facility, special event area, or retention basin, any substance, matter, or liquid or solid, which will or may result in the pollution of said waters. (4271)

(B) Refuse and Trash. No person shall dump, deposit, or leave any glass or plastic bottles or containers, broken glass, ashes, paper, boxes, cans, rubbish, waste, garbage, household appliances or furniture, construction or landscaping materials, or other discarded items. No such refuse or trash shall be placed in any waters in or contiguous to any park and recreation facility, special event area, or retention basin or left anywhere on the grounds thereof but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided, all such refuse or trash shall be carried away from the park and recreation facility, special event area, or retention basin by the person responsible for its presence and properly disposed of elsewhere. (4271)

(C) Sanitary Facilities. No person shall urinate or defecate except in a designated sanitary facility provided for such purposes within a park and recreation facility, special event area, or retention basin. (4271)
(D) Bathing, Swimming, or Wading. No person shall swim, bathe, or wade in any waters or waterways or any public restroom unless in a designated bathing area in or adjacent to any park and recreation facility, special event area, or retention basin except in such waters and at such places designated for such purposes and in compliance with such regulations as are herein set forth or may be hereafter adopted. Moreover, no person shall frequent any waters or places customarily designated for the purpose of swimming, bathing, or wading, or congregate thereat when such activity is prohibited by the Parks, Recreation & Commercial Facilities Department Director or designee upon a finding that such use of the water would be dangerous, a threat to public health, or otherwise inadvisable. (4271, 5054)

(E) Boating. No person shall bring into or operate any boat, raft, or other watercraft, whether motor powered or not, upon any waters, within any park and recreation facility, special event area, or retention basin, except at places designated for boating by the Parks, Recreation & Commercial Facilities Department Director or designee. The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to designate places for boats, rafts, or watercraft, which are not motor powered separately from such craft that are motor powered. Such activity shall be in accordance with applicable regulations as are now or may hereafter be adopted. (4271, 5054)

(F) Golfing. No person shall use any portion of a park and recreation facility, special event area, or retention basin for golfing purposes or make use of any golf club or golf ball in any park and recreation facility, special event area, or retention basin, except at places designated for golfing by the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

(G) Motorized Vehicles. No person shall drive, ride, or operate at any time, any motorized vehicle or motor-assisted device of any type, including but not limited to; any automobile, truck, motorcycle, motorbike, motor scooter, or all-terrain vehicle, within a park and recreation facility, special event area, or retention basin, except upon public roadways or designated parking areas running through or adjoining such premises, or within areas designated for such purposes by the Parks, Recreation & Commercial Facilities Department Director or designee. This prohibition shall not apply to City-owned vehicles, motorized wheelchairs, power-driven personal mobility devices, or similar motorized mobility devices utilized by persons with disabilities, vehicles authorized by the City to operate on such premises such as utility or maintenance vehicles, or any emergency or public safety vehicle. The Parks, Recreation & Commercial Facilities Department Director or designee shall have the authority to identify, designate, or limit motorized vehicle or motor-assisted device traffic within a park and recreation facility, special event area, or retention basin as necessary. A person operating a motorized vehicle or motor-assisted device within authorized areas of a park and recreation facility, special event area, or retention basin shall obey all traffic control signs or notices posted or placed therein. (4271, 5054)

(H) Non-Motorized Vehicles. No person shall operate or ride any skateboards, rollerblades, roller skates, bicycles, or any type of rolling vehicle where such activity is specifically prohibited by written posted notice; or on any brickwork, ornamental surface, picnic table, bench, tennis or basketball or volleyball court, playground, equipment, surface used for ADA access, fountain area, planter, or sculpture; or in an unsafe manner so as to infringe upon or endanger the safety of themselves or the general public within any park and recreation facility, special event area, or retention basin. All persons operating a non-motorized vehicle within any park and recreation facility, or special event area, or retention basin shall obey all traffic control signs or notices posted or placed therein. (4271, 5054)
(I) Horseback Riding. No person shall bring a horse into a park and recreation facility, special event area, or retention basin except on designated bridle trails or paths, equestrian areas, or other areas designated by the Parks, Recreation & Commercial Facilities Department Director or designee. If horses are permitted in any area, they shall be thoroughly broken, properly restrained, ridden with due care, and shall not be allowed to graze or go unattended; nor shall they be hitched to any rock, tree, shrub, or fence. (4271, 5054)

(J) Leashed Dogs. Dogs in all City of Mesa parks, multiuse paths and basins shall be controlled and restrained on leashes no greater than six feet (6’) in length. Owners of dogs shall immediately remove any dogs exhibiting aggressive behavior that evidences a threat of imminent injury; clean up after pets; be liable for injury caused by aggressive dogs; be responsible for the immediate repair of damage caused by a dog; not be under the age of twelve (12); and comply with all animal control ordinances stated in Mesa City Code, Title 6, Chapter 4. Pertaining to dog parks; owners shall have a leash visible at all times, dogs shall be at least four (4) months of age; licensed with visible tags; leashed immediately if exhibiting aggressive behavior; and not be allowed into a dog park if in season. (4271, 5054)

(K) Animals. Except with respect to horses and dogs as provided in Subsections (I) and (J), no person shall bring into or be allowed to enter a park and recreation facility or special event area with any animal owned or under control of such person, except in designated areas clearly marked by signs permitting such use or in other areas designated or approved by the Parks, Recreation & Commercial Facilities Department Director or designee for such activities as animal shows, petting zoos, educational events, or obedience classes. In all cases, if animals are permitted in an area, they shall be restrained and under the control of such person at all times. (4271, 5054)

(L) Models. No person shall bring into, use, or operate any radio controlled or non-radio-controlled model, including but not limited to, model aircraft, model boats, model motor cars, and other models, in any park and recreation facility, special event area, or retention basin except in areas set apart for such purposes and designated by the Parks, Recreation & Commercial Facilities Department Director or designee. The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to designate places for models that are not motor powered separately from those models that are motor powered. (4271, 5054)

(M) Glass Containers. No person within a park and recreation facility, special event area, or retention basin shall have in his/her possession or custody a glass container of any kind or description. (4271)

(N) Disfiguration or Removal of Improvements. No person shall deface, disfigure, injure, tamper with, displace, or remove any turf grass, landscape materials, electrical equipment, wiring, playground equipment, picnic table, bench, fire pit, grill, paving, water fountain, public utility line; or part or appurtenance thereof; sign, monument, marker, fencing, restroom fixture, or any other park equipment, facility, property, structure, or improvement of any kind whatsoever, within a park and recreation facility, special event area, or retention basin. (4271, 5054)

(O) Disfiguration or Removal of Natural Resources. No person shall disfigure, displace, remove, or excavate, as applicable, any soil, rock, stone, sand, tree, shrub, cactus, plant material, or other natural resource of any description, within a park and recreation facility, special event area, or retention basin. (4271, 5054)

(P) Harming, Removing, or Releasing Animals. No person shall harm, remove from, or release into any park and recreation facility, special event area, or retention basin any animals without approval of the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)
(Q) Fires. No person shall start or sustain a fire, except for the combustion of charcoal in fire pits, grills, or other areas as designated and approved for such use by the Parks, Recreation & Commercial Facilities Department Director or designee within any park and recreation facility, special event area, or retention basin. This provision shall not serve to prohibit the burning of wood in the fireplaces located at Falcon Field Park nor the ceremonial burning of the flag of the United States of America or the Arizona State flag. (4271, 5054)

(R) Iceblocking or Water Sliding. No person shall engage in any iceblocking or erect and/or engage in any water sliding activities within any park and recreation facility, special event area, or retention basin except as designated and approved for such use by the Parks, Recreation & Commercial Facilities Department Director or designee, within any park and recreation facility, special event area, or retention basin. (4271, 5054)

(S) Interference With Persons or Activities. No person shall unreasonably disturb or interfere with any person or party occupying any area or participating in any activity organized by the City of Mesa within a park and recreation facility, or special event area, or retention basin. (4271)

(T) Parked Vehicles. No person within a park and recreation facility, special event area, or retention basin shall wash and/or wax a vehicle or undertake mechanical repair or maintenance of any vehicle, including but not limited to; automobile oil changes or engine tune-ups, except in the case of an emergency where the vehicle is not operable. Unattended vehicles left in a parking lot or parking structure in any park and recreation facility, special event area, or retention basin within the hours of 10:00 p.m. and Sunrise shall be impounded. (4271, 5054)

(U) Miscellaneous Prohibited Uses. No person within a park and recreation facility, special event area, or retention basin shall use, unless a permit is obtained in advance from the Parks, Recreation & Commercial Facilities Department Director or designee, or the Parks, Recreation & Commercial Facilities Department Director or designee has approved a specific area for such uses within a particular park and recreation facility, special event area, or retention basin, a sling shot; BB, pellet, or paint ball gun; javelin; shot-put; discus; fireworks; rockets; hot air balloons; or hard-material types of jousting, fencing, or archery equipment. (4271, 5054)

(V) No person shall interfere with the Parks, Recreation & Commercial Facilities Department Director or designee, police officer, or park ranger in the performance of his/her duties or the enforcement of any provisions of this Chapter within a park and recreation facility, special event area, or retention basin. (4271, 5054)

6-10-4: VENDING/SOLICITATION WITHIN A PARK AND RECREATION FACILITY, SPECIAL EVENT AREA, OR RETENTION BASIN: (4271, 5054)

(A) Selling, Advertising, and Signage. No person shall expose or offer for sale or hire any service or article, including food, beverages, and confectionary articles; announce, advertise, or call the public attention to any service or article for sale or hire; or paste, glue, tack, or otherwise post any sign, placard, or advertisement within a park and recreation facility, special event area, or retention basin unless all applicable tax and licensing permits are obtained and approvals for such activities is granted by the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

(B) No person shall engage in any vending or solicitation operations without having first obtained a peddlers, solicitors, and transient merchants license pursuant to Title 5, Chapter 8 of the City Code. The license shall note the specific park and recreation facility, special event area, or retention basin in which the licensee is authorized to conduct vending and/or solicitation operations and the duration of such use. (4271)
(C) The Parks, Recreation & Commercial Facilities Department Director or designee may waive any of the requirements of this Section for vending and/or solicitation operations conducted in connection with special events sponsored or approved by the City. (4271, 5054)

(D) For purposes of this Section, "vending" means a person engaging in the sale, distribution, or display of any items of tangible personal property. (4271)

(E) For purposes of this Section, "solicitation" means a person requesting an immediate donation or exchange of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or thing of value. The solicitation may be spoken, written, or by printed work, or by another means of communication. Solicitation does not include requesting or accepting payment of the fare on a public transportation vehicle by the operator of the vehicle. (4271)

6-10-5: URBAN CAMPING: (4271)

(A) Except upon the approval of the Parks, Recreation & Commercial Facilities Department Director or designee, no person shall camp within a park and recreation facility, special event area, or retention basin, or in any building, facility, parking lot, structure, or on any property adjacent thereto, that is owned, leased, licensed, possessed, controlled or in use, by the City. (4271, 5054)

(B) For the purpose of this Section, the term "camp" means to use real property of the City for living accommodation purposes such as sleeping activities, or making preparations to sleep, including the laying down of bedding for the purpose of sleeping, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping, or doing any digging or earth breaking, or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area for living accommodation purposes regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Any camping equipment left unattended within or adjacent to a park and recreation facility, special event area, or retention basin shall be discarded. (4271, 5054)

6-10-6: SPIRITUOUS LIQUOR; PROHIBITIONS; PERMITS: (4271, 5054):

(A) No person within a park and recreation facility, special event area, or retention basin shall consume or have in his possession or custody any spirituous liquor except under the conditions set forth in Subsections (B) and (C) of this Section. (4271)

(B) Subsection (A) of this Section shall not apply to those premises within a park and recreation facility, special event area, or retention basin where the sale of spirituous liquor is being governed by a special event license or permit issued by the State Liquor Department. During those events or activities within a park and recreation facility, special event area, or retention basin that is governed by a State liquor license or permit, the sale and consumption of spirituous liquor on those premises at those times shall be subject to all terms and conditions of State law, the State liquor license or permit, and all applicable contracts involving the sale of spirituous liquor on those premises; at all other times, consumption of spirituous liquor within a park and recreation facility, special event area, or retention basin is prohibited unless authorized under a City permit obtained from the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)
(C) The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to issue permits allowing the consumption and possession of beer and wine in any City of Mesa park and recreation facilities, special event areas, or retention basins under the management and direction of the Parks, Recreation & Commercial Facilities Department Director and pursuant to the Guideline for the Permitting of Beer and Wine Possession and Consumption. Such beer and wine permits are available only for persons of legal drinking age ("responsible party") representing two (2) or more persons. Permits shall identify the name and signature of the responsible party; and the date and specific park or facility for which the permit is issued. The City permit shall state that the authority it confers to possess or consume beer and wine is contingent upon compliance with all terms and conditions of the permit, park rules, City ordinances, and State laws. The person's name that is identified on the City permit as the responsible party shall remain on site at all times during which beer and wine is consumed. If the City permit is not complied with in any respect; the permit is null and void, and the prohibition described in Subsection (A) of this Section is reinstated. Unless authorized under a State liquor license or a City permit, it is unlawful to possess or consume any spirituous liquor in any park and recreation facility, special event area, or retention basin. (4271, 4317, 5054)

6-10-7: MULTI-USE PATH: (4271)

(A) Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly requires a different meaning: (4271)

MULTI-USE PATH: An off-road surfaced path which may be separated from motorized vehicular traffic by an open space or barrier and has been designated, or designed and designated, by the City for public use for human-powered travel or movement or by use of a motorized wheelchair. (4271)

PEDESTRIAN: Means a person who is traveling on or is otherwise lawfully using a multi-use path and includes a person who is either walking, jogging, running, skating, or bicycling on the multi-use path. Pedestrian also means a person with a disability, who is using a motorized or human-powered wheelchair or similar mobility device on the multi-use path. (4271)

(B) Multi-use paths are for the exclusive use of pedestrians. Unless otherwise prohibited, pedestrians may enter and use a multi-use path in the company of a leashed dog and shall be bound by the rules contained in Section 6-10-3(J). (4271)

(C) A pedestrian who is operating a human-powered device or vehicle, i.e., bicyclists and skaters, upon a multi-use path shall yield the right-of-way to any pedestrian walking, jogging, running, or in a wheelchair or similar mobility device on the multi-use path. A pedestrian operating a bicycle on a multi-use path shall yield the right-of-way to skaters. (4271)

(D) All pedestrians using multi-use paths shall travel at a rate of speed which is reasonable and prudent under the prevailing conditions and in a consistent and predictable manner, obey all instructions of any traffic control device, warning sign, or pavement marking applicable to use of the multi-use path, and refrain from entering any portion of the multi-use path when it is flooded or contains standing water. (4271)

(E) No person shall willfully throw, deposit, or cause to be thrown or deposited, upon any multi-use path any glass bottles, glass, nails, tacks, wires, cans, or any other object, substance, or debris, including animal waste. Any person who drops, or causes to be dropped, thrown, or deposited upon a multi-use path any such material will immediately remove it or cause it to be removed. (4271)

(F) The City Manager or designee may adopt and post additional rules and regulations which the City Manager or designee deems reasonably necessary for the full and safe enjoyment of multi-use paths by pedestrians. (4271, 5054)
6-10-8: **UNLAWFUL REMAINDER IN OR RETURN TO PARK:** (4271)
After the Parks, Recreation & Commercial Facilities Department Director or designee, park ranger, or police officer directs a person to leave, or ejects a person from a park and recreation facility, special event area, or retention basin, it shall be unlawful for the person to remain within the park and recreation facility, special event area, or retention basin or return to the same park and recreation facility, special event area, or retention basin for at least twenty-four (24) hours after being directed to leave, or ejected. (2763, 3212, 4271, 5054)

6-10-9: **ENFORCEMENT AND PENALTY:** (4271)

(A) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall, in connection with their duties imposed by law, diligently enforce the provisions of this Chapter. (4271, 5054)

(B) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall have the authority to eject from the park and recreation facility, special event area, or retention basin any person who violates any provision of this Chapter or any rule or any City Code; or who engages in any other disorderly or disruptive behavior occurring in a park and recreation facility, special event area, or retention basin. A person ejected shall be informed at the time of ejection that re-entry is prohibited for at least twenty-four (24) hours. (4271, 5054)

(C) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall have the authority to seize and confiscate any property, thing, or device in the park and recreation facility, special event area, or retention basin used in violation of this Chapter. (4271, 5054)

(D) The park rangers shall have the authority to issue citations and warnings for violations of the City Code or any City ordinance or any provision of this Chapter within a park and recreation facility, special event area, or retention basin. Citations shall be issued in accordance with A.R.S. §13-3903. (4271)

(E) Penalty. Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (4271)
CHAPTER 11

SMOKING REGULATIONS AND HEALTHIER SMOKEFREE ENVIRONMENTS

(Initiative I95-1 - Approved 3-26-96,2112,3204,3205,3218,3287)

SECTION:

6-11-1: PURPOSE
Since the active smoking of tobacco and the inhalation of environmental tobacco smoke (ETS) are dangers to human health and the most prevalent cause of preventable death, disease, and disability, as well as are annoyances, inconveniences, discomforts, and general health hazards to those who are involuntarily exposed to such, and in order to serve the public health, safety, and welfare, the declared purpose of this Chapter is to protect people from dangerous, unnecessary, and/or involuntary health risks by prohibiting the smoking of tobacco or any other plant in City or public places and places of employment, as defined in this Chapter. (2112,I95-1)

6-11-2: DEFINITIONS:

ACCESSORY BAR: A place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for on-site consumption. For purposes of this paragraph, "incidental" means that the gross annual receipts, from the sale of alcoholic beverages, associated snacks, appetizers, and other products for consumption at the accessory bar are no greater than twenty-five percent (25%) of the gross annual receipts of the entire restaurant, for the same period of time. (3287)

BAR: Those business premises where the Arizona Department of Liquor Licenses and Control has licensed the retail sale and on-site consumption of alcoholic beverages, and fifty percent (50%) or more of the business' gross annual revenues, for every consecutive twelve-month period, are derived from the sale of alcoholic beverages. (2112,I95-1,3287)
BUILDING SAFETY DIRECTOR: The public officer appointed to that position by the City Manager, or such other person as the City Manager shall designate. (3287,4252)

DESIGNATED SMOKING AREA: Means: (3287)

(A) An indoor area where smoking is allowed under this Chapter that is physically separated and independently ventilated from smokefree areas, so that air within designated smoking areas allowed under this Chapter does not drift or get vented into any smokefree areas. The Building Safety Director is authorized to make reasonable requirements, consistent with the Mesa Building Code and this Chapter, including the use of self-closing and tight-fitting doors, applying the terms "physically separated" and "independently ventilated" to accomplish this goal. (3649,3715,4252)

However, under no circumstances shall the designated smoking area exceed in size the smokefree area in that facility. Moreover, the smoking area shall not include the entry lobby, waiting areas, rest rooms, or areas where minors may customarily congregate in that facility. The designated smoking area shall be constructed so that nonsmoking customers can receive all services provided by that business without walking through the smoking area and without exposure to tobacco smoke. Repeated and confirmed violations pertaining to the infiltration of smoke particulates into nonsmoking areas may result in rescission of any alternatives to a smokefree environment offered in this Section, or annulment of the privilege to allow any smoking within the establishment. (3287,3649)

(B) A designated smoking area may also include the grounds of a building or other facility required to be smokefree under this Chapter when the designated outdoor smoking area is at least fifteen feet (15') away from nonsmoking patrons and the public entrances and exits of the facility. (3287)

EMPLOYEE: Any person who is employed by any "employer" for direct or indirect monetary wages or profits. (2112,I95-1,3287)

EMPLOYER: Any person or entity employing the service of an "employee." (2112,I95-1,3287)

PLACE OF EMPLOYMENT: Any area under control of a private or public employer that is used as a workplace for employees. (2112,I95-1,3287)

PUBLIC PLACE: Any area available to, and customarily used by, the public, including areas closed in by a roof and walls with openings for ingress and egress, and any areas used for public gatherings where persons are seated, standing, or otherwise there for a common purpose such as attendance at or waiting lines for events in a park, amphitheater, stadium, or other assembly area so designated or allowed by the City of Mesa for a legal event. Public places regulated by this Chapter shall include, but not be limited to: grocery and other retail stores, waiting rooms, public and private schools, doctors’ office buildings, pharmacies, hospitals and nursing homes, community centers, child care centers, any group meeting places for children’s clubs, scout troops, or other child-/youth-centered organizations, public rest rooms, lobby and public service areas of hotels, motels, sports/recreational facilities, restaurants, and all public places regulated by A.R.S. §36-601.01. A public place shall also include all places identified under Arizona or federal law as a place of public accommodation. (I95-1,3287)

RESTAURANT: A facility regularly open for the primary purpose of serving food prepared for consumption, either on or off the premises, to customers for compensation, including those that also serve alcoholic beverages from an accessory bar. For purposes of this Chapter only, a “restaurant” shall have annual gross revenue from the sale of food exceeding fifty percent (50%) for every consecutive twelve-month period, excluding, however, food such as appetizers, snacks, and other food products consumed in an accessory bar which the owner chooses to designate as a smoking area under this Chapter. (2112,I95-1,3287)
SMOKE OR SMOKING: Means and includes: (2112,I95-1,3287)

(A) Carrying or placing of a lighted cigarette, 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; (2112,I95-1,3287)

(B) Placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; (2112,I95-1,3287)

(C) Carrying or placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in one’s hands or any appendage or devices and allowing smoke to diffuse in the air. (2112,I95-1,3287)

SMOKEFREE: No tobacco or other plant smoke and freedom from inhaling environmental tobacco smoke (ETS) or passive smoke, including secondhand smoke generated by an active smoker or sidestream smoke or fumes from any such burning material, device, or ashtray that continues to emit such tobacco smoke or fumes from lighted or extinguished smoking materials. (I95-1,3287)

TOBACCO SHOP: Means: (3287)

(A) An exclusively retail business, (3287)

(B) That is not part of a larger store, and (3287)

(C) That derives at least ninety percent (90%) of its gross annual revenue, for every consecutive twelve-month period, from the retail sale of tobacco products and smoking equipment. (3287)

6-11-3: REGULATION OF SMOKING, CITY PROPERTY:

All buildings and vehicles owned, leased, or occupied by the City of Mesa shall be subject to the provisions of this Chapter, as well as outdoor areas or facilities, the primary intended use of which requires persons to assemble, such as group seating or standing or waiting in lines, thus exposing them to inhalation of ETS, excepting designated smoking areas as per Section 6-11-5(A)3. (2112,I95-1)

6-11-4: REGULATION OF SMOKING IN PUBLIC PLACES:

No person shall smoke in any public place when the public gathers together for any purpose or event, except in a bar whose owner chooses to allow smoking, in a designated smoking area meeting all the requirements of this Chapter, or pursuant to a hardship exception or phase-in as prescribed in this Chapter. (2112,I95-1,3204,3287)

6-11-5: REGULATION OF SMOKING IN PLACES OF EMPLOYMENT:

(A) On or before March 1, 1997, each employer in each place of employment within the City shall adopt, implement, maintain, and announce to its employees a smoking policy containing at a minimum the following requirements: (2112,I95-1,3287)

1. Except as set forth below, all workplace areas shall be "smokefree" as previously defined in Section 6-11-2. (I95-1,3287)
2. Smoking is prohibited in conference rooms, meeting rooms, classrooms, auditoriums, cafeterias, kitchens, lunchrooms, employees’ lounges, rest rooms provided by employers for employee use, and in waiting areas, including outdoor waiting lines, hallways, stairways, elevators, and areas common to all employees. (2112,195-1,3287)

3. A separate smoking area outdoors which does not require others to walk through it upon entering or a smoking area indoors which is separately constructed and negatively pressure ventilated using a separate cooling and/or heating ventilation system may be provided at the option of the employer. However, if an employee complains to the employer or the City that smoke is drifting or being vented out of the designated smoking area and interfering with nonsmokers, and the employer or the City confirm that as a fact, the employer shall repair, relocate, or eliminate the designated smoking area. (195-1,3287)

4. Nothing in Chapter 11 shall require an employer to construct, purchase, or otherwise provide or facilitate any smoking area, and nothing in Chapter 11 shall preclude the designation of the total premises as smokefree at the option of the employer. (195-1,3287)

(B) No employee shall be retaliated against in any fashion, nor subject to termination or to disciplinary action as a result of his complaint about smoking violations in the workplace. (2112,195-1,3287)

6-11-6: WHERE SMOKING IS ALLOWED:

(A) A private residence or public housing dwelling unit, but the common areas and common open space, as defined in Title 11, Mesa City Code, of public housing projects and private multiple- and single-residence developments that are accessible to the public or the residents of the project or development (such as lobbies, playgrounds or "tot lots," elevators, and recreation areas, whether located indoors or outdoors) are required to be smokefree when the public or residents gather in those areas, as are private residences required to be smokefree when used as commercial child care or health care facilities. (195-1,3205,3287)

(B) Hotel and motel rooms rented to guests which may include rooms specified as permitting smoking within rooms so designated. (195-1,3287)

(C) Private clubs, including fraternal lodges, meeting the definition of private clubs rather than places of public accommodation under the 1964 Civil Rights Act, as amended, conducting private functions where the public is not invited, welcomed, or served, hence not charged for services, will be expected to set their own policies relative to smoking control within their private facilities. Private clubs do not include establishments holding public liquor licenses from the Arizona Department of Liquor Licenses and Control, or clubs formed to circumvent this Chapter where persons pay nominal dues or the "members" do not control the operation of the "club." (195-1,3287)

(D) Where smoking or smoking materials are being used to exercise protected First Amendment activity, such as smoking materials used for bona fide religious purposes. (3287)

(E) Tobacco shops. However, if a tobacco shop shares a common ventilation system with an area required to be smokefree under this Chapter, the tobacco shop must meet the requirements of a designated smoking area before smoking can occur there. (3287)
(F) Hotel, motel, wedding chapel, reception center, restaurant, and any other bona fide conference or meeting rooms while these are being used exclusively for, or leased exclusively for, private meeting functions to which the public is not invited or allowed to attend. However, if a conference or meeting room shares a common ventilation system with an area required to be smokefree under this Chapter, the conference or meeting room where smoking is allowed must meet the requirements of a designated smoking area before smoking can occur there. (3287)

(G) In a designated smoking area meeting the requirements of this Chapter. (3287)

(H) In a building or facility operating under a hardship exception or phase-in, as allowed pursuant to an order of the Building Safety Director under this Chapter. (3287,4252)

(I) In any building, facility, or area not required to be smokefree under this Chapter. (3287)

6-11-7: SIGN POSTING:

(A) "No Smoking" signs, "Smokefree" signs, "This is a Nonsmoking Establishment" sign, or the international "No Smoking" symbol shall be clearly and conspicuously posted by the owner/operator/manager/employer or other person in control in enclosed areas where smoking is prohibited by this Chapter, including each entry point. The owner, manager, operator, or other person having control of a business or facility shall remove all ashtrays and other smoking paraphernalia from all areas required to be smokefree under this Chapter. (2112,195-1,3287)

(B) Where smoking is permitted indoors under this Chapter, the owner shall conspicuously post a sign stating "Designated Smoking Area" at all entrances to that area. All bars that choose to allow smoking throughout their facility shall post a sign on all outside entry doors stating "This is a Smoking Establishment, and Does Not Provide a Nonsmoking Area." All signs designating smoking areas or smoking establishments under this Chapter shall also state that "Minors May Not Enter Unless Accompanied and Supervised by a Parent or Legal Guardian." It is unlawful for an owner, manager, operator, or other person in control of a business or facility to allow minors to enter any area where smoking is permitted under this Chapter unless each minor is accompanied and supervised by a parent or legal guardian. (3287)

(C) If a building or facility has both smokefree areas and a designated smoking area, the owner, manager, operator, or other person in control of that building shall conspicuously post a sign at all initial entry points clearly indicating that "This Establishment Provides Both Smoking and Nonsmoking Areas." The owner, manager, operator, or other person in control of such a building or facility shall also clearly indicate inside the building or facility, through the signs required in paragraphs (A) and (B) above, in which areas smoking is permitted and in which areas smoking is prohibited. (3287)

(D) All signs and symbols required under this Chapter shall have letters or symbols no smaller that three inches (3") in height. (195-1,3287)

6-11-8: BARS AND RESTAURANTS: (3204,3218,3287)

(A) Smoking is allowed throughout all bars and their grounds (other than accessory bars in restaurants) providing it does not affect nonsmoking areas. (3287)
All restaurants shall be smokefree, except the restaurant owner may choose to allow smoking:

1. In an accessory bar if it is a designated smoking area meeting all the requirements of this Chapter; or

2. If the restaurant owner applies for, is granted, and complies with a hardship exception or phase-in under this Chapter.

6-11-9: (RESERVED)

6-11-10: HARDSHIP SITUATIONS:

(A) Hardship Phase-In. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter may apply to the Building Safety Director for a phase-in of part or all of the structural, HVAC, signage, and other requirements of this Chapter applicable to designated smoking areas. The Building Safety Director may grant a phase-in period of up to one (1) year. Hardship applicants shall bear the burden of showing that immediate implementation of the requirements of this Chapter would create an undue financial hardship.

1. For purposes of this Section, an "undue financial hardship" means that the owner does not have current funds, or the current ability to borrow and repay funds, necessary and sufficient to remodel the owner’s facility to comply with this Chapter.

2. A hardship phase-in application shall contain the following:

(a) An estimate from an appropriately licensed contractor of the costs of complying with this Chapter;

(b) Mesa sales tax and other financial statements for the most recent annual period purporting to show an undue financial hardship on the applicant;

(c) A time and task schedule for complying with all requirements of this Chapter should a hardship phase-in be granted;

(d) A sworn statement explaining how the applicant will protect the health of employees and the public from secondhand and sidestream smoke during a phase-in period;

(e) A sworn statement that the applicant shall completely fulfill the structural, HVAC, signage, and all other requirements of this Chapter applicable to designated smoking areas in that facility in accordance with its submitted time and task statement and within the hardship phase-in period, if granted;

(f) A description of all efforts the applicant has made, and which reasonably could be made, to operate the business or facility successfully within a smokefree environment.

(B) Hardship Smoking Exception. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter but wishing to allow smoking throughout the owner’s business or facility may apply to the Building Safety Director for a hardship smoking exception allowing smoking in an area or areas otherwise required to be smokefree under this Chapter. Applicants shall bear the burden of showing that operating smokefree in part or all of their premises has created an undue financial hardship.
1. For purposes of this Section, evidence of a fifteen percent (15%), or more, reduction in gross revenue over the applicable period of time shall constitute prima facie evidence and a rebuttable presumption of an "undue financial hardship." (3287)

2. An application for a hardship smoking exception shall contain the following: (3287)

   (a) A description of all efforts the applicant has made, or which reasonably could be made, to operate the business or facility successfully within a smokefree environment. (3287)

   (b) Mesa sales tax statements comparing sales receipts for a four-month period of compliance under this Chapter and the same four-month period in the year prior to compliance, or other comparable period acceptable to the Building Safety Director. (3287,4252)

   (c) A sworn statement that the applicant shall comply with the terms of the Building Safety Director's hardship exception order, including structural, HVAC, periodic reevaluation of the grounds for a smoking hardship exception, and such other requirements the Building Safety Director may deem reasonably necessary to protect the health of employees and the public. (3287,4252)

(C) Application. (3287)

1. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking phase-in, that person shall apply to the Building Safety Director within sixty (60) days of December 20, 1996. (3287,4252)

2. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking exception, that person shall apply to the Building Safety Director within one year of December 20, 1996. (3287,4252)

3. All operations within new businesses or new facilities constructed or remodeled after December 20, 1996 shall comply with the provisions of this Chapter, and are not eligible for a hardship exception or phase-in. (3287)

4. If a person submits a complete application for a hardship phase-in or exception within the time frames set forth above, and works in good faith to fulfill the requirements of this Chapter and the orders of the Building Safety Director, the Building Safety Director may temporarily permit smoking in areas otherwise required to be smokefree under this Chapter until the Building Safety Director finally grants or denies the application. (3287,4252)

5. If a person fails to submit a complete application for a hardship phase-in or exception within the time frames set forth above, or fails to fulfill the requirements of this Chapter or the orders of the Building Safety Director in processing such application, the business or facility must be smokefree as required under this Chapter, or the owner, manager, tenant, and other person(s) in control of the premises are subject to enforcement action under this Chapter. (3287,4252)

(D) Investigation and Decision. The Building Safety Director, or designee, may hold an administrative hearing to review a hardship application under this Section, and the Building Safety Director may conduct such other investigation and review as the Building Safety Director deems necessary. The applicant shall cooperate with the Building Safety Director's investigation. (3287,4252)
1. The Building Safety Director may grant a hardship phase-in or hardship smoking exception subject to such terms and conditions as the Building Safety Director deems reasonably necessary to protect the health and safety of employees and the nonsmoking public, in light of the "Purpose" section of this Chapter (6-11-1), and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1) (see footnote two [2] pages forward). (3287,4252)

2. The decision of the Building Safety Director granting or denying a hardship application under this Section is subject to appeal as a special action in the Maricopa County Superior Court, to the extent and in the manner provided in Volume 17B, A.R.S. (3287)

(E) No Application or Permit Fees. The City shall not assess or collect any application fee or charge for hardship exceptions or phase-ins. Furthermore, if remodeling of existing structures, as of December 20, 1996, is undertaken solely for the purpose of complying with the smokefree requirements of this Chapter, no Mesa building permit fees or other City-imposed charges shall be assessed or collected due to such remodeling. (3287)

6-11-11: CHAPTER NOT TO EXCUSE NONCOMPLIANCE WITH OTHER MEASURES:
Nothing in this Chapter excuses noncompliance with any Mesa Code (including the Mesa Zoning Code), county, state, or federal law (such as Occupational Safety and Health Administration standards), or any rule or regulation adopted pursuant thereto. (3287)

6-11-12: ENFORCEMENT:

(A) Against the Smoker. Any person who smokes in an area required to be smokefree under this Chapter shall be subject to citation for a petty offense. For the first petty offense, the fine is one hundred dollars ($100.00). For the second petty offense, the fine is two hundred dollars ($200.00). For the third petty offense, the fine is three hundred dollars ($300.00). For each petty offense thereafter, the violator shall be subject to Class One criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five hundred dollars ($500.00), a maximum fine of two thousand five hundred dollars ($2,500.00), six (6) months in jail, or both such fine and imprisonment. (I95-1,3287)

(B) Against the Owner, Manager, and Tenant of a Facility. All owners, managers, operators, tenants, or other persons in control of an establishment or area regulated under this Chapter ("responsible party") are jointly and individually liable for compliance with this Chapter. (I95-1,3287)

1. Upon a determination of reasonable cause that a responsible party has failed to fulfill a requirement of this Chapter or to maintain a smokefree environment where required under this Chapter, the Building Safety Director, or designee, may issue and serve upon the responsible party a notice of civil violation stating the nature of the violation. The notice shall be in the form established by the Building Safety Director. Service shall be made by mailing a copy thereof to the place of business by certified or registered mail. Service shall be deemed completed when so mailed. (2112,I95-1,3287,4252)

2. Within ten (10) days of service of said notice, the responsible party shall either pay the fine to the Building Safety Director, or designee, or request a hearing on the violation by filing a written request for hearing with the Building Safety Director. If the responsible party pays the fine, the allegations in the notice shall be deemed admitted, and such person shall be deemed responsible for having committed the offenses described in the notice. If a hearing is requested, the City Manager shall appoint a Hearing Officer. (2112,I95-1,3287)
3. Failure to respond timely to a notice of violation shall result in a default judgment finding the party
responsible for the violations described in the notice and imposing the penalties provided for in this Chapter.
Unpaid judgments, whether by default or after hearing, may be recorded as liens against the responsible
party’s property. (2112,195-1,3287)

4. Each instance of noncompliance with this Chapter or each instance of failure to maintain a smokefree
environment where required under this Chapter shall constitute a separate civil offense. For the first civil
offense, the fine is one hundred dollars ($100.00). For the second civil offense, the fine is two hundred dollars
($200.00). For the third civil offense, the fine is three hundred dollars ($300.00). For each offense thereafter,
the violator shall be subject to criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual
offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five
hundred dollars ($500.00), a maximum fine of two thousand five hundred dollars ($2,500.00), six (6) months
in jail, or both such fine and imprisonment. (3287)

5. If the Hearing Officer or judge determines that a violation of this Chapter has occurred, they shall issue an
order imposing a sanction in accordance with the schedule in paragraph 4 above and in addition, shall assess
against the responsible party the City’s personnel, mailing, and other costs incurred in investigating and
hearing the case. (2112,195-1,3287)

(C) Inspection and Investigation. To the maximum extent allowed by law, the Building Safety Director, or
designee, is authorized to inspect for compliance with all requirements of this Chapter and the Mesa City
Code, including all technical requirements the Building Safety Director is authorized to develop under this
Chapter and any hardship order the Building Safety Director may issue under this Chapter. The Building
Safety Director’s authority includes, but is not limited to, requiring information from persons subject to the
Mesa City Code and investigating the truth of that information, as necessary to determine compliance with
the City Code. Persons regulated under this Chapter shall retain for at least three (3) years all information
necessary to validate compliance with this Chapter. (3287,4252)

(D) Suspension, Revocation of Hardship Exception or Phase-in. A material change in circumstances or failure of
any person to comply at all times with all terms and conditions of a hardship exception or phase-in shall be
grounds for revocation or suspension of the hardship exception or phase-in that was granted. The Building
Safety Director is authorized to initiate revocation or suspension proceedings pursuant to the civil hearing
procedures in this Section. (3287,4252)
6-11-13: NONRETAILIATION:
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, customer, or other person because such person exercises any right to a smokefree environment afforded by this Chapter. (3287)

6-11-14: CITY MANAGER IMPLEMENTATION DECISIONS:
Any affected person with questions about the implementation of this Chapter and desiring written guidance indicating how the City will apply this Chapter may write to the Mesa City Manager, P.O. Box 1466, Mesa, AZ. The City Manager is authorized to provide binding, written direction in response to such requests. Such direction shall be consistent with the purposes of this Chapter, as reflected in Section 6-11-1, and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1)*. The City Manager’s directions shall also be consistent with the City Charter’s requirement that the City Manager faithfully execute all laws of the City, the City Charter, and all acts of the City Council. The City Manager’s directions under this Section are subject to challenge in the Maricopa County Superior Court under the special action provisions, Volume 17B, A.R.S., to the extent and in the manner provided therein. (3287)

6-11-15: (RESERVED)
6-11-16: (RESERVED)
6-11-17: (RESERVED)
6-11-18: (RESERVED)
6-11-19: (RESERVED)
6-11-20: (RESERVED)

*The text of Proposition 200 (Initiative 95-1) contained the following preamble:

WHEREAS the city of Mesa adopted Ordinance 2112 Sept. 8, 1986, and since that time much more scientific and medical research is reported from the U.S. Environmental Protection Agency (EPA), the U.S. Surgeon General and other researchers, more fully documenting the health risks and health effects of both active and passive smoking; and

WHEREAS smoking is the most prevalent and preventable cause of death in the U.S.A., leading to more than twice as many deaths as the other leading causes combined (including alcohol, illegal drugs, motor vehicles, murders, suicide, AIDS, fires, firearms, etc.); and

WHEREAS the EPA has determined that "widespread exposure to environmental tobacco smoke (ETS) in the United States presents a serious and substantial public health impact" and that ETS contains many harmful chemicals and carcinogens and is a serious health risk to human beings, especially to infants, children, and pregnant women; and

WHEREAS in children, in the U.S.A., ETS exposure is causally associated with hundreds of thousands of respiratory infections and up to a million cases of increased severity of asthma, as well as being a serious risk factor for new cases of asthma in children; and

WHEREAS an increasing majority of voters in Mesa (nearly 75%) "support a complete ban on smoking in public places" as reported by O'Neil Associates' Valley Monitor Poll, in a public opinion survey of Mesa registered voters, October 1994.
ARTICLE II

STORAGE AND DISPLAY OF TOBACCO PRODUCTS

SECTION:

6-11-21: DEFINITIONS:
In this Article, unless the context otherwise requires: (3563)

1. "Person" means the State, the County, a political subdivision of the State, other governmental entities, a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual. "Person" also includes a trustee, receiver, an assignee, or similar representative. (3563)

2. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other manner of ingestion. (3563)

6-11-22: STORAGE AND DISPLAY OF TOBACCO PRODUCTS:
(A) No person who owns, conducts, operates, or maintains a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products, shall store or display, or cause to be stored or displayed, such tobacco products in an area or manner that is accessible to the public without employee assistance. (3563)

(B) A person is exempt from the requirement of this Section if both: (3563)

1. The business where tobacco products are sold prohibits entry of individuals under the age of eighteen (18) at all times; and (3563)

2. Photographic identification is required from any individual who appears to be twenty-six (26) years of age or younger prior to entering the business where tobacco products are sold. (3563)

6-11-23: PENALTY:
Each instance of violation of this Article shall constitute a separate civil offense. For the first civil offense at a retail site, the fine is one hundred dollars ($100). For the second and third civil offense at a retail site, the fine is five hundred dollars ($500). However, if more than three (3) violations occur at a retail site in any consecutive twelve- (12-) month period, the person or entity operating such retail site shall be subject to a minimum fine of five hundred dollars ($500) or a maximum fine of two thousand five hundred dollars ($2,500). The City, through its Code Compliance Supervisor, or designee, will follow the civil offense procedures set forth in Section 6-11-12(B), Mesa City Code. (3563)
CHAPTER 12

OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES
(749, 1635, 2034, 2466, 2610, 3770, 4028, 4253, 4942, 4962)

SECTION:

6-12-1: INTRODUCTION

Certain noise levels must be tolerated by all citizens in order for the normal functions of city life to continue. (4942)

However, any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying is subject to regulation as provided herein. (4942)

Children playing, construction equipment, barking dogs, amplified musical instruments, trash trucks, airplanes, and loud parties are all examples of noise found within our community. (4942)

6-12-2: PROHIBITED NOISES, STANDARD

(A) The following activities are prohibited if they produce: (4942)

1. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; and (4942)

2. Are continuous or intermittent for a period of at least fifteen (15) minutes; or (4942)

3. Occur after 10:00 p.m. but before 6:00 a.m.; and (4942)

4. Are plainly audible beyond the property line of the property on which conducted; and (4942)

5. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities or special event. (4942)

(B) Allowing or causing any noise by using, operating or permitting to be played any electronic music device, television, amplifier, musical instrument, or instrument, machine or device used for the production, reproduction or emission of sound. (4942)
6-12-2

(C) Creating or allowing any noise in connection with the loading or unloading of any vehicle. (4942)

(D) Owning, possessing, harboring or permitting any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or makes other sounds. (4942)

(E) Allowing or causing any malicious or willful shouting, yelling, screaming, or any other form of raucous vocalization by a person or group of people. (4942)

6-12-3: OTHER PROHIBITED NOISES:

(A) Use any automobile, motorcycle or other vehicle, engine or motor of whatever size, stationary or moving, instrument, device or thing, in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise. (4942)

(B) Operating any mechanical device operated by gasoline, or otherwise, without having a muffler, in good working order and in constant operation, to prevent excessive or unusual noise and smoke; and no person shall use a muffler cutout, bypass or similar device. (4942)

(C) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any reasonable person of normal sensibilities or neighborhood in the vicinity. (4942)

(D) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person normal sensibilities to be aware of vibration accompanying the sound at a distance of fifty (50) feet. (4942)

(E) Maintaining or operating an outdoor speaker that is affixed to any structure or placed upon any property where:

1. The speaker is audible for a distance of more than fifty (50) feet from the source; or (4942)

2. The speaker is two hundred fifty (250) feet or closer to a location that is zoned or developed for residential use. This restriction shall not apply to intercommunication systems that are utilized from 9:00 a.m. to 6:00 p.m. for the sole purpose of conducting the internal business affairs of the establishment. (4942)

3. This provision does not prohibit use of an outdoor speaker where a temporary exemption has been granted by the City Manager or designee. (4942)

6-12-4: UNRULY GATHERING:

A gathering of two (2) or more persons on any private or public property, including property used to conduct business, in a manner which disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities and/or creates noise prohibited under 6-12-2. (4942, 4962)

6-12-5: ABATEMENT OF UNRULY GATHERING:

A peace officer may abate an unruly gathering by reasonable means including, but not limited to, citation and/or order dispersal of the persons attending the gathering. (4942)
6-12-6: GENERAL EXEMPTIONS:
The following activities are exempted from the provisions of 6-12-2 and 6-12-3: (4942)

(A) Emergency work necessary to restore property to a safe condition following a fire, accident or natural disaster; to restore public utilities; or to protect persons or property from an imminent danger; (4942)

(B) Sound made to alert persons to the existence of an emergency, danger or attempted crime; (4942)

(C) Activities or operations of governmental units or agencies; (4942)

(D) Parades, concerts, festivals, fairs or similar activities that have been approved by the City for a special events permit; (4942)

(E) Athletic, musical or cultural activities or events (including practices and rehearsals) conducted by or under the auspices of public or private schools, and public or private colleges or universities; (4942)

(F) Activity, including commercial activity, which is permitted under the zoning code. (4942)

(G) Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting, including crafts and hobbies, or excavation work conducted between 6:00 a.m. through 8:00 p.m. Mondays through Fridays. Also, a person may engage in or allow such activities at that person’s residence between 6:00 a.m. and 8:00 p.m. on Saturdays or Sundays. (4942)

6-12-7: TEMPORARY EXEMPTIONS:

(A) The City Manager or designee is authorized to grant a temporary exemption from the requirements established by this article if such temporary exemption would be in the public interest and there is no feasible and prudent alternative to the activity, or the method of conducting the activity, for which the temporary exemption is sought. (4942)

(B) A temporary exemption must be in writing and signed by the City Manager or designee and must set forth the name of the party granted the exemption, the location of the property for which it is authorized, the date(s) and time(s) for which it is effective. (4942)

(C) A temporary exemption may be granted only for the period of time that is reasonably necessary to conduct the activity, which in no case may exceed thirty (30) days, unless otherwise specified. (4942)

(D) The following factors shall be considered by the City Manager or designee in determining whether to grant a temporary exemption: (4942)

1. The balancing of the hardship to the applicant, the community and other persons in not granting the variance against the adverse impact on the health, safety and welfare of persons adversely affected and any other adverse effects of the granting of the variance; (4942)

2. The nearness of any residence or residences, or any other use; (4942)

3. The level of the sound to be generated by the event or activity; (4942)
4. Whether the type of sound to be produced by the event or activity is usual or unusual for the location or area for which the variance is requested; (4942)

5. The density of population of the area in which the event or activity is to take place; (4942)

6. The time of day or night which the activity or event will take place; (4942)

7. The nature of the sound to be produced, including but not limited to whether the sound will be steady, intermittent, impulsive or repetitive. (4942)

6-12-8: PERSONS RESPONSIBLE FOR NOISE VIOLATIONS:
(A) The person responsible for an activity that violates this section shall be deemed responsible for the violation. (4942)

(B) If the person responsible for an activity that violates this section cannot be determined, the owner, property manager or agent of the owner, sponsor of the event, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation. (4942)

(C) Any person in attendance who engaged in any conduct causing the disturbance may also be deemed responsible for the violation. (4942)

(D) After three (3) violations on the same property, in addition to the above, the owner of the property may also be deemed responsible for the violation. (4942)

6-12-9: ENFORCEMENT:
(A) The Police Department and any other City department as designated by the City Manager is authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible for a violation of this section. (4942, 4962)

(B) Officers responding to a complaint under the provisions of this section may: (4942)

1. Advise the concerned parties of the violation and seek to gain voluntary compliance; or (4942)

2. Issue a civil infraction violation. (4942)

6-12-10: PENALTY:
(A) Any person who shall violate any of the provisions of this Chapter or of the Mesa City Code as amended herein shall be guilty of a civil infraction. (4942)

(B) The penalty for a person found responsible for a first violation shall be a mandatory minimum fine of two hundred and fifty dollars ($250.00); a mandatory minimum fine of five hundred dollars ($500.00) for a second violation; and a mandatory minimum fine of two thousand and five hundred dollars ($2,500.00) for a third or subsequent violation. (4942)

(C) The Court may, in its own discretion, grant cost recovery for law enforcement services and/or establish a surcharge. (4942)

(D) Each subsequent violation shall be a separate offense, punishable as hereinabove described. (4942)
CHAPTER 13

ABANDONED MOTOR VEHICLES (1185,1635,2132)

(Repealed by 2568)

CHAPTER 14

FAIR HOUSING

SECTION:

6-14-1: DEFINITIONS
6-14-2: ESTABLISHMENT OF A FAIR HOUSING POLICY
6-14-3: PROHIBITED ACTIONS
6-14-4: PENALTY

6-14-1: DEFINITIONS:
Except where otherwise indicated by the context, the following definitions shall apply in the interpretation and enforcement of this Chapter: (1278,1635,2671)

DISCRIMINATE OR DISCRIMINATION: Shall mean to make, directly or indirectly, any distinction prohibited under state or federal law with respect to any person or persons based on sex, race, color, religion, national origin, familial status, or handicap. (1278,1635,2671)

FAMILIAL STATUS: Shall be defined as provided in the Fair Housing Amendments Act of 1988. (2671)

HANDICAP: Shall be defined as provided in the Americans with Disabilities Act of 1990. (2671)

HOUSING: Shall mean (a) any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous, located in the City used for the building or the placing of one (1) or more housing or rooming units owned by, or otherwise subject to the control of, one (1) or more persons; and/or (b) any real property, or any interest therein, located in the City; and/or (c) any single-family dwelling or multiple-family dwelling or trailer house or trailer space, or any portion thereof, including a housing unit or rooming unit, or any interest therein, located in the City which is used or occupied or intended, arranged, assigned, or designated to be used or occupied as the home, home site, residence, or sleeping place of one (1) or more persons; and/or (d) a single room, suite of rooms, or apartment, with or without cooking and kitchen facilities, occupied or intended for occupancy as living quarters by a person, by a family, or by a group of persons living together. (1278,1635)
OWNER: Shall include a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession or the right to sell, rent, or lease any housing. (1278,1635)

REAL ESTATE BROKER OR REAL ESTATE SALESPERSON: Shall mean an individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who, with the intention or expectation of receiving or collecting same, lists, sells, purchases, exchanges, rents, or leases any housing accommodations, including options thereupon; or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer to any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, exchange, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these. (1278,1635)

6-14-2: ESTABLISHMENT OF A FAIR HOUSING POLICY:

It is hereby declared to be among the civil rights of the people of the City to be free from discrimination in the occupancy and provision of housing. Accordingly, it shall be contrary to the policy of the City and unlawful to discriminate against individuals or families because of race, color, sex, religion, ancestry, national origin, familial status, or handicap in the purchase, lease, rental, exchange, advertising, display, promotion, or financing of housing within the City. The foregoing policy shall be interpreted in light of applicable federal and state laws, regulations, and judicial decisions and shall be subject to the following restrictions and exemptions: (1278,1635,2671,3712)

(A) Certain groups may be restrictive:

1. Religious organizations and private clubs may limit the sale, rental, or occupancy of noncommercial units to their members unless membership is limited by race, color, or national origin and handicap; (2671)

2. Governmental agencies may impose limits to the numbers of people permitted to occupy a structure; and/or (2671)

3. Governmental or private agencies which address the conduct of a person(s) convicted of the illegal manufacture or distribution of a controlled substance. (2671)

(B) Exemptions exist for: (2671)

1. Federal and/or state projects for the elderly; (2671)

2. Projects where one hundred percent (100%) of the residents are at least sixty-two (62) years old after September 13, 1989; and/or (2671)

3. Projects where eighty percent (80%) of the units have at least one (1) inhabitant at least fifty-five (55) years old; (2671,3712)

4. A room or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other and if the owner occupies one (1) such living quarter as his residence (four-plex or less). (Discriminatory advertising is not exempted.) (2671)
(C) Except for discriminatory advertising, the sale or rental of a single-family home is exempted, provided: (2671)

1. The owner does not own or have any interest in more than three (3) single-family houses at one time; (2671)

2. A real estate professional or a property manager is not involved in the transaction; and/or (2671)

3. If the dwelling is not owner occupied or most recently occupied by the owner prior to the transaction, then the exemption applies only if there is only one (1) sale per any twenty-four- (24-) month period. (2671)

6-14-3: PROHIBITED ACTIONS:
It is hereby declared to be unlawful: (1278,1635,2671)

(A) For any person, including but not limited to, owners, lessees, agents, real estate brokers, real estate salespersons, trustees, mortgagees, financial institutions, title companies, or insurance companies, except as exempted under Section 6-14-2: (1278,1635,2671)

1. To discriminate against any person because of sex, race, color, religion, ancestry, national origin, familial status, or handicap in the sale, lease, rental, or other transfer of interest in housing. (1278,1635,2671)

2. To so discriminate in the extension of loans, credit, insurance, or other services relating to the transfer of interest in housing. (1278,1635)

3. To print or circulate or cause to be printed or circulated any publication or to use any form of application or to make any inquiry in connection with prospective sales, leases, rentals, or other transfers of interest in housing or the extension of credit, loans, insurance, or other services relating to the transfer of interest in housing which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, ancestry, national origin, familial status, or handicap or expresses intent to make any such limitation, specification, or discrimination. (1278,1635,2671)

(B) To refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent, or lease any housing from or to a person because of his sex, race, color, religion, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(C) To refuse to negotiate for the sale, purchase, exchange, rental, or lease of any housing to a person because of his sex, race, color, religion, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(D) To represent to a person that any housing is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is available or to refuse to permit a person to inspect any housing because of his sex, race, color, religion, ancestry, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(E) To induce or attempt to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of any person or persons of a particular race, color, religion, national origin, familial status, or handicap. (1278,1635,2671)

(F) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this Chapter or attempt to do so. (1278,1635)

6-14-4: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each violation shall constitute a separate offense. The imposition of any sentence shall not exempt the offender from compliance with the requirements of this Chapter. (1635,2466,2671)
CHAPTER 15

ALARMS SYSTEMS

This Chapter is intended to regulate the activities and responsibilities of those persons who purchase, lease, or rent and those persons who own or conduct the business of selling, leasing, renting, maintaining, or monitoring alarm systems, devices, or services. It is further intended to encourage the improvement in reliability of those systems, devices, and services and to ensure that Police Department personnel will not be unduly diverted from responding to actual criminal activity as a result of responding to false alarms. This Chapter specifically encompasses "burglar alarms" and "robbery/panic" alarms, both audible and inaudible (silent). Specific exclusions and exceptions will be detailed within this Chapter. (4111, 5079)
6-15-2: DEFINITIONS: (4111, 5079)

Except where otherwise indicated by the context, the following definitions shall apply in the interpretations and enforcement of this Chapter: (4111)

ALARM OR ALARM SYSTEM: Any mechanical or electrical device which is used to detect unauthorized entry into a building or other premises or to alert others of the occurrence of the commission of an unlawful act against a person or within a building or other premises, and that may be designed to emit an audible alarm, and/or transmit a signal or message when activated. Alarm or alarm system includes, but is not limited to, silent, panic, holdup, robbery, duress, burglary, and proprietor alarms. (4111, 5079)

ALARM AGENT: Any person who is employed by an alarm business, either directly or indirectly, whose duties include any of the following: maintaining, servicing, or repairing any alarm or alarm system in or on any building, place, or premises. Any person whose duties consist solely of resetting an alarm following activation shall not be deemed to be an alarm agent. (4111)

ALARM BUSINESS: The business by an individual, partnership, corporation, or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing, or monitoring an alarm or alarm system in or on any building, structure, or facility. (4111)

ALARM SITE: A single fixed premises or location served by an Alarm System or Systems. Each Unit, if served by a separate Alarm System in a multi-unit building or complex, shall be considered a separate Alarm Site unless owned and/or operated by one entity. (5079)

ALARM USER: Any person, firm, partnership, corporation, or business who (which) leases, rents, purchases, or uses any monitored or proprietor alarm, alarm system, device, or service. (4111)

AUDIBLE ALARM: A device designed for the detection of an unauthorized entry of premises and which, when activated, generates an audible sound on the premises. (4111)

AUTOMATIC DIALER: Any electrical, electronic, mechanical or other device capable of being programmed to send a prerecorded voice message, when activated or if self-activated, over a telephone line, radio or other communication system, to the City of Mesa. (5079)

COMMON CAUSE: A common technical difficulty or malfunction which causes an alarm system to generate a series of false alarms, all of which occur within a twenty-four (24) hour period. The series of false alarms shall be counted as one false alarm only if the cause of the series of false alarms is repaired within 72 hours and/or before it generates additional false alarms, documentation of the repair is provided to the Coordinator, and during the thirty-day period following the repair, the alarm system generates no additional false alarms from the documented cause. (4111, 5079)

COORDINATOR: The Chief of Police of the Mesa Police Department or the individual designated by the Chief of Police to enforce the provisions of this Chapter. (4111)

ENHANCED CALL VERIFICATION: A monitoring procedure requiring that a minimum of two calls be made prior to making an alarm dispatch request. The two calls must be made to different phone numbers where a responsible party can typically be reached. (5079)
FALSE ALARM: An alarm notification to the Police Department when the responding officer finds no evidence of a criminal offense or attempted criminal offense. Excluded from this definition are: (4111)

(A) Alarms occurring during electrical storms, hurricanes, tornados, blizzards, and acts of God; or (4111)

(B) The intermittent disruption or disruption of the telephone circuit beyond the control of the alarm company and/or alarm user; or (4111)

(C) Electrical power disruption or failure; (4111)

LICENSING AUTHORITY: The City of Mesa Tax and Licensing Division or the Police Department, as applicable, who has the authority to issue licenses or permits pursuant to this Chapter or the Reciprocal Alarm Licensing Ordinance of another city or town. (4111)

MOBILE PANIC ALARM/BUTTON: Any mobile, mechanical or electronic device that can be worn or carried by a person, designed so that a person may intentionally activate it to summon police assistance. (5079)

MONITORED ALARM: A device designed for the detection of an unauthorized entry into premises and which, when activated, generates an audible or inaudible signal to a monitoring station. (4111, 5079)

PERSON: An individual, firm, partnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit and the plural as well as the singular number. (4111)

PRIMARY ALARM BUSINESS LICENSE: A license issued by the licensing authority of a city or town that has adopted the Reciprocal Alarm Licensing Ordinance to an alarm business that has its headquarters, main office, corporate office, or designated branch of the alarm business located within this State. In the event that an alarm business has its headquarters, main office, corporate office, or designated branch in a city or town that does not require the licensing of alarm businesses, the alarm business may apply for a primary alarm business license from any city or town in this State that has adopted the Reciprocal Licensing Ordinance. (4111)

PROPRIETOR ALARM: Any alarm or alarm system which is not leased or rented from or owned or maintained under contract by an alarm business. (4111)

RECIPIROCAL ALARM BUSINESS LICENSE: A license issued by the licensing authority of a city or town that has adopted the Reciprocal Alarm Licensing Ordinance, and in which that alarm business conducts business. This license shall be issued only to an alarm business that has a valid primary alarm business license from a similar licensing authority within this State that has adopted the Reciprocal Alarm Licensing Ordinance. (4111)

RECIPIROCAL ALARM LICENSING ORDINANCE: An ordinance that is substantially the same in its material terms to the reciprocal alarm licensing provisions codified in this Article and that is intended by the adopting jurisdiction to be recognized as being reciprocal with alarm licensing ordinances adopted by other cities and towns in this State. Minor or non-material variations that are enacted in a particular city or town to accommodate local conditions or needs shall not affect the reciprocal nature of the Ordinance. (4111)

RESPONSIBLE PARTY: A person to be notified when an alarm system is activated, as designated by an alarm user. (5079)

ROBBERY/PANIC ALARM OR BURGLARY ALARM SYSTEM: Any mechanical or electrical device designed so that a person may intentionally activate it to summon Police assistance. (4111)
The duties of an alarm business shall be as follows:

(A) To install an alarm system compatible with the environment, to take reasonable measures to prevent the occurrence of false alarms, and, if it has agreed to provide maintenance or repair service to the system, to service the system within seventy-two (72) hours of a request for service. The alarm business shall not install a single action non-recessed button as a device to activate a panic alarm.

(B) To instruct each of its alarm users and/or the principal occupants of the buildings or premises protected by an alarm system in the proper operation of the system. Such instruction will specifically include all necessary instructions in turning the system on and off and in avoiding false alarms.

(C) To provide each purchaser and user with a City of Mesa alarm user permit application.

(D) Upon leasing or renting an alarm system:

   1. To conspicuously place on the premises a tag identifying the pertinent alarm business, including the telephone number to call when the alarm has been activated.

   2. To maintain current records of the location of these alarm systems, devices, or services and the name and telephone number of the persons and alternate to be notified whenever the alarm is activated.

   3. To inactivate or cause to be inactivated any audible alarm within twenty (20) minutes of the notification of its activation.

(E) Upon monitoring an alarm system:

   1. To establish a central receiving station in order to monitor these alarm systems.

   2. To organize its central receiving station in order to be able to readily and positively identify the type of alarm, i.e., burglary, or robbery, and the location of the alarm if there is more than one system.

   3. The central receiving station shall attempt to contact the alarmed location and/or the alarm user, and two attempts shall be made either to different numbers or locations, by telephonic or other electronic means on every alarm signal - except that no attempts shall be required on a robbery/panic alarm activation - whether or not actual contact with a person is made, before requesting police response to an alarm system signal.

   4. To maintain current records as to each of these alarms or alarm systems, which shall include the alarm permit number, the name of the owner or occupant of the premises, the name and telephone number of the user or primary person and at least one (1) alternate responsible for responding to the premises when the alarm is activated, and information concerning whether the alarm system includes an audible alarm.

   5. To make notification of activated alarm systems in the manner prescribed by the Coordinator, including the alarm permit number, suite or apartment number, and such other reasonable information concerning the alarm system as the Coordinator may request.
6. To arrange, upon request, for either the alarm user, alarm agent, or other responsible representative to go to the premises of an activated alarm system in order to be available to assist the police in determining the reason for activation and securing the premises. In no event shall there be unreasonable delay in arriving at the location of the alarm. (Thirty [30] minutes shall be deemed as reasonable.) If the Police depart the premises prior to the arrival of the user, alarm agent, or other responsible representative, then the user, alarm business, or proprietor may document their required response through telephonic notification of the Police Department upon their arrival at the location of the alarm signal. In the event this requirement is not met and the police are unable to determine the reason for the activation, such activation shall be deemed a false alarm. (4111, 4419, 5079)

(F) To cease responsibility for an alarm system pursuant to this Chapter, the alarm business shall promptly notify the Police Department in the event the alarm business ceases to lease, rent, maintain, service, or monitor any alarm system. Said notice shall be sent within ten (10) days. (4111)

(G) Alarm businesses which sell alarms but do not monitor, maintain, lease, service, or install alarms or alarm systems shall not be subject to Subsections (A), (B), (C), (D), (E), or (F) of this Section but shall be responsible for instructing each person who purchases an alarm or alarm system in the proper use and operation of the alarm. Each instruction will specifically include all necessary instructions in turning off said alarm(s) and in avoiding false alarms. (4111)

(H) An Alarm Company shall provide the Alarm Coordinator with a customer list in a format acceptable to the Alarm Coordinator, upon request, to assist the Alarm Coordinator with creating the law enforcement’s tracking data. (5079)

(I) The Alarm Business shall complete and sign the City of Mesa Alarm Information Checklist with the proprietor or alarm user and submit the form as required below. The form must be signed by an alarm company representative and the alarm user or proprietor before submission to the Police Department. The Alarm Business shall submit the form, in the manner prescribed by the Coordinator, to the Police Department within 10 days of commencement of service for the alarm system. (5079)

6-15-4: ALARM USER DUTIES: (4111)
The duties of an alarm user shall be as follows: (4111)

(A) To instruct all personnel who are authorized to place the system or device into operation in the appropriate method of operation. (4111)

(B) To inform personnel who are authorized to place the alarm system into operation of the provisions of this Chapter, emphasizing the importance of avoiding false alarms. A current copy of the provisions of this Chapter shall be maintained on the premises and be made available to persons who are authorized to place an alarm system into operation. (4111)

6-15-5: PROPRIETOR'S ALARM RESPONSIBILITIES: (4111)
The duties of a proprietor shall be as follows: (4111)

(A) To be familiar with the provisions of this Chapter. (4111)

(B) To maintain the alarm or alarm system in good working order and take reasonable measures to prevent the occurrence of false alarms. (4111)
(C) To notify the Police Department of the name, address, and telephone number of the primary person and at least one (1) alternate to be notified in case the alarm is activated, unless the alarm system is not audible and is monitored at a remote location. (4111)

(D) Upon the purchase of any alarm system device or service which includes an audible alarm: (4111)

1. To notify the Police Department of the name, address, and telephone number of the primary person and at least one (1) alternate who should be notified when the alarm is activated. (4111)

2. To inactivate or cause to be inactivated the alarm system within twenty (20) minutes of notification of its activation. (4111)

6-15-6: ALARM USER PERMIT REQUIREMENTS: (4111, 4419, 5079)

(A) Every alarm user shall apply for and receive an alarm permit from the Mesa Police Department. Application shall be made to the Mesa Police Department Alarm Unit for a permit within 30 days of the installation date of an alarm system. Users of alarm systems having both robbery/panic and burglary alarm capabilities shall obtain one (1) permit per alarm site. The application for an alarm user's permit shall be made on a form approved by the Coordinator and shall be accompanied by the permit fee as prescribed in Appendix A. All permits issued pursuant to this Section shall be for a period of three hundred and sixty-five calendar days from the date of issue and shall be renewable annually, three hundred and sixty-five calendar days from the original date of issue or renewal, as applicable, and subject to a permit renewal fee as prescribed in Appendix A. An alarm user's permit shall be available within the premises protected by the alarm and shall be available for inspection by the Mesa Police Department. Permits are not transferable from one user to another user or from one address to another address. (4111, 4419, 5079)

(B) Alarm systems operated by the County, State, or Federal government and installed on premises such entity occupies or uses for governmental purposes, and State public school (non-charter and charter) buildings and facilities, as well as accredited private schools offering curriculum between kindergarten and twelfth (12th) grade, shall not be subject to payment of fees pursuant to this Section. (4111, 4339)

6-15-7: ALARM BUSINESS LICENSE REQUIREMENTS; ADMINISTRATION; DURATION; DUPLICATE LICENSE: (4111, 5079)

(A) It shall be unlawful for any person to conduct, operate, or engage in or carry on an alarm business, or to engage in the occupation of alarm agent, or represent oneself as an alarm agent, without first having obtained such licenses as are required. A separate license is required for each business name under which an alarm business conducts business or advertises. In the event that the licensing authority has reasonable cause to believe that an alarm business does not have a valid alarm business license as required or that a person is engaged in the alarm business without a valid alarm business license, the licensing authority or its designee, with the assistance of the Police Department, shall issue a warning to the alarm business stating that it is in violation of the Mesa City Code ordinance. The warning shall direct the alarm business to apply for an alarm business license within ten (10) calendar days of the date of the warning. The alarm business receiving such a notice shall not engage in the alarm business until an alarm business license is issued. (4111)

(B) The duty of prescribing forms is vested in the licensing authority. License application shall be submitted to the licensing authority, which shall have the authority to issue, deny, suspend, or revoke a license. (4111)
(C) The license required shall be in addition to any other licenses or permits required by the City, County, or State in order to engage in business, including the City zoning laws, as may be required to be licensed. Failure of any applicant or licensee, as applicable, to meet the requirements of Subsection (C) shall be grounds for denial, suspension, or revocation of a license. (4111)

(D) All licenses issued pursuant to this Chapter shall be for a period of one (1) year from the date of issue and shall be renewable annually, one (1) year from the original date of issue or renewal, and be renewed in accordance with provisions of Section 6-15-12: Renewal of License. (4111)

(E) Upon written request and the payment of a fee as prescribed in Appendix A, the licensing authority shall issue a duplicate license to a licensee whose license has been lost, stolen, or destroyed. (4111, 5079)

(F) It shall be unlawful for an alarm business to use or to contract with for purposes of using the service of an unlicensed alarm business or alarm agent. (4111)

6-15-8: TYPES OF LICENSES; RECIPROCITY: (4111)

(A) The types of licenses issued pursuant to this Chapter are as follows: (4111)

1. Primary Alarm Business License. A primary alarm business license may be applied for by an alarm business that is physically located within this City, in a jurisdiction that has not adopted this Reciprocal Alarm License Ordinance, or in a jurisdiction outside this State. (4111)

2. Reciprocal Alarm Business License. An alarm business, whether physically located within or outside the State of Arizona, that has a valid primary alarm business license issued by a jurisdiction within this State that has adopted the Reciprocal Alarm License Ordinance shall be entitled to the issuance of a reciprocal alarm business license upon compliance with the requirements of this Section. (4111)

3. Alarm Agent License. A person desiring to engage in the business or occupation of alarm agent shall apply for and receive an alarm agent license from the jurisdiction that issues the primary alarm business license for the alarm business for which the alarm agent is or will be working. A person holding a valid alarm agent license, who desires to work for an alarm business holding a reciprocal alarm license, does not have to obtain a separate license, but shall provide a copy of his or her license, upon request, to the jurisdiction in which the reciprocal license has been issued. (4111)

6-15-9: ALARM BUSINESS LICENSE APPLICATIONS; CONTENTS: (4111)

(A) All applications for alarm business licenses(s) shall include the following: (4111)

1. The name, business address, mailing address, and telephone number of the alarm business. If the applicant is a corporation, general or limited partnership, limited liability company, or other legal entity, the name of the applicant shall be set forth exactly as shown in its articles of incorporation, charter, certificate of limited partnership, articles of organization, or other organizational documents, as applicable, together with the state and date of incorporation and the names, residence addresses, and dates of birth of each controlling person. If one (1) or more of the partners, members, or shareholders of the applicant is a corporation or other legal entity, the provisions of this Subsection relating to the information required of a corporation shall apply. (4111)
2. In the event that the applicant is a corporation, general or limited partnership, limited liability company, or other legal entity, the applicant shall designate one (1) of its officers, general partners, or members to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this Article. The applicant shall provide a copy of their corporation, partnership, or limited liability company formation documents. (4111)

3. The name of the applicant and each controlling person, any alias or other name used or by which the applicant or any controlling person has been previously known, his or her current residence and business addresses, telephone numbers, including facsimile numbers and e-mail addresses, if applicable. (4111)

4. The names and addresses of the alarm agents employed by the alarm business. (4111)

5. The residence and business address of the applicant and each controlling person for the five-year period immediately preceding the date of filing of the application and the inclusive dates of each such address. (4111)

6. Proof that the applicant, and each controlling person, is at least eighteen (18) years of age, as indicated on a current driver's license with picture, or other picture identification document issued by a governmental agency. (4111)

7. Height, weight, color of eyes and hair, and date of birth of the applicant and each controlling person. (4111)

8. Two (2) current two-inch by two-inch (2" x 2") photographs of the applicant and each controlling person. (4111)

9. The employment history of the applicant and each controlling person for the five- (5-) year period immediately preceding the date of the filing of the application. (4111)

10. Information as to whether the applicant or any controlling person, or the business on behalf of which the license is being applied for, has ever been refused or denied any similar license or permit, or has had any similar permit or license revoked, canceled, or suspended, and the reason(s) for the revocation, cancellation, or suspension. (4111)

11. Whether or not the applicant or any controlling person has ever been convicted of a crime, regardless of whether the conviction was later set aside or expunged, in any domestic, foreign, or military court. "Crime" means any and all felonies, misdemeanors, and serious driving offenses, including driving under the influence of intoxicating liquor or drugs, reckless driving, driving on a suspended, revoked, canceled, or refused driver's license, or any driving offense for which the possible penalty includes jail time. "Crime" does not include minor or civil traffic offenses. "Convicted" means having plead guilty or nolo contendre to a crime, having been found guilty of a crime, or having been sentenced for a crime, whether incarcerated, placed on probation, fined, or having received a suspended sentence. An applicant or controlling person shall also answer "yes" to this question, even though he or she has not been convicted of a crime, if the applicant or controlling person is presently pending trial or other court proceeding for a crime. (4111)

12. For initial and renewal applications for primary alarm business licenses only, one (1) full set of fingerprints on fingerprint cards, or fingerprint data, as specified in Section 6-15-19: Background Investigation; Fingerprints, for the applicant and each controlling person. Fingerprints or fingerprint data must be submitted on fingerprint cards provided or approved by the licensing jurisdiction, but may be taken by any law enforcement or other government agency. (4111)
13. Copies of the State of Arizona Registrar of Contractor's C-11, C-12, or L-67 license, as applicable, or a copy of the K-67 license for combined residential and commercial, issued to the alarm business applicant, and copy of the State of Arizona transaction privilege tax license, if applicable. (4111)

14. A list of all Arizona counties, cities, and/or towns where the applicant conducts business. (4111)

15. An express agreement by the alarm business that any and all records of the alarm business, whether written or recorded, electronically or otherwise, or in any other form, relating to information required to be supplied to the Police Department in case of an alarm, shall be immediately made available at any time upon request for inspection by agents of the Police Department. (4111)

16. A copy of a valid primary alarm business license if the application is made for an original or renewal reciprocal alarm business license. (4111)

17. Such other information, evidence, statements, or documents as may be deemed by the licensing authority to be reasonably necessary to process and evaluate the application or renewal. (4111)

(B) Applicants for primary or reciprocal alarm business licenses, or applicants for renewal of any such licenses, shall notify the licensing authority, in writing, of any change in the information contained in the license application or renewal application. Notification shall be given to the licensing authority within fifteen (15) calendar days of the occurrence of the change. (4111)

6-15-10: ALARM AGENT LICENSE APPLICATIONS: (4111)

(A) An alarm agent license application and an alarm agent license renewal application shall include the following information about the applicant: (4111)

1. The name of the applicant and any alias or other name, used by the applicant or by which the applicant has previously been known, his or her current residence and business addresses, telephone numbers, including facsimile numbers, and e-mail addresses, if applicable. (4111)

2. The name, business address, and business telephone number of the alarm business where the applicant is or will be employed. (4111)

3. Proof that the applicant is at least eighteen (18) years of age, as indicated on a current driver's license with picture, or other picture identification document issued by a governmental agency. (4111)

4. Height, weight, color of eyes and hair, and date of birth of the applicant. (4111)

5. Two (2) current two-inch by two-inch (2" x 2") photographs of the applicant. (4111)

6. The applicant's business and/or employment history for the five- (5-) year period immediately preceding the date of the filing of the application. (4111)

7. Information as to whether, in this City or elsewhere, the applicant has ever been refused or denied any similar license or permit, or has had any similar permit or license revoked, canceled, or suspended and the reason(s) for the revocation, cancellation, or suspension. (4111)
8. Whether or not the applicant has ever been convicted of a crime, regardless of whether the conviction was later set aside or expunged, in any domestic, foreign, or military court. "Crime" means any and all felonies, misdemeanors, and serious driving offenses, including driving under the influence of intoxicating liquor or drugs, reckless driving, driving on a suspended, revoked, canceled, or refused driver's license, or any driving offense for which the possible penalty includes jail time. "Crime" does not include minor or civil traffic offenses. "Convicted" means having plead guilty or nolo contendere to a crime, having been found guilty of a crime, or having been sentenced for a crime, whether incarcerated, placed on probation, fined, or having received a suspended sentence. An applicant shall also answer "yes" to this question, even though he or she has not been convicted of a crime, if the applicant is presently pending trial or other court proceeding for a crime. (4111)

9. One (1) full set of fingerprints on fingerprint cards, or fingerprint data, as provided in Section 6-15-19: Background, Investigation; Fingerprints. Fingerprints or fingerprint data must be submitted on fingerprint cards provided or approved by the licensing jurisdiction, but may be taken by any law enforcement or authorized government agency. (4111)

10. A list of all Arizona counties, cities, or towns where the applicant conducts business. (4111)

11. Such other information, evidence, statements, or documents as may be deemed by the licensing authority to be reasonably necessary to process and evaluate the application or renewal. (4111)

(B) Applicants for alarm agent licenses, or applicants for renewal of such licenses, shall notify the licensing authority, in writing, of any change in the information contained in the license application or renewal application. Notification shall be given to the licensing authority within fifteen (15) calendar days of the occurrence of the change. (4111)

6-15-11: FEES; DISPLAY OF LICENSES: (4111, 5079)

(A) All license application fees, as prescribed in Appendix A, shall accompany the initial application or renewal application. All licensing fees are non-refundable, non-transferable, and will not be separated. (4111, 5079)

(B) Alarm business licenses shall state whether they are primary alarm business licenses, or reciprocal alarm business licenses. The primary alarm business license or reciprocal alarm business license, as applicable, shall be at all times conspicuously displayed at the alarm business's central office or station. (4111)

(C) Alarm agent licenses shall be carried on the person of an alarm agent at all times while so employed and the alarm agent shall display the license to any police officer or authorized representative of this City upon request. (4111)

6-15-12: RENEWAL OF LICENSE: (4111)

(A) The holder of a primary alarm business license, reciprocal alarm business license or alarm agent license shall renew the license annually by submitting a renewal application containing the information listed in Section 6-15-9: Alarm Business License Applications; Contents, and Section 6-15-10: Alarm Agent License Applications, as applicable, and paying the required renewal fee and the costs for a criminal history investigation. The holder of a reciprocal alarm business license, as a condition of renewal, shall also submit a copy of the approved primary alarm business license upon which reciprocity is based. (4111)

(B) Applications for license renewal shall be filed with the licensing authority not later than ninety (90) days prior to the expiration of the license currently in effect. Applications for license renewal shall not be accepted after ninety (90) days prior to the expiration date of the license. In the event that a license expires without the licensee having submitted a timely application for renewal, the holder of the expired license must file a new application for initial license and shall comply with all of the requirements provided herein for obtaining an initial license. (4111)
6-15-13: ISSUANCE; GROUNDS FOR DENIAL: (4111)

(A) The licensing authority will issue a license provided for by this Article to an applicant, or renew a license, if applicable, when the following conditions of the applicable licensing provisions have been fully satisfied: (4111)

1. All application requirements have been met, including any criminal history background checks and fingerprint requirements. (4111)

2. All fees have been paid in full. (4111)

3. No grounds for denial listed in this Section exist. (4111)

(B) The licensing authority shall deny a license or deny the renewal of a license if, at the time of the filing of an original application or a request for renewal, the licensing authority has reasonable grounds to believe that an applicant, licensee, or controlling person: (4111)

1. Has been previously convicted, in any jurisdiction, of a felony; or a misdemeanor involving fraud, theft, dishonesty, moral turpitude, physical violence, assault, indecent exposure, illegal use or possession of a deadly weapon, or a violation of Arizona Revised Statutes Title 13, Chapter 34 (drug offenses, including but not limited to those relating to possession, sale, or other conduct involving marijuana, narcotic drugs, precursor chemicals, and prescription drugs), or offenses committed in another jurisdiction, which if committed in Arizona would be in violation of Arizona Revised Statutes Title 13, Chapter 34, within the five- (5-) year period immediately preceding the filing of an original application or a request for renewal, whether or not the conviction(s) have been expunged from court records pursuant to law. (4111)

2. Has prepared or filed an application or request for renewal which contains false or misleading information, submitted false or misleading information in support of such application or request, or failed or refused to make full disclosure of all information required by this Section. (4111)

3. Has had a license relating to alarm businesses or agents, as applicable, or a license of similar character, issued by the city of another authority, suspended, canceled, or revoked within the five- (5-) year period immediately preceding the date of the filing of the application. (4111)

4. Is not a United States citizen or lawful permanent resident alien or an alien who is authorized to work by the United States Department of Justice Immigration and Naturalization Service. (4111)

5. Has violated a provision of this Article, or has committed any act, which if committed by a licensee, would be grounds for the denial or revocation of a license pursuant to this Section. (4111)

(C) Notice shall be given of any denial of a license application, or a request for renewal, in writing, and either by hand-delivery or by mail, to the address of record. The notice shall include the reasons for denial of the license or license renewal. (4111)
6-15-14: LICENSE SUSPENSION OR REVOCATION; GROUNDS: (4111)

(A) The licensing authority may suspend or revoke any primary or reciprocal alarm business or alarm agent license, when the licensing authority has reasonable grounds to believe any of the following: (4111)

1. The licensee, or any controlling person, has violated any of the grounds for denial of a license, as described in Section 6-15-13(B): Issuance; Grounds for Denial. (4111)

2. The licensee or any controlling person has failed to comply with the requirements of this Section, including failure to provide changes in license information, as required. (4111)

3. The licensee has failed to comply with the requirements of Section 6-15-3: Alarm Business Duties, as specified for alarm business or alarm agent responsibilities and false alarms. (4111)

4. The licensee has failed to maintain in good standing all licenses or permits that are required pursuant to this Section to hold a primary or reciprocal alarm business license, or alarm agent license, as applicable. (4111)

6-15-15: LICENSE SUSPENSION OR REVOCATION PROCEDURE: (4111)

(A) The licensing authority shall give notice of its intent to suspend or revoke a license. Notice shall be given in writing, either by hand-delivery or by mail, to the address of record. The notice shall include the reasons for the suspension or revocation. (4111)

(B) The licensing authority shall transmit, by facsimile, notice of the suspension or revocation, when such action is final, to all counties, cities, and towns listed on the licensee's application. The suspension or revocation of a primary alarm business license shall result in the same action being taken as to all reciprocal alarm business licenses, which are derived from that primary alarm business license. (4111)

6-15-16: LICENSE REVIEW AND APPEALS: (4111)

(A) Any person wanting to appeal a decision with respect to either the denial of an application for a license, or renewal, or the suspension or revocation of a license, which is subject to this Section, is entitled to the review and appeal procedures in accordance with this Code. (4111)

6-15-17: APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE: (4111)

(A) No person, association, firm, corporation, or other legal entity may apply for any license required under this Chapter within one (1) year from the denial of any such license to such applicant, or from the non-renewal or revocation of any such license, unless the cause of such denial, revocation, or non-renewal has been, to the satisfaction of the licensing authority, removed within such time. This Section shall be inapplicable to denials of applications or renewal when the reason for denial was for an administrative, technical, or otherwise non-material reason. (4111)
6-15-18: TERMINATION AND/OR CANCELLATION OF LICENSE; NOTICE: (4111)

(A) An alarm agent who terminates employment with an alarm business shall immediately surrender his or her alarm agent license to the licensing authority. (4111)

(B) An alarm agent who terminates his employment with an alarm business to change employment to another alarm business licensee shall notify the licensing authority of the transfer, in writing, within fifteen (15) calendar days of the change in employment. (4111)

(C) An alarm business may cancel an alarm business license by filing a notice of cancellation of the license with the licensing authority. The notice of cancellation shall include the effective date of the cancellation. In the event of the cancellation of a primary alarm business license, notice shall be given to all jurisdictions in which reciprocal alarm business licenses have been issued and are active. Reciprocal alarm business licenses shall be canceled as of the effective date of the cancellation of the primary alarm business license, unless the licensee requests the license be canceled sooner. (4111)

6-15-19: BACKGROUND INVESTIGATION; FINGERPRINTS: (4111)

(A) As a condition of the issuance of licenses pursuant to this Chapter, the licensing authority shall require each applicant and controlling person to furnish one (1) full set of fingerprints, or fingerprint data, to enable the licensing authority to conduct a criminal background investigation to determine the suitability of the applicant or controlling person. (4111)

(B) The licensing authority shall submit or electronically transmit all completed fingerprint cards to the Department of Public Safety to conduct a statewide criminal history check. The applicant or controlling person shall bear the cost of conducting the criminal background investigation. The cost shall not exceed the actual cost of obtaining the criminal history information. Criminal history records checks shall be conducted pursuant to Section 41-1750, Arizona Revised Statutes, and Public Law 92-544, as amended. The Department of Public Safety is authorized to exchange the submitted fingerprint card information with the Federal Bureau of Investigation for a national criminal history records check. (4111)

6-15-20: FALSE ALARMS; PENALTY ASSESSMENTS AND PERMIT REVOCATION: (4111, 4419, 5079)

(A) Any robbery/panic alarm system, whether permitted or not, which has more than one (1) false alarm within a three hundred and sixty-five-calendar-day-period shall be subject to penalty assessments as prescribed in Appendix A. (4111, 5079)

1. If a second false alarm within a three hundred and sixty-five-calendar-day-period for any robbery/panic alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false robbery/panic alarms. (4111, 5079)

2. If a third and/or any subsequent false alarm within the same three hundred and sixty-five-calendar-day-period for any robbery/panic alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment per occurrence, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false robbery/panic alarms. (4111, 5079)
Any burglary alarm system that has one recorded false alarm within a three hundred and sixty-five-calendar-day-period shall be subject to penalty assessments as follows: (4111, 4419, 5079)

1. On the first recorded false alarm within a three hundred and sixty-five-calendar-day-period for any burglary alarm system, the Alarm Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of the receipt of the false alarm notice. This assessment shall be waived if the alarm user successfully completed the City of Mesa Alarm Awareness class prior to the first recorded false alarm, or if the alarm user successfully completes the class within sixty (60) days after the first recorded false alarm. (4111, 4419, 5079)

2. If a second false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4111, 4419, 5079)

3. If a third false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4111, 4419, 5079)

4. If a fourth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4111, 4419, 5079)

5. If a fifth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. (4419, 5079)

6. If a sixth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. (4419, 5079)

7. If a seventh false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. Any subsequent false alarms within the same three hundred and sixty-five-calendar-day-period shall be assessed, as prescribed in Appendix A for each occurrence. (4419, 5079)

Multiple false alarms generated in a twenty-four- (24-) hour period by a common cause shall be deemed to be one (1) false alarm for assessment purposes. (4111)
Any alarm system which has ten (10) or more false alarms within a three hundred and sixty-five-calendar-day-period shall also be subject to permit revocation. (4111, 5079)

1. If ten (10) or more false alarms within a three hundred and sixty-five-calendar-day-period for any alarm system are recorded, the Coordinator shall notify the alarm user by certified mail of such fact and shall direct that the alarm user, within ten (10) days of receipt of the notice of excessive false alarms, submit a report to the Coordinator describing the actions taken or to be taken to discover and eliminate the cause of the false alarms. A copy of the notification shall be sent by regular mail to the alarm business providing service or inspection to the user. (4111, 5079)

If the alarm user submits a report as directed, the Coordinator shall determine if the actions taken or to be taken will prevent the reoccurrence of false alarms. The Coordinator shall notify the alarm user in writing that the permit will not be revoked at that time and that if subsequent false alarms occur within the three hundred and sixty-five-calendar-day-period, the permit may be summarily revoked. (4111, 5079)

If no report is submitted as required or if the Coordinator determines that the actions taken or to be taken by the alarm user will not prevent the reoccurrence of false alarms, the Coordinator shall give notice by certified mail to the alarm user that the permit will be revoked without further notice on the tenth (10th) day after the date of the notice. (4111)

If the alarm user fails to pay the penalty assessment within the time provided after receipt of written notification from the Coordinator as provided in this Section, the Coordinator may summarily revoke the alarm user's permit through written notification mailed to the alarm user by certified mail, which notification shall be effective on the third (3rd) day following the mailing of said notice of revocation. The Coordinator shall have the authority to summarily revoke an alarm user's permit for failure to pay a penalty assessment. (4111)

An alarm user whose permit has been revoked shall be immediately furnished written notification by certified mail of such revocation and shall within three (3) days after the furnishing of such written notification discontinue the use of the alarm system with respect to which a permit has been revoked. It shall be unlawful for any alarm user to fail to disconnect such system within three (3) days after written notification has been furnished advising the alarm user of the revocation of the alarm user permit, and such failure shall subject the alarm user to the penalties hereinafter provided. (4111)

For purposes of any written notification to be provided under the terms of this Chapter, such notice shall be effective if the same is mailed by certified mail addressed to the alarm user at the address furnished to the Coordinator in connection with a permit application or at such other address as the alarm user may furnish in writing to the Mesa Police Department, and such notice shall be effective if mailed to the alarm business at the address provided to the Coordinator in connection with the filing of alarm user instructions or, alternatively, to the last known address of said alarm business. Any notice required hereunder shall be effective on the third (3rd) day after the notice has been deposited in the United States Certified Mails with sufficient postage attached. Failure to mail notice to an alarm business shall not impair or invalidate any notice furnished to the alarm user. (4111)
(J) An alarm user whose alarm permit has been revoked may have it reinstated by paying all overdue assessments, submitting a corrective report detailing the corrective action taken with proof of inspection for malfunctions attached, and paying a reinstatement fee as prescribed in Appendix A. (4111, 5079)

(K) Any alarm company that fails to comply with alarm business duties as outlined in this Chapter is subject to penalty assessments as prescribed in Appendix A. (5079)

(L) Any alarm user that is found to be operating an alarm system without a valid alarm permit is subject to penalty assessments as prescribed in Appendix A. (5079)

6-15-21: GENERAL REGULATIONS: (4111, 5079)

(A) Each alarm system shall be inspected and serviced by the permittee at least once in each twelve (12) month period. Records shall be maintained by the permittees for each system showing dates of inspection and the name of the person making such inspection. Records shall be kept for a minimum of two (2) years and be open to the Police Chief or his designee on his request upon twenty-four (24) hours' notice. (4111, 5079)

(B) It shall be unlawful for any person to intentionally activate any robbery panic or robbery alarm for any reason other than to warn of an actual robbery or to intentionally activate any burglar alarm for any reason other than to warn of an unauthorized entry into an alarm-protected premises. This Subsection shall not apply to the testing of alarm systems when the testing has been done in accordance with the prescribed guidelines set by the Police Department and when the Police Department has been given advance notice of such testing. (4111)

(C) No person or business who (which) purchases, leases, rents, or uses an audible alarm system, device, or service which is not connected to a central receiving station (of an alarm business) shall allow said alarm to sound in excess of twenty (20) minutes. (4111)

(D) No person shall use or cause to be used any Automatic dialing device or device attachment that automatically selects a public primary telephone trunk line of the City of Mesa and then reproduces any prerecorded message or signal. (5079)

1. Within sixty (60) days after the effective date of this Chapter, all existing automatic dialing devices programmed to select a public primary telephone trunk line of the City of Mesa and then reproduce any prerecorded message or signal shall be disconnected. (5079)

6-15-22: UNLAWFUL ACTS AND PENALTIES: (4111, 5079)

(A) In addition to the unlawful acts hereinabove specified, it shall be unlawful for any alarm user to install an alarm system for use within the City without obtaining a permit as required by this Chapter. It shall be unlawful for any alarm user to fail to disconnect an alarm system after the revocation of an alarm user's permit in accordance with the terms and provisions of this Chapter. It shall be unlawful to operate an alarm system without a permit. (4111, 5079)

(B) Penalty. Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (4111)
6-15-23:  APPEALS PROCEDURES: (4111, 5079)

(A) Any party aggrieved by a decision of the Coordinator made pursuant to Section 6-15-20 may, within ten (10) days of receipt of notice of the decision, appeal to a Hearing Officer so designated by the City Manager. A copy of the appeal request shall be sent to the Coordinator. (4111)

(B) The request for an appeal shall set forth the specific objections to the decision of the Coordinator, which form the basis of the appeal. (4111)

(C) The Hearing Officer shall set a time and place for the hearing as soon as practicable. (4111)

(D) The decision of the Hearing Officer shall be based upon the evidence presented and it shall:

1. Affirm the decision of the Coordinator, in which case any assessment imposed shall be sustained; or (4111, 5079)

2. Reverse the decision of the Coordinator, in whole or part, in which case no assessment shall be imposed. (4111)

6-15-24:  LIABILITY OF CITY LIMITED: (4111)

The Police Department shall take every reasonable precaution to assure that alarm notifications received are given appropriate attention and are acted upon with dispatch. Nevertheless, the City shall not be liable for any failure or neglect to respond appropriately upon receipt of an alarm notification or the failure or neglect of any person with a license issued pursuant to the Chapter or with a franchise in connection with the installation and operation of equipment, the transmission of alarm signals, or the relaying of such signals and messages. In the event the City finds it necessary to order the revocation or disconnection of an alarm device, the City shall incur no liability by such action. (4111)
### Appendix A: Fines, Fees and Assessments (5079)

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<tr>
<td>Panic/Holdup Function</td>
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**False Alarm Assessments – Burglary**

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**False Alarm Assessments – Panic and/or Hold-Up**

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**Alarm Company Licensing – Initial License Fees**

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<thead>
<tr>
<th>Category</th>
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<tr>
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<tr>
<td>Reciprocal Alarm Business</td>
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<td>Alarm Agent</td>
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**Alarm Company Licensing – Renewal License Fees**

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<td>Alarm Agent</td>
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**Criminal History Investigation – Cost determined by DPS**

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<tr>
<th>Category</th>
<th>Amount</th>
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<tr>
<td>Duplicate Licensee Fee</td>
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**Alarm Company Assessments**

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<th>Event</th>
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<tr>
<td>Failure to ECV (civil citation)</td>
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<tr>
<td>Failure to provide permit number when asking for police response</td>
<td>$15</td>
</tr>
<tr>
<td>Request Dispatch to a location in error</td>
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</tr>
<tr>
<td>Failure to Provide Cancel/New Subscriber Lists as required</td>
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</tr>
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(5079)
CHAPTER 16
SEXUALLY ORIENTED BUSINESSES

SECTION:

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6-16-2: CLASSIFICATION
6-16-3: LICENSE REQUIRED
6-16-4: ISSUANCE OF LICENSE
6-16-5: FEES
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6-16-1: DEFINITIONS:

ADULT ARCADE (ALSO KNOWN AS "PEEP SHOW"): Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed exhibit "specified sexual activities" or "specified anatomical areas." (2618, 3740)

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE: A commercial establishment which offers sexually explicit material for sale or rental, for any form of consideration, and meets any one (1) or more of the following criteria: (2618, 3740)

(A) That has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618, 3740)

(B) That has a substantial or significant portion of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618, 3740)
(C) That derives thirty percent (30%) or more of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)

(D) That derives a substantial or significant portion of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)

(E) That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equal to at least two hundred (200) square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two (2) dimensions and all areas that are reserved for foot traffic shall be included; or (3740)

(F) That displays a substantial or significant amount of sexually explicit material in its display area. (3740)

**ADULT CABARET:** A nightclub, bar, restaurant, or other commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays:

(A) Persons who appear in a state of nudity or semi-nude; or (2618)

(B) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (2618)

(C) Films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters which depict or describe "specified sexual activities" or "specified anatomical areas." (2618,3740)

**ADULT MOTEL:** A hotel, motel, or similar commercial establishment that:

(A) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that depict or describe "specified sexual activities" or "specified anatomical areas" and has a sign visible from the public right-of-way which advertises the availability of adult, nude, sex, or "XXX" movies, videos, films, or other similar reproductions; or (2618,3740)

(B) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or (2618)

(C) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours. (2618)

**ADULT MOTION PICTURE THEATER:** A commercial establishment that features, exhibits, or displays during any part of two (2) or more days within any continuous thirty- (30-) day period for any form of consideration films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that exhibit "specified sexual activities" or "specified anatomical areas." (2618,3740)
ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays persons who appear in a state of nudity or semi-nude or live performances that expose or exhibit "specified anatomical areas" or "specified sexual activities." (2618,3470)

BOARD OF ADJUSTMENT: The board established pursuant to ARS §9-462.06 and Mesa City Code Section 11-18-5. (2618)

CHIEF OF POLICE: The Chief of Police of the City of Mesa or the designated agent of the Chief of Police. (2618)

EMPLOY, EMPLOYEE, AND EMPLOYMENT: Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. (2618)

ESTABLISHMENT: Means and includes any of the following: (2618)

(A) The opening or commencement of any sexually oriented business as a new business; or (2618)

(B) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or (2618)

(C) The addition of any sexually oriented business to any other existing sexually oriented business; or (2618)

(D) The relocation of any sexually oriented business. (2618)

LICENSEE: In the case of a business, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license, and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business. (2618)

NUDE MODEL STUDIO: Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly exhibited, before other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of Arizona or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or a structure: (2618,3740)
(A) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and (2618)

(B) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and (2618)

(C) Where no more than one (1) nude or semi-nude model is on the premises at any one time. (2618)

**NUDITY OR A STATE OF NUDITY:**

(A) The appearance of a human anus, male genitals, female genitals, or female breast; or (2618)

(B) A state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or areola of the female breast. (2618)

**OPERATES OR CAUSES TO BE OPERATED:** To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business. (2618)

**PERSON:** An individual, proprietorship, partnership, corporation, association, or other legal entity. (2618)

**RESIDENTIAL DISTRICT:** The Single Residence districts, the Multiple Residence districts, and the Town Center Residence districts described and defined in the Mesa Zoning Ordinance. (2618)

**RESIDENTIAL USE:** All uses allowed in residential districts under the Mesa Zoning Ordinance. (2618)

**SEMI-NUDE:** A state of dress which shows the female breast below a horizontal line across the top of the areola at its highest point, or which shows the male or female buttocks. This definition shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed in whole or in part. (2618,3740)

**SEXUAL ENCOUNTER CENTER:** A business or commercial enterprise that offers for any form of consideration or features, displays, exhibits, or permits: (3740)

(A) Physical contact in the form of wrestling or tumbling between two (2) or more persons when one (1) or more of the persons is in a state of nudity or semi-nude; or (2618,3740)

(B) Two (2) or more persons engaging in "specified sexual activities" or exposing "specified anatomical areas." (3740)
SEXUALLY EXPLICIT MATERIAL: Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, videocassettes, video reproductions, slides, or other products offered in photographic, electronic, magnetic, digital, or other imaging medium, or other visual representations that are distinguished or characterized by an emphasis on matters that depict, describe, or exhibit "specified sexual activities" or "specified anatomical areas," or instruments, devices, or paraphernalia, excluding condoms and other birth control and disease prevention products, that are designed for use in connection with "specified sexual activities." (3740)

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter center, or any combination of the foregoing. (2618,3740,5367)

SPECIFIED ANATOMICAL AREAS MEANS: (a) Human genitals in a state of sexual arousal; (b) the appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or (c) a state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or the areola of the female breast. (2618,3740)

SPECIFIED SEXUAL ACTIVITIES: Means and includes any of the following: (2618)

(A) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, that occurs directly and not through clothing; or (2618,3740)

(B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or (2618)

(C) Masturbation, actual or simulated; or (2618)

(D) Excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above. (2618)

SUBSTANTIAL ENLARGEMENT: Of a sexually oriented business, the increase in floor area occupied by the business by more than twenty-five percent (25%) as the floor area exists on August 1, 1991. (2618)

TAX AND LICENSING ADMINISTRATOR: The City of Mesa Tax and Licensing Administrator or the designated agent of the Tax and Licensing Administrator. (2618)

TRANSFER OF OWNERSHIP OR CONTROL: Of a sexually oriented business, means and includes any of the following: (2618)

(A) The sale, lease, or sublease of the business; (2618)
(B) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or (2618)

(C) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2618)

6-16-2: CLASSIFICATION:
Sexually oriented businesses are classified as follows: (2618)

(A) Adult arcades; (2618)

(B) Adult bookstores or adult video stores; (2618)

(C) Adult cabarets; (2618)

(D) Adult motels; (2618)

(E) Adult motion picture theaters; (2618)

(F) Adult theaters; (2618)

(G) Nude model studios; (2618, 5367)

(H) Sexual encounter centers; (2618, 3740, 5367)

(I) Adult novelty stores; and (3740, 5367)

(J) Any combination of classifications set forth above. (2618, 3740, 5367)

6-16-3: LICENSE REQUIRED:

(A) It is unlawful: (2618)

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Tax and Licensing Administrator pursuant to this Chapter. (2618)

2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Tax and Licensing Administrator pursuant to this Chapter. (2618)

3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Chapter. (2618)
(B) An application for a license must be made on a form prescribed by the Chief of Police. An application for a sexually oriented business license must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (+/-6”). (2618)

(C) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Chief of Police and the Tax and Licensing Administrator to determine whether the applicant meets the qualifications established in this Chapter. (2618)

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 6-16-4 and each applicant shall be considered a licensee if a license is granted. (2618)

6-16-4: ISSUANCE OF LICENSE:

(A) Within thirty (30) days after receipt of a completed application, the Tax and Licensing Administrator will approve or deny the issuance of a license to an applicant for a sexually oriented business license and to an applicant for a sexually oriented business employee license. The Tax and Licensing Administrator will approve the issuance of a license to an applicant unless the Chief of Police finds one (1) or more of the following to be true: (2618)

1. An applicant is under eighteen (18) years of age. (2618)

2. An applicant has been employed in a sexually oriented business in a managerial capacity in Mesa or any other jurisdiction within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)

3. The application and investigation fee or the license fee required by this Chapter have not been paid. (2618)

4. An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business. (2618)

5. An applicant has failed to provide information required in order to determine the qualifications of the applicant under this Chapter for issuance of the license or has falsely answered a question or request for information on the application form. (2618)

6. An applicant or the proposed establishment is in violation of or is not in compliance with this Chapter or the Mesa City Code. (2618)
7. An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. (2618)

8. An applicant or an applicant's spouse has been convicted of a crime: (2618)

   (a) Involving: (2618)

      (i) Any of the following offenses as described in Chapter 14 of the Arizona Criminal Code: (2618)

         (aa) Indecent exposure; (2618)

         (bb) Public sexual indecency; (2618)

         (cc) Public sexual indecency to a minor; (2618)

         (dd) Sexual abuse; (2618)

         (ee) Sexual conduct with a minor; (2618)

         (ff) Sexual assault; (2618)

         (gg) Sexual assault of a spouse; (2618)

         (hh) Molestation of a child; (2618)

      (ii) Any of the prostitution or pandering offenses described in Chapter 32 of the Arizona Criminal Code; (2618)

      (iii) Any of the following offenses as described in Chapter 35 of the Arizona Criminal Code: (2618)

         (aa) Production, publication, sale, possession, and presentation of obscene items; (2618)

         (bb) Coercing acceptance of obscene articles or publications; (2618)

         (cc) Furnishing obscene or harmful items to minors; (2618)

         (dd) Public display of explicit sexual materials; (2618)

         (ee) Creation, transportation, or distribution of obscene films, photographs, or motion pictures of minors; (2618)

         (ff) Obscene or indecent telephone communications to minors for commercial purposes; (2618)
(iv) Any of the following offenses described in Chapter 35.1 of the Arizona Criminal Code: (2618)

(aa) Commercial sexual exploitation of a minor; (2618)

(bb) Sexual exploitation of a minor; (2618)

(cc) Admitting minors to public displays of sexual conduct; (2618)

(v) Any of the following offenses described in Chapter 36 of the Arizona Criminal Code: (2618)

(aa) Incest; (2618)

(bb) Contributing to delinquency and dependency; (2618)

(cc) Permitting life, health, or morals of a minor to be imperiled by neglect, abuse, or immoral associations; (2618)

(vi) Any offense described in Chapter 1 of Title 6 of the Mesa City Code pertaining to obscene live performances; (2618)

(vii) Any similar offenses to those described above under the criminal or penal code of Arizona, other states, Mesa, other cities, or other countries; (2618)

(viii) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; (2618)

(b) For which: (2618)

(i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; (2618)

(ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or (2618)

(iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four- (24-) month period. (2618)
(B) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse. (2618)

(C) An applicant who has been convicted or whose spouse has been convicted of an offense listed above may qualify for a sexually oriented business license only when the time period required by this Section has elapsed. (2618)

(D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the classification or classifications of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. All licenses, both those pertaining to the business as well as those applicable to employees, shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. (2618)

6-16-5: FEES:

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar ($500.00) nonrefundable application and investigation fee. (2618)

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Tax and Licensing Administrator an annual nonrefundable license fee of five hundred dollars ($500.00) within thirty (30) days of license issuance or renewal. (2618)

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by a fifty dollar ($50.00) nonrefundable application and investigation fee. (2618)

(D) All license applications and fees shall be submitted to the Tax and Licensing Administrator. (2618)

6-16-6: INSPECTION:

(A) A business license applicant or licensee shall permit representatives of the Police Department or any other city, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, or welfare or structural safety to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business. (2618)

(B) A person who operates a sexually oriented business or his agent or employee commits an offense if such person refuses to permit a lawful inspection of the premises by the persons designated above. (2618)

(C) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (2618)
6-16-7: EXPIRATION OF LICENSE:
All licenses shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-16-3. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected. (2618)

6-16-8: SUSPENSION:
The Tax and Licensing Administrator is authorized to, and will, suspend a sexually oriented business license and a sexually oriented business employee license for a period not to exceed thirty (30) days if the Chief of Police determines that a business licensee or an employee has: (2618)

(A) Violated or is not in compliance with this Chapter or with the Uniform Codes adopted by the City in Title 4 of the Mesa City Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or (2618)

(B) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises; or (2618)

(C) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter; or (2618)

(D) Permitted illegal gambling by any person on the sexually oriented business premises; or (2618)

(E) Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)

6-16-9: REVOCATION:

(A) The Tax and Licensing Administrator is authorized to, and will, revoke a license if a cause of suspension in Section 6-16-8 occurs and the license has been suspended within the preceding twelve (12) months. (2618)

(B) The Tax and Licensing Administrator is authorized to, and will, revoke a sexually oriented business license and a sexually oriented business employee license if the Chief of Police determines that a business licensee or an employee: (2618)

1. Gave false or misleading information in the material submitted to the City during the application process; or (2618)

2. Has allowed the possession, use, or sale of controlled substances on the premises; or (2618)

3. Has allowed prostitution on the premises; or (2618)

4. Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or (2618)
5. Has been convicted of an offense listed in Section 6-16-4(A)8(a) for which the time period required in Section 6-16-4(A)8(b) has not elapsed; or (2618)

6. On two (2) or more occasions within a twelve- (12-) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 6-16-4 for which a conviction has been obtained and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or (2618)

7. Has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or oral sexual contact to occur in or on the licensed premises. The term "oral sexual contact" shall have the same meaning as defined in Section 13-1401, Arizona Criminal Code; or (2618)

8. Is delinquent in payment to the City of hotel occupancy taxes, ad valorem taxes, sales taxes, or the annual license fee or any other fee or tax related to the sexually oriented business or other business of the licensee. (2618)

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license. (2618)

(D) Subsection (B)7 (above) does not apply to adult motels as a grounds for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view. (2618)

(E) When the Tax and Licensing Administrator revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business or employee license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Tax and Licensing Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (B)5 (above), an applicant may not be granted another license until the appropriate number of years required under Section 6-16-4(A)8(b) has elapsed. (2618)

6-16-10: APPEAL:
If the City denies the issuance of a license or suspends or revokes a license, the City will send to the applicant or licensee by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the person whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the State Superior Court. An appeal to the Arizona Superior Court must be filed within thirty (30) days after the receipt of notice of the decision of the City. Licensee's filing of an appeal or other legal action, in good legal order, challenging the City's decision to suspend or revoke a license under this Chapter shall have the effect of maintaining the status quo until a judge hears and decides the merits of the matter. Applicant's filing of an appeal or other legal action, in good legal order, challenging the City's decision not to issue a license under this Chapter shall result in the City issuing a temporary license to applicant to operate until a judge hears and decides the merits of the matter. The licensor shall bear the burden of proof in court. (2618,3740)
6-16-11:  **TRANSFER OF LICENSE:**

A licensee shall not transfer a license to another nor shall a business licensee operate a different classification of a sexually oriented business than that designated in the application or operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. No sexually oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business. (2618)

6-16-12:  **LOCATION OF A SEXUALLY ORIENTED BUSINESS:**

(A)  A person commits an offense if that person operates or causes to be operated a sexually oriented business in any zoning district other than the C-3 district (General Commercial), the M-1 district (Limited Industrial), the M-2 district (General Industrial), or the PEP district (Planned Employment Park) as defined and described in the Mesa Zoning Ordinance. (2618)

(B)  A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:

1. A church; or (2618)
2. A public or private elementary or secondary school; or (2618)
3. A public or private day care center, preschool, nursery, kindergarten, or similar use; or (2618)
4. A boundary of a residential district as defined in this Chapter; or (2618)
5. A public park; or (2618)
6. The property line of a lot devoted to a residential use as defined in this Chapter; or (2618)
7. An establishment having an Arizona Spirituous Liquor License with any of the following classifications: Bar License (Series #06), Beer and Wine Bar License (Series #07), or the equivalent of such licenses. (2618)

(C)  A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business. (2618)

(D)  A person commits an offense if the person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business. (2618)
(E) For the purposes of Subsection (B) (above), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, a public or private elementary or secondary school, a public or private day care center, preschool, nursery, kindergarten or similar use, or establishment having the designated Spirituous Liquor License or to the nearest boundary of an affected public park, residential district, or residential lot. The presence of city, county, or other political boundaries shall be irrelevant for purposes of calculating and applying the distance requirements of this Chapter. (2618)

(F) For purposes of Subsection (C) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located. (2618)

(G) Any sexually oriented business that fails to comply with Subsections (A), (B), or (C) of this Section but was lawfully operating before this Chapter took effect shall not be deemed to be in violation of this Chapter when this Chapter takes effect. However, such business will only be permitted to continue in noncompliance with Subsections (A), (B), or (C) (above) for a period not to exceed three (3) years from the effective date of this Chapter, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. In addition, during those three (3) years, such business shall not be increased, enlarged, extended, or altered, except that the business may be changed so as to fully comply with this Chapter. (2618)

(H) A sexually oriented business lawfully operating is not rendered in violation of this Chapter by the location, subsequent to the granting or renewal of the sexually oriented business license, of a church, public or private elementary or secondary school, public park, residential district, or residential lot within one thousand feet (1,000') of the sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked. (2618)

6-16-13: EXEMPTION FROM LOCATION RESTRICTIONS:

(A) If the City denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 6-16-12 of this Chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Clerk a written request for an exemption from the locational restrictions of Section 6-16-12. (2618)

(B) If the written request is filed with the City Clerk within the ten- (10-) day limit, the Board of Adjustment shall hear and consider the request. The Board of Adjustment shall set a date for the hearing within sixty (60) days from the date the written request is received. (2618)

(C) The Board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply. (2618)
(D) The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Section 6-16-12 if it makes the following findings: (2618)

1. That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare; and (2618)

2. That the granting of the exemption will not violate the spirit and intent of this Chapter of the City Code; and (2618)

3. That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of blight; and (2618)

4. That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of neighborhood renewal or restoration; and (2618)

5. That all other applicable provisions of this Chapter and the Mesa City Code will be observed. (2618)

(E) If the Board grants the exemption, the exemption is valid for one (1) year from the date of the Board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 6-16-12 until the applicant applies for and receives another exemption. (2618)

(F) If the Board denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action. (2618)

(G) The granting of an exemption does not exempt the applicant from any provisions of this Chapter other than the locational restrictions of Section 6-16-12. (2618)

6-16-14: HOURS OF OPERATION:
No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one (1:00) A.M. and six (6:00) A.M. on weekdays and Saturdays and one (1:00) A.M. and ten (10:00) A.M. on Sundays. (2618)

6-16-15: (RESERVED) (5367)
6-16-16: ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:

(A) A nude model studio shall not employ any person under the age of eighteen (18) years. (2618)

(B) A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Subsection if the person under eighteen (18) years was in a rest room not open to public view or persons of the opposite sex. (2618)

(C) A person commits an offense if the person appears semi-nude or in a state of nudity or knowingly allows another to appear semi-nude or in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way. (2618)

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (2618)

6-16-17: ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS:

(A) A person commits an offense if the person knowingly allows a person under the age of eighteen (18) years to appear semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)

(B) A person under the age of eighteen (18) years commits an offense if the person knowingly appears semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)

(C) It is a defense to prosecution under Subsections (A) and (B) of this Section if the person under eighteen (18) years was in a rest room not open to public view or to persons of the opposite sex. (2618)

6-16-18: ADDITIONAL REGULATIONS FOR ADULT MOTELS:

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Chapter. (2618)

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, such person rents or subrents a sleeping room to another and within ten (10) hours from the time the room is rented, such person rents or subrents the same sleeping room again. (2618)

(C) For purposes of Subsection (B) of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (2618)
6-16-19: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements: (2618)

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (+/-6”). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. (2618)

2. The application shall be sworn to be true and correct by the applicant(s). (2618)

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or his designee. (2618)

4. It is the duty of the owners and operator of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. In the case of an adult arcade (or "peep show"), it is the duty of the owners and operator of the premises and the licensed employees who are present to ensure that no more than one (1) person occupies a viewing room or "peep" booth at any time and that all other entrances to peep booths or other viewing areas (and to the aisles, walkways, and hallways leading to peep booths or other viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain, or other device. (2618)

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station. (2618)

6. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises, to ensure that the line of sight and view area specified in Subsection 5 (above) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this Section. (2618)
7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level. (2618)

8. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present on the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (2618)

9. No operator, owner, or employee shall allow openings of any kind to exist between viewing rooms or booths. (2618)

10. No person shall make or attempt to make an opening of any kind between viewing booths or rooms. (2618)

11. The operator or owner shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist. (2618)

12. The owner or operator shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting. (2618)

13. The owner or operator shall cause all wall surfaces and seating surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight inches (48") of the floor. (2618)

(B) A person having a duty under Subsections 1 through 13 of Subsection (A) (above) commits an offense if the person fails to fulfill that duty. (2618)

6-16-20: CRIMINAL PENALTY:
Any person who violates any provision of this Chapter or of the Mesa City Code as amended by this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment. (2618)

6-16-21: CIVIL INJUNCTION:
Any person who violates this Chapter or the Mesa City Code as amended by this Ordinance is subject to a civil suit for injunction as well as prosecution for criminal violations and liability for licensing sanctions such as suspension or revocation. (2618)

6-16-22: LIABILITY AND LIABILITY FOR THE CONDUCT OF OTHERS: (3740)

(A) The offenses and violations described in this Chapter require proof, direct or indirect, of culpable mental state. (2618,3740)

(B) A licensee of a sexually oriented business is jointly and individually liable for violations of and offenses under this Chapter by the employees of the sexually oriented business and for all civil and criminal sanctions or remedies for such violations and offenses, including but not limited to, license suspension or revocation, prescribed herein, when that licensee knew, or a reasonable licensee would have known, of those violations and offenses. (2618,3740)

6-16-23: EXCLUSIONS: (5367)
The licensing requirements of this Chapter shall have no application, no effect upon, and shall not be construed as applying to escorts, escort assistants or escort bureaus with a valid, unsuspended license to operate issued pursuant to Mesa City Code Title 6, Chapter 24. (5367)
CHAPTER 17

TATTOOING AND BODY PIERCING

SECTION:

6-17-1: DEFINITIONS (3425)
6-17-2: UNLAWFUL ACT
6-17-3: PENALTY

6-17-1: DEFINITIONS: (3425)
For the purposes of this Section, the term "tattoo" shall mean a permanent mark or design made on the skin by a process of pricking and ingraining an indelible pigment into or under the skin or by raising scars. The term "body piercing" shall mean cutting, injecting, poking, or inserting instruments upon or under the skin for the purpose of attaching earrings, rings, jewelry, jeweled studs, or other metallic, glass, or plastic object for the purpose of wearing such object. (2981,3425)

6-17-2: UNLAWFUL ACT:
It is unlawful for anyone to body pierce or cause a body pierce or to place a tattoo or cause a tattoo to be placed on any other person under the age of eighteen (18) years except with the consent of a parent or legal guardian. The parent or guardian must be present at the time of body piercing and/or tattooing. (2981,3425)

6-17-3: PENALTY:
Among other penalties that may apply, any person, firm, or corporation that violates any provision of this ordinance shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500) or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000). Each violation continued shall be a separate offense, punishable as described above. (2981,3425)
CHAPTER 18

CONTESTED PROPERTY DISPUTES

SECTION:

6-18-1: DISPUTES INVOLVING PROPERTY IN THE POSSESSION OF THE POLICE DEPARTMENT

(A) When the Police Department possesses property that it has obtained in the normal course of work but no longer needs, the Police Department shall determine whether disposal of the property is provided for by law. (2993)

(B) If disposal of the property described in Subsection (A) of this Section is not provided for by law, then the Police Department shall determine whether a dispute exists over the ownership of the property. If no dispute exists, then the Police Department may return the property to the person claiming ownership. (2993)

(C) If property described in Subsection (A) of this Section is claimed by more than one (1) person, then the Police Department shall send a request to the Mesa City Court for a hearing to be conducted to determine the ownership of the property. The Police Department shall mail copies of the request to each person who is claiming ownership. (2993)

(D) Upon receiving a request, the City Court shall schedule a hearing on the matter and shall provide written notification of the hearing date, time, and location to each person who is claiming ownership of the property. The hearing shall be informal. The technical rules of evidence shall not apply; decisions shall be based upon the preponderance of the evidence. The City Court shall allow testimony to be given orally or through sworn written affidavits. (2993)

(E) Final decisions of the City Court are subject to appeal to Superior Court pursuant to Arizona Revised Statutes Title 12, Chapter 6, Article 6. When the time for appeal has expired or, if the decision of the City Court is appealed, when a final order is issued by the Superior Court, the City Court shall notify the party awarded the property that they may obtain the property from the Police Department. (2993)

CHAPTER 19

RECOVERY OF COSTS FOR POLICE SERVICES

(Repealed by 4942)
OPERATING A MOTOR VEHICLE ON UNPAVED SURFACE
(4820)

SECTION:

6-20-1: DEFINITIONS (4820)
6-20-2: VIOLATIONS (4820)
6-20-3: EXCEPTIONS (4820)
6-20-4: PENALTIES (4820)

6-20-1: DEFINITIONS: (4820)
For purposes of this Section, unless the context otherwise requires:

(A) "Motor Vehicle" means every motorized, electric, or other self propelled conveyance by which any person or property is or may be transported or drawn upon the ground, excepting devices moved by human power or used exclusively upon stationary rails or tracks. Motor vehicle includes all on and off-road vehicles, all-terrain vehicles and off-road recreational vehicles. (4820)

(B) "Unpaved Road" means any road, equipment path, or driveway that is not covered by asphalt, asphalitic concrete, or concrete pavement. (4820)

(C) "Unstabilized Surface" means any surface that is not covered by:

1. Asphalitic concrete,

2. Cement concrete,

3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, or

4. A stabilization method approved by the City Manager or Designee. (4820)

6-20-2: VIOLATIONS: (4820)
It is unlawful to operate or drive or leave any motor vehicle, on an unpaved road or unstabilized surface that is:

(A) Not a public or private road, street or lawful easement; and

(B) That is closed by the landowner by rule or regulation of a federal agency, this state, a county or a municipality or by a proper posting. (4820)
6-20-3: EXCEPTIONS: (4820)

(A) This Chapter 20 shall not apply to the operation of vehicles used in the normal course of business or the normal course of government operations. (4820)

(B) This Chapter 20 shall not apply to operations directed by utilities for operation, distribution and transmission systems provided that both of the following conditions are satisfied:

1. Operations are performed with a marked company vehicle; and

2. If operations are performed with a personal vehicle, then identification of the company shall be visible and readable by the public. (4820)

6-20-4: PENALTIES: (4820)

(A) As mandated by A.R.S. §9-500.27, a person who violates this Chapter 20 of the ordinance is guilty of a Class 3 Misdemeanor. (4820)

(B) As mandated by A.R.S. §9-500.27, if a person is deemed to have violated this Chapter 20 in addition to or in lieu of a fine, a judge may order the person to perform at least eight (8) but not more than twenty-four (24) hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both. (4820)
CHAPTER 21

FIREWORKS
(5021)

SECTION:

6-21-1: DEFINITIONS (5021)
6-21-2: FIREWORKS PROHIBITED; EXCEPTIONS (5021, 5260)
6-21-3: SALE OF FIREWORKS (5021)
6-21-4: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY (5021)
6-21-5: AUTHORITY TO ENFORCE VIOLATIONS; MEANS OF ENFORCEMENT; PENALTY (5021)

6-21-1: DEFINITIONS. (5021)

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Consumer firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601. (5021)

2. *Display firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601. (5021)

3. *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601. (5021)

4. *Novelty items* means federally deregulated novelty items that are known as glowworms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601. (5021)

5. *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the City of Mesa. (5021)

6. *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the City of Mesa Fire Chief or his designee. (5021)

7. *Public facilities* means any building or real property, excluding public right of way, which is owned, leased or otherwise operated by a governmental entity. (5021)
6-21-2: FIREWORKS PROHIBITED; EXCEPTIONS. (5021)

(A) The use, discharge or ignition of permissible consumer fireworks within the City of Mesa corporate limits, is prohibited except as provided for in this section:

(i) The use, discharge or ignition of permissible consumer fireworks is limited to June 24th through July 6th and December 24th through January 3rd on private property with the property owner’s permission. (5021, 5260)

(ii) The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities. (5021)

(B) Nothing in this section shall be construed to prohibit the use, discharge or ignition of novelty items as defined in Section 6-21-1(A)(4) or the occurrence of a supervised public display of fireworks. (5021)

(C) Permits may be granted by the City of Mesa Fire Chief or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. Additionally, a permit may be denied or revoked during time periods of High Fire Danger warnings. The City of Mesa Fire Chief or designee has authority to impose conditions on any permits granted. (5021)

6-21-3: SALE OF FIREWORKS. (5021)

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under 16 years of age. (5021)

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law. (5021)

(C) The sale of permissible consumer fireworks within the City of Mesa corporate limits is limited to May 20 through July 6 and December 10 through January 3 each year. (5260)

6-21-4: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY. (5021)

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following: (5021)

(i) The use, discharge or ignition of permissible consumer fireworks may only be used within the Mesa city limits between June 28th through July 4th and December 30th through January 1st on private property with the property owner’s permission. The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities. Mesa City Code 6-21-2 (5021)

(ii) Permissible consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16. (5021)

(B) Signs required under this Section shall be placed at each cash register and in each area where permissible consumer fireworks are displayed for sale. (5021)

(C) The City of Mesa Fire Chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be filed with the Mesa City Clerk’s Office. (5021)
6-21-5: AUTHORITY TO ENFORCE VIOLATIONS; MEANS OF ENFORCEMENT; PENALTY

(A) The City of Mesa Fire Chief or designee or a City of Mesa police officer may issue complaints to enforce violations of this Chapter. (5021)

(B) Using, discharging or igniting permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties: (5021)

(i) A first offense is punishable by a fine of seventy-five dollars ($75.00). (5021)

(ii) A second offense within 12 months of the first offense is punishable by a fine of one hundred fifty dollars ($150.00). (5021)

(iii) A third offense within 12 months of the second offense is punishable by a fine of five hundred dollars ($500.00). (5021)

(iv) For each offense thereafter occurring within 12 months of the preceding offense is punishable by a fine of seven hundred fifty dollars ($750.00). (5021)

(C) All owners, managers, operators, tenants or other persons in control of a business offering for sale fireworks under this Chapter are jointly and individually liable for compliance with this Chapter. (5021)

(D) Selling or offering for sale permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties: (5021)

(i) A first offense is punishable by a fine of two hundred fifty dollars ($250.00). (5021)

(ii) A second offense within 12 months of the first offense is punishable by a fine of five hundred dollars ($500.00). (5021)

(iii) A third offense within 12 months of the second offense is punishable by a fine of one thousand dollars ($1000.00). (5021)

(iv) For each offense thereafter, the violator shall be subject to class one criminal misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the defendant is subject to a maximum fine of two thousand five hundred dollars ($2,500.00) and up to six (6) months in jail. (5021)

(E) The penalties provided for in Subsection (B) and (D) are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from issuing warnings for violations under this Chapter or seeking voluntary compliance with the provisions of this Chapter. (5021)
CHAPTER 22

CONVENIENCE STORES

(5056, 5279)

SECTION:

6-22-1: PURPOSE OF CHAPTER (5056)
6-22-2: DEFINITIONS (5056)
6-22-3: AUTHORITY OF THE CHIEF (5056)
6-22-4: DELIVERY OF NOTICES (5056)
6-22-5: REGISTRATION REQUIRED (5056)
6-22-6: CERTIFICATE OF REGISTRATION (5056)
6-22-7: ISSUANCE, DENIAL, AND DISPLAY OF CERTIFICATE OF REGISTRATION (5056)
6-22-8: EXPIRATION AND RENEWAL OF CERTIFICATION OF REGISTRATION (5056)
6-22-9: REVOCATION OF CERTIFICATE OF REGISTRATION (5056)
6-22-10: ASSESSMENT; SECURITY MEASURES APPLICABILITY; GRANDFATHERED CONVENIENCE STORES (5056, 5279)
6-22-11: INSPECTIONS (5056, 5279)
6-22-12: ALTERNATIVE SECURITY PLAN (5056)
6-22-13: APPEALS (5056)
6-22-14: VIOLATIONS; PENALTIES (5056)

6-22-1: PURPOSE OF CHAPTER. (5056)
The purpose of this Chapter is to protect the health, safety, and welfare of the citizens of the City of Mesa by reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores in the City. To this end, this Chapter establishes a registration program for convenience stores and provides requirements relating to security of the stores. (5056)

6-22-2: DEFINITIONS. (5056)
In this Chapter, the following words and phrases shall have the meanings stated in this Section unless the context otherwise requires: (5056)

(A) AGGREGATE AREA means the area contained within the perimeter of the inside surface of the exterior walls. (5279)

(B) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the Chief under this Chapter to the owner or operator of a convenience store. (5056)

(C) CHIEF means the Chief of Police of the City of Mesa or the designated agents of the Chief of Police. (5056)

(D) CONVENIENCE STORE means retail establishments that sell a limited line of groceries, prepackaged food items, tobacco and tobacco products, magazines, and other household goods, primarily for off-premises consumption and typically having extended hours of operation in a small building of less than 7,500 square feet. This definition includes small retail stores located on the same parcel as, or operated in conjunction with, a service station. (5056)
(E) DROP SAFE means a cash management device in which money can be deposited without the depositor having immediate access to the contents. (5056)

(F) EMPLOYEE means any person who performs any service on the premises of a convenience store on a full-time, part-time, temporary or contract basis (including managers), whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair, maintenance or cleaning of the premises or for the delivery of goods to the premises. (5056)

(G) GRANDFATHERED CONVENIENCE STORE means a convenience store constructed and in existence prior to September 12, 2011 that has not been remodeled since September 12, 2011. (5279)

(H) HEIGHT MARKER means a measuring strip that may be attached on or near a door frame of a convenience store to aid in identifying the height of a person entering or exiting the convenience store. (5056)

(I) MANAGER means the person designated in the registration application filed under this Chapter as being responsible for the daily operation of a convenience store. (5056)

(J) NEWLY CONSTRUCTED CONVENIENCE STORE means a convenience store built on vacant land or rebuilt on the existing foundation of a demolished building whose permit applications for the newly constructed convenience store were received and accepted by the City of Mesa Building Official on or after September 12, 2011. (5279)

(K) NOTICE means any written notice that the Chief is required to give an applicant or registrant under this Chapter. (5056)

(L) PERSON means any individual, corporation, organization, partnership, association, or any other legal entity. (5056)

(M) POLICE CALLS FOR SERVICE means the number of calls to the Mesa Police Department for criminal or suspected criminal activity. (5056)

(N) REGISTERED AGENT means the person identified in the registration application filed under this Chapter who is authorized to receive on behalf of the convenience store any legal process or notice required or provided for in this Chapter. (5056)

(O) REGISTRANT means a person issued a certificate of registration for a convenience store under this Chapter and includes all owners, lessees and operators of the convenience store identified in the registration application filed under this Chapter. (5056)

(P) REMODELED means any convenience store undergoing either of the following on or after September 12, 2011: (I) an increase in the floor area of an existing convenience store by fifty percent (50%) or more; or (II) alterations where the work area exceeds fifty percent (50%) of the aggregate area of the building. (5279)

6-22-3: AUTHORITY OF CHIEF. (5056)

The Chief shall implement and enforce this Chapter and may establish rules, regulations, or procedures as necessary to carry out the purpose of this Chapter. (5056)
6-22-4: DELIVERY OF NOTICES (5056)
A notice is deemed to be delivered: (1) on the date the notice is hand delivered to the applicant, registrant, or the registered agent of the applicant or registrant; or (2) when placed in the United States mail with postage affixed thereto and addressed to the applicant, registrant, or the registered agent of the applicant or registrant at the address provided for in the registration applicant. Delivery of the notice to any applicant or registrant on the application or the registered agent shall constitute sufficient notice to all registrants. (5056)

6-22-5: REGISTRATION REQUIRED. (5056)
(A) Each convenience store within the City of Mesa must have a valid certificate of registration within thirty (30) calendar days after it has opened for business. (5056)

(B) A registrant shall obtain a new certificate of registration within thirty (30) calendar days after any change in the information contained in the application for a certificate of registration for a convenience store, including, but not limited to, any changes in ownership of the convenience store, and any changes in the registered agent, manager, or emergency contact person for the convenience store. If the convenience store holds an Alternative Security Plan at the time that the change of information is provided, the Chief shall review the Plan to determine whether it shall remain effective. (5056)

6-22-6: CERTIFICATE OF REGISTRATION (5056, 5279)
(A) To obtain a certificate of registration for a convenience store, a person must submit to the Chief a notarized application on a form provided by the Mesa Police Department. The applicant must be the person who will own, operate, or manage the convenience store. (5056)

(B) Convenience stores that are not required to implement the security measures identified in Section 6-22-10(D) shall include a listing of any security measures under 6-22-10(D) that are in place in their stores. (5056, 5279)

6-22-7: ISSUANCE, DENIAL, AND DISPLAY OF CERTIFICATE OF REGISTRATION. (5056)
(A) The Chief shall issue to the applicant a certificate of registration for a convenience store if the Chief determines that the applicant has complied with all requirements for issuance of the certificate of registration. (5056)

(B) If the Chief determines that the requirements of Section 6-22-6 have not been met, the Chief shall deliver written notice to the applicant that the application is denied and shall include in the notice the reason for denial and a statement informing the applicant of the right of appeal pursuant to Section 6-22-13. (5056)

(C) A certificate of registration must be displayed in a conspicuous manner and location in the convenience store that is visible to the public inside the store. The certificate of registration must be presented upon request to the Chief or any other peace officer or regulatory officer or official having responsibility for enforcement of this Code for examination. (5056)

6-22-8: EXPIRATION AND RENEWAL OF CERTIFICATE OF REGISTRATION (5056, 5279)
(A) A certificate of registration for a convenience store expires two (2) years after the date of issuance. (5056)

(B) A certificate of registration may be renewed by making application in accordance with Section 6-22-6. A registrant shall apply for renewal at least thirty (30) calendar days before the expiration of the certificate of registration. (5056)
6-22-9: REVOCATION OF CERTIFICATE OF REGISTRATION

(A) The Chief may revoke a certificate of registration for a convenience store if the Chief determines that any registrant made a false statement as to a material matter in the application or in a hearing concerning the certificate of registration. The Chief may also revoke a certificate of registration for a convenience store if any registrant, agent or employee, at registrant’s convenience store has been found responsible (whether by admission, default or after a hearing) of three or more violations of this Chapter within a period of thirty-six months. (5056, 5279)

(B) A Notice of Revocation shall be sent to the registrant. The Notice shall include the reason for the revocation, the date the Chief orders the revocation, and a statement informing the registrant of the right to appeal pursuant to Section 6-22-13. The revocation is final unless the registrant files an appeal with the City Manager or designee within ten (10) calendar days after Notice of Revocation is delivered to the registrant. The appeal shall be in writing and shall state the grounds for the appeal. The City Manager, or designee, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. The revocation is stayed pending a final determination following the appeal. (5056, 5279)

6-22-10: ASSESSMENT; SECURITY MEASURES APPLICABILITY; GRANDFATHERED CONVENIENCE STORES (5056, 5279)

(A) Assessment. The Police Department shall have the authority to assess every convenience store in every odd year to determine the number of calls for police service per year. (5056, 5279)

(B) Applicability of Security Measures. In addition to all other requirements of this Chapter, newly constructed convenience stores and remodeled convenience stores shall comply with the security measures set forth in this Section. (5279)

(C) Grandfathered Convenience Stores. A grandfathered convenience store is not required to comply with the security measures set forth in this Section unless the store has had an average of thirty (30) or more calls for police service per year for the four (4)-year period immediately preceding an assessment by the Police Department. If a grandfathered convenience store required to comply with the security measures in this Section due to calls for service is determined not to have had an average of thirty (30) or more calls for police service per year for the four (4)-year period immediately preceding a subsequent assessment, then the requirement that the grandfathered convenience store comply with the security measures in this Section is suspended. If the grandfathered convenience store is again determined to have had an average of thirty (30) or more calls for police service in the four (4)-year period immediately preceding an assessment subsequent to suspension of the requirement to comply with the security measures, then the grandfathered convenience store shall forever be required to comply with the security measures. (5279)

(D) Security Measures: Newly constructed convenience stores, remodeled convenience stores, and grandfathered convenience stores identified under Paragraph C of this Section shall comply with the following security measures: (5056, 5279)
1. **Security Signs**: (5056, 5279)

   (a) Metal “NO TRESPASSING” signs shall be posted on each of the exterior sides of the building. Each sign shall state “NO TRESPASSING” in both English and Spanish with letters that are at least two inches tall. Each NO TRESPASSING sign must also state “A.R.S. 13-1502.” The signs may contain additional language as required by law and must be in a format approved by the Chief. For convenience stores located in a strip mall and not having more than two (2) exterior walls, one (1) of the above-mentioned metal “NO TRESPASSING” signs shall be affixed to the back door side of the building. (5279)

   (b) NO TRESPASSING signs shall be posted at each public entrance and exit of a convenience store. Each sign shall state “NO TRESPASSING” in both English and Spanish with letters that are at least one inch tall. Each “NO TRESPASSING” sign must also state “A.R.S. 13-1502.” The signs may contain additional language as required by law and must be in a format approved by the Chief. (5279)

   (c) One (1) current Trespass Enforcement Program sticker provided by the Mesa Police Department shall be affixed to the glass front door next to or below the entrance door handle. (5279)

   (d) A sign stating “Store is Under Video Surveillance” in letters at least one (1) inch high must be posted at each public entrance and exit of the convenience store and must be readable from inside and outside the store. (5279)

   (e) A sign indicating that an alarm system is in use must be posted at each public entrance and exit of the convenience store. (5279)

   (f) A sign indicating that employees cannot open the drop safe and that employees have minimum cash on hand must be posted at each public entrance and exit of the convenience store. (5279)

2. **Height Marker**: A height marker must be posted at each public exit door of a convenience store depicting the actual height of an individual exiting the store. (5056)

3. **Store Visibility**: A registrant shall provide for and maintain visibility in a convenience store as follows: (5056)

   (a) An unobstructed line of sight that allows a view of and from the cash register and sales transaction area through all windows and public entrance and exit doors must be maintained in the convenience store at all times. The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground. For purposes of measurements in this Subsection only, measurements shall be made from the inside of the store, starting at the floor and measuring upward. (5056, 5279)

   (b) All public entrance and exit doors of a convenience store must be made of glass or another transparent material. (5056)
4. **Employee Safety Training**: (5056, 5279)

   (a) A registrant shall ensure that safety training is provided for and completed by employees of the convenience store in compliance with this Section. The safety training shall consist of completing a safety training program offered by the City of Mesa Police Department or a comparable training program approved by the Mesa Police Department. (5056, 5279)

   (b) Each employee of a convenience store (with the exception of temporary employees) must complete the safety training program within thirty (30) calendar days after beginning employment with the convenience store. (5056, 5279)

   (c) Each employee of a convenience store (with the exception of temporary employees) shall complete the safety training program every twenty-four (24) months or as otherwise directed by the Chief. (5279)

   (d) If the convenience store hires temporary employees (either directly or through a temporary agency), those employees must complete the safety training program prior to beginning work. (5056, 5279)

   (e) Each employee shall sign the “Mesa Police Department Approved Convenience Store Employee Safety Training Completion Statement” provided by the Mesa Police Department, which indicates the date and time of completion of the safety training. The employee’s supervisor shall also sign the Training Completion Statement verifying that the employee completed the required safety training. Copies of each employee’s statements must be maintained on file in the convenience store or electronically for six (6) months after the employee leaves employment with the convenience store or until the next bi-annual training is completed by that employee. The statements must be made available to the Chief or any other peace officer immediately upon request. (5056, 5279)

5. **Telephone Access**: Landline telephone access must be provided at each convenience store for use by employees to contact law enforcement or other emergency response if needed. (5056)

6. **Trespass Enforcement Program Affidavit**:

   (a) A registrant shall execute a Trespass Enforcement Program affidavit, on a form provided by the Chief, which authorizes the police department to enforce, on behalf of the registrant, all applicable trespass laws on the premises of the convenience store. This form expires two (2) years from the date of the application. A renewal application for this affidavit shall be submitted thirty (30) calendar days prior to the expiration date. (5056)

   (b) A Trespass Enforcement Log will be kept in the premises at all times out of public view, but accessible to staff and representatives of the Mesa Police Department on request. This log is a form provided by the Mesa Police Department where the trespassed individuals, along with their pertinent information, are listed for future reference in case of any further violations. (5056, 5279)
7. **General Safety Conditions:**

(a) Exterior entrances to the convenience store shall be illuminated with a minimum of five (5) foot candles, which equals five (5) lumens per square foot, of light at ground level to six (6) feet vertical from dusk to dawn. (5056)

(b) Existing exterior lamps provided on the building and in the parking areas for security of patrons and employees shall be repaired within forty-eight (48) hours when the light is not operational to maximize the lighting efficiency. (5056)

(c) If the convenience store has outdoor pay phones, they must be lit from dusk to dawn with a minimum of five (5) foot candles, which equals five (5) lumens per square foot, of light. (5056)

(d) The exterior refuse area of the store must have lighting from dusk to dawn that has a minimum of five (5) foot candles, which equals five (5) lumens per square foot of light. In lieu of having such lighting, a convenience store may employ one of the following measures: (i) have a fully functioning and operational professional grade automatic motion detector; or (ii) have a company policy in writing, acknowledged in writing by store employees, which prohibits employees from going to and from the exterior refuse area during hours of darkness. The written policy and all written employee acknowledgments of such policy must be made available to the Chief or any other police officer immediately upon request. (5279)

(e) Any graffiti that may appear on the registrant’s property shall be removed or covered within forty-eight (48) hours of discovery or when notice is given by the Police Department. (5056)

(f) Anytime the lobby or area open to the public is unattended and void of customers, the lock on the entry doors must be engaged. A “Reopen in 10 Minutes” or similar sign shall be placed on the customer entrance door during this time. An audible door alarm on entry doors that can be heard in each individual area of the store can serve as an alternative to locking the entry doors. Employees are then required to make every effort to return to the lobby or area open to the public as soon as the door alarm is activated, so as not to leave the area unattended when occupied by customers. (5056, 5279)

(g) Eight (8) inch tall address numbers must be installed in the form of paint, vinyl, plastic or other manmade material, wood or metal and maintained 1) on each street facing side of building; 2) on a stand-alone sign; or 3) posted above each entrance door for emergency address identification. (5056, 5279)

(h) Coolers containing beer or other alcoholic beverages will be secured or locked from public access from 2:00 a.m. to 6:00 a.m. (Monday through Sunday). (5056, 5279)

8. **Surveillance Camera System:** (5056, 5279)

(a) A registrant shall provide, maintain, and operate a minimum of two (2) color digital high resolution surveillance cameras inside the convenience store. (5279)

(b) A registrant shall provide, maintain, and operate a minimum of two (2) color or black and white digital high resolution surveillance cameras on the exterior of the building viewing the parking lot and/or gas pump area. (5279)

(c) Each camera must be capable of providing a digital image that clearly depicts the facial features of the person being filmed. The recorded image must be of such clarity, quality, and detail that it is useful in identifying a person suspected of committing a crime. (5056, 5279)
(d) One (1) interior camera must be positioned to provide coverage of the person operating the cash register and shall be positioned to provide a clear, full facial view of any person who approaches the cash register.

(e) One (1) interior camera must be positioned to provide a clear view of each individual entering or exiting the main public entrance of the store. The coverage of the cameras required by this Subsection must remain unobstructed by any display, sign, or other item. (5056, 5279)

(f) All cameras must remain unobstructed by any display sign or other item. (5279)

(g) Each camera must be operating and recording at all times, including hours when the store is not open for business. (5056, 5279)

(h) Each camera must be operated in a fixed position and not in a panning motion. (5279)

(i) Each camera must display the correct date and time of each recording. (5056, 5279)

9. Video Recording and Storage:

(a) One (1) or more digital video recording devices must be used to record images from each surveillance camera in the convenience store. Each recording device must be kept in a secured location that is remote from the surveillance cameras. (5056)

(b) The video recording devices must be designed, equipped, and operated, at a minimum, to digitally record images from the surveillance cameras every time motion occurs in the convenience store, whether or not the store is open for business. (5056)

(c) All digital video recordings must be maintained for a least fifteen (15) calendar days. (5056)

(d) A digital video recording must be made available to the Chief or any other peace officer for viewing as soon as possible but no later than seventy-two (72) hours after being requested. (5056)

10. Alarm System: A registrant shall provide, maintain, and operate an alarm system in the convenience store. (5056)

(a) A convenience store must have a silent panic or holdup alarm system for which a valid alarm license is held in compliance with Title VI, Chapter 15 of this Code. The system must, at a minimum, include a panic button located within reach of the cash register and out of view of the customer. The panic button must generate a silent alarm signal indicating a holdup or other life-threatening emergency requiring an immediate police department response. (5056)

11. Drop Safes: A registrant shall provide and maintain drop safes and signs indicating the use of drop safes in the convenience store. (5056)

(a) A convenience store shall have a cash accountability policy mandating the maximum amounts of cash that can be kept in cash registers. (5056)

(b) A drop safe must be bolted to the floor of the convenience store. A drop safe may have a time-delay mechanism to allow small amounts of change to be removed. (5056)
12. **Right to Require Additional Security Measures:** The Chief shall continue to monitor the number of calls for police service of those convenience stores that have implemented the security measures required in Section 6-22-10. If the Chief determines that a convenience store continues to have excessive calls for police service despite compliance with all security measures identified in 6-22-10, the Chief may order the convenience store to take additional security measures targeted at the specific criminal act(s) or suspected criminal activity(s) occurring at the convenience store by issuing a Notice to the registrant of additional measures required. Any such measures must be implemented in accordance with the timeframes set forth in the Notice. (5056, 5279)

**6-22-11: ** **INSPECTIONS (5056, 5279)**

Property Inspections: Newly constructed convenience stores, remodeled convenience stores, and grandfathered convenience stores required to comply with the security measures under Section 10 of this Chapter pursuant to 6-22-10(C) shall permit, without notice during business hours and at other reasonable times upon request, representatives of the Police Department to inspect the interior and exterior of the convenience store, including but not limited to surveillance camera systems (if applicable), for the purpose of ensuring compliance with this Chapter. (5056, 5279)

**6-22-12: ** **ALTERNATIVE SECURITY PLAN (5056)**

(A) Grandfathered convenience stores that are required to comply with the security measures set forth in Section 10 of this Chapter may request that the Chief approve an alternative Safety and Security Plan in lieu of one or more of the security measures required by Section 6-22-10. The Alternative Security Plan will (1) outline which security measures described in Section 6-22-10 will be implemented; (2) outline what alternative safety and security measures the registrant will implement and (3) explain how this Alternative Security Plan will meet the goals of this ordinance, including reducing crime; preventing the escalation of crime; and increasing the successful prosecution of crime that does occur. (5056, 5279)

(B) If the Chief determines that the Alternative Security Plan will meet the goals of this ordinance, he may approve the Alternative Security Plan. In determining whether to approve or disapprove the request for an Alternative Security Plan, the Chief will consider the following criteria: (5056)

1. The proposed security measures; (5056)
2. The number of calls for police service from the registrant’s convenience store; (5056)
3. The types of calls for police service from the registrant’s convenience store; (5056)
4. The cost of compliance with the security measures required by Section 6-22-10; and (5056)
5. The overall safety and security issues in the surrounding neighborhood. (5056)

(C) The Chief may grant an Alternative Security Plan subject to such terms and conditions as the Chief deems reasonably necessary to protect the health and safety of employees and the public, in light of the “Purpose” section of this Chapter. (5056)
(D)  Eligibility

1.  Convenience stores constructed or remodeled after the effective date of this Chapter are not eligible for an Alternative Security Plan. (5056)

2.  A person who owns or operates a convenience store subject to this Chapter may request an Alternative Security Plan at any time. Forms for requesting an Alternative Security Plan will be provided by the Mesa Police Department. (5056)

(E)  Review of Alternative Security Plan: If a registrant notifies the City of a change of registration information or if a registrant or convenience store receives a citation and the convenience store holds an Alternative Security Plan, the Chief shall review the Plan to determine whether it shall remain effective. Any changes to the Plan that are deemed necessary by the Chief to protect the health and safety of employees and the public, in light of the “Purpose” section of this Chapter shall be made within the timeframe set forth by the Chief. (5056)

6-22-13:  APPEALS (5056, 5279)

If the Chief denies issuance or renewal of a certificate of registration, denies or modifies an Alternative Security Plan, or revokes a certificate of registration, this action is final unless the applicant or registrant files an appeal with the City Manager or designee within ten (10) calendar days after Notice of such decision is delivered to the applicant or registrant. The appeal shall be in writing and shall state the grounds for the appeal. The City Manager, or designee, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. A revocation of the Certificate of Registration is stayed pending a final determination following the appeal. (5056, 5279)

6-22-14:  VIOLATIONS; PENALTIES. (5056)

(A)  A person who violates a provision of this Chapter, or who fails to perform an act required of the person by this Chapter, commits a civil offense. (5056)

(B)  All owners, managers, operators, tenants or other persons in control of a convenience store regulated under this Chapter are jointly and individually liable for compliance with this Chapter. (5056)

(C)  Any police officer or City employee designated by the City Manager is authorized to commence an enforcement action under the provisions of this Chapter by issuing a uniform civil code complaint citation in substantially the form authorized under Title I of the Mesa City Code. (5056)

(D)  When a violation of this Chapter is discovered, a person shall be given a written warning and shall have fourteen (14) days to correct the violation. If the violation is not corrected within fourteen (14) days, a person may be given a citation for a violation of this Chapter after evaluation of the circumstances. Only one warning for a particular violation need be given. Once a person has been given a warning for a particular violation, the person may be repeatedly cited for the same violation without any additional warnings. Once any person has been found responsible (whether by admission, default or after a hearing) for committing violations of this Chapter on three (3) separate dates and within a thirty-six (36) month time period, no additional warnings need be given for any violations of this Chapter. (5056, 5279)

(E)  When any person is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, the court shall order the person to pay a mandatory civil sanction in the amount of one hundred and fifty dollars ($150.00) per violation. When any person is found responsible for any violation of this Chapter, whether by admission, default, or after a hearing, for a second time within thirty-six (36) months of any prior violations of this Chapter, the court shall order the person to pay an enhanced civil sanction of two hundred and fifty dollars ($250.00) per violation. When any person is found responsible for any violation of this Chapter, whether by admission, default, or after a hearing, for a third time within thirty-six (36) months of any prior violation(s) of this Chapter, the court shall order the person to pay an enhanced civil sanction of five hundred dollars ($500.00) per violation. (5056, 5279)
(F) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on three (3) separate dates within a thirty-six (36) month period, whether by admission, default, or after a hearing, shall be subject to Class One Criminal Misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the court may impose a sentence authorized by the laws of the State of Arizona for a Class One Misdemeanor, including incarceration not to exceed six (6) months in jail, a fine not to exceed two thousand five hundred dollars ($2,500.00), and up to three (3) years of unsupervised probation. The court shall order a person who has been convicted of a violation of this Section to pay a fine in the amount of at least five hundred dollars ($500.00) for each violation for which a conviction has been obtained. (5279)

(G) The thirty-six (36) month provision of this Section shall be calculated by the dates the violations were committed. The responsible person shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within thirty-six (36) months of the commission of another violation for which the responsible party was convicted or otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5279)

(H) Each day in which a violation of this Chapter continues shall constitute a separate offense. (5279)

(I) The penalties provided for in this Section are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5279)
CHAPTER 23

HOTEL REGISTRATION AND RECORDS
(5033)

SECTION:

6-23-1: DEFINITIONS (5033)
6-23-2: REGISTRATION AND RECORDS REQUIREMENTS (5033)
6-23-3: MAINTENANCE AND INSPECTION OF RECORDS (5033)
6-23-4: COMMENCEMENT OF AN ENFORCEMENT ACTION; CIVIL VIOLATIONS (5033)
6-23-5: CIVIL PENALTIES (5033)

6-23-1: DEFINITIONS (5033)
In this Chapter the following words and phrases shall have the meanings stated in the Section unless the context otherwise requires:

HOTEL: Any public or private space or structure, building or part of a building or group of buildings including but not limited to any hotel, inn, hostel, tourist home, house, motel, rooming house, apartment house, trailer, hostel, youth hostel or other place within the City offering lodging designed for or primarily occupied by transients for a fee, rent or in exchange for any form of consideration including money or any other thing of value. It does not include foster homes, rest homes, sheltered care homes, nursing homes, licensed health care facilities, jails, half-way houses, hospitals, asylums, sanitariums, orphanages, prisons or detention facilities.

OPERATOR: Any person, partnership, corporation or association who owns, leases, controls, manages, operates or is employed by a hotel.

PRE-APPROVED IDENTIFICATION SYSTEM: A database of information maintained by a hotel’s corporate office, such as a gold club membership or frequent stay rewards program, that requires a registrant to register online and identify him or herself in exchange for certain benefits or perquisites offered by the hotel.

REGISTRATION RECORDS: A register maintained by a hotel containing the name and method of payment of every person who rents, pays a fee, or exchanges anything of value to occupy a room in the hotel, for any period of time. Such register shall include all information required by this Chapter.

REGISTRANT: A least one person over the age of eighteen who shall occupy the available lodging at a hotel. In the event of a family or youth group activity requiring the reservation of multiple rooms under one adult name, that adult shall be the registrant for all such rooms.

RESPONSIBLE PARTY: Any operator who violates provisions of this Chapter or has control over any operator who violates a provision of this Chapter.

OCCUPANT: A person other than the registrant, who occupies, dwells in, controls or takes possession of available lodging at a hotel for any period of time.

TRANSIENT: Any person who obtains lodging or the use of any lodging on a temporary basis.
(A) Operators shall require every registrant to provide evidence of identity: (5033)

1. Through a pre-approved identification system; or (5033)

2. Through credit card payment; and/or (5033)

3. Through a government issued identification or other identification, which contains the following information (5033)

   (a) Person’s full name; (5033)

   (b) Person’s date of birth or age; (5033)

   (c) Person’s residence address; and (5033)

   (d) Photograph of the person (5033)

(B) Operators shall keep a record of all registrants of the hotel which shall include the name and residence or billing address of the registrant, in addition to the following information: (5033)

1. The day, month, year and time of arrival of the registrant; (5033)

2. The number or location of the room(s) assigned to the registrant; (5033)

3. The date that the registrant and occupant(s) are scheduled to depart; (5033)

4. The rate charged and amount collected for the lodging; and (5033)

5. The method of payment for the lodging. (5033)

(C) In addition, if evidence of identity is provided under Section (A) (3) above, and the registrant pays by cash to occupy the room, operators shall take reasonable steps to verify the identification presented by the registrant and operators shall keep a record of items (A) (3) (b) and (A) (3) (c). (5033)

(D) Operators may request that all registrants provide the make, model and license plate number and state of any vehicle parked on hotel premises, and this information, if provided, shall be kept with the registration records of the hotel. (5033)
6-23-3: MAINTENANCE AND INSPECTION OF RECORDS (5033)

(A) Operators shall keep and maintain all registration records required by this Chapter for a period of 30 calendar days from the date of departure. (5033)

(B) No registration record(s) as defined in this Chapter shall be altered, erased or defaced so as to interfere with any inspection of the record. The registration records may be maintained in an electronic format, so long as the records comply with other provisions of this Chapter. (5033)

(C) The Mesa Police Department is hereby authorized to make inspections of the registration records to determine compliance with the provisions of this Chapter, in connection with any lawful investigation or for any other lawful purpose. (5033)

(D) Information contained in the registration records remains the property of the hotel and shall not be subject to public disclosure or considered public record unless such registration records become part of a City record; in such event, such information shall only be disclosed in accordance with public records laws. (5033)

(E) It is unlawful for any operator of a hotel to fail to maintain the registration records required by this Chapter or to fail to make the records available to the Mesa Police Department for inspection or investigation or any other law enforcement purpose upon demand. (5033)

6-23-4: COMMENCEMENT OF AN ENFORCEMENT ACTION; CIVIL VIOLATIONS (5033)

(A) Any police officer or City employee designated by the City Manager is authorized to commence an enforcement action under the provisions of this Chapter by issuing a uniform civil code complaint citation in substantially the form authorized under Title 1 of the Mesa City Code. (5033)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter, or from enforcing this Chapter through notices of violation, warnings or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5033)

(C) The responsible party shall, within ten (10) days of the issuance of the citation, either pay the civil sanction and the fees, or appear in person or through an attorney before the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the responsible party pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in 6-23-5. If the responsible party appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing. (5033)
(D) If a responsible party served with a citation fails to pay the civil sanction and the fees or to appear on or before the time directed to appear or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose a civil sanction plus the applicable fees and charges in accordance with Section 6-23-5 of this Chapter. (5033)

(E) All proceedings before the Civil Hearing Officer shall be non-adversarial, informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Rules of Procedure for Special Actions of the Arizona Supreme Court, Volume 17B of the Arizona Revised Statutes. (5033)

(F) Any judgment issued pursuant to this Article may be collected as any other civil judgment. (5033)

6-23-5: CIVIL PENALTIES (5033)

(A) Any operator who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than two hundred fifty dollars ($250.00) or more than one thousand five hundred dollars ($1,500.00). A second finding of responsibility for a violation of this Chapter shall result in a civil sanction of not less than two hundred and fifty dollars ($250.00) or more than two thousand five hundred dollars ($2,500.00). A third finding of responsibility for a violation of this Chapter shall result in a civil sanction of not less than five hundred dollars ($500.00) or more than two thousand five hundred dollars ($2,500.00). (5033)

(B) The Hearing Officer may take mitigating factors into consideration such as the size of the hotel to include the number of units and previous calls for police service in determining the amount of the sanction. (5033)

(C) The Hearing Officer may grant cost recovery for law enforcement services and/or establish a surcharge. (5033)

(D) Each subsequent violation shall be a separate offense, punishable as hereinabove described. (5033)
CHAPTER 24

ESCORT SERVICES

SECTION:

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6-24-1: PURPOSE AND INTENT (5367)
It is the purpose and intent of the City Council, by the adoption of this Chapter, to regulate the escort industry: (1) for the protection of the public from criminal activity (such as prostitution, assault, sex trafficking of adults and children, and human trafficking) and health risks through the spread of sexually transmitted diseases; and (2) for the preservation of the peace and welfare of the community. (5367)

6-24-2: DEFINITIONS (5367)
The below words and phrases, wherever used in this Chapter, shall be construed as defined in this Section unless, clearly from the context, a different meaning is intended. 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. (5367)

(A) APPLICANT: A person who applies for a license issued pursuant to this Chapter and who, upon approval of the application, will be licensee. (5367)

(B) BUSINESS SERVICES DIRECTOR: The City’s Business Services Director or his/her designee. (5367)

(C) CITY: The City of Mesa, Arizona. (5367)

(D) CONSIDERATION: Money or money’s worth, payment, reward, fee, salary, commission, profit or anything regarded as a return given or suffered by one for the act or promise of another. (5367)
(E) **CONTROLLING PERSON:** (A) any individual who has a ten percent (10%) or greater interest in the ownership or the earning of the business of a licensee/applicant, and (B) any of the following persons for a licensee/applicant: (5367)

(1) The president or other executive officers of a corporation; (5367)

(2) Each general partner of a limited partnership or any partner of a non-limited partnership; (5367)

(3) The managing members or officers of a limited liability company/corporation; or (5367)

(4) A sole proprietor. (5367)

(F) **ESCORT:** Any person, who for consideration acts as, advertises as, or is held out to the public as available for hire to consort with or to accompany another person(s) to social affairs, places of amusement or entertainment, within any place of public or private resort, including within any private quarters. (5367)

(G) **ESCORT ASSISTANT:** Any person, not an escort, who for consideration: (5367)

(1) Assists an escort in the escort’s services, including a person who drives an escort, provides scheduling or referral services, provides security services, offers or furnishes an escort, or introduces patrons to escorts; or (5367)

(2) Acting as the agent for either an escort bureau or a patron, contacts or meets with patrons or escort bureaus at any location, whether that person is employed by the escort bureau or any other business, or is self-employed. (5367)

(H) **ESCORT BUREAU:** Any person, who for consideration, furnishes, refers or offers to furnish or refer escorts, or provides, or offers to introduce, patrons to escorts; the definition includes, but is not limited to, services provided by an escort agency or escort service. (5367)

(I) **HEARING OFFICER:** The Business Services Director or an independent contractor hired by the City to serve as a hearing officer to conduct a hearing and make an impartial determination on an appeal requested by a licenses/applicant pursuant to this Chapter. (5367)

(J) **LICENSE:** A license issued pursuant to this Chapter. (5367)

(K) **LICENSEE:** A person who is the holder of a valid license under this Chapter. A licensee includes an agent, servant, employee, controlling person or other person, while acting on behalf of that licensee, whenever such licensee is or would be prohibited from doing or performing an act or acts under this Chapter. (5367)

(L) **LICENSING ADMINISTRATOR:** The City’s Business Licensing and Revenue Collections Administrator or his/her designee. (5367)

(M) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Licensing Administrator. (5367)

(N) **OFFER TO PROVIDE ACTS OF SEXUAL CONDUCT:** To offer, propose or solicit to provide sexual conduct to a patron including, but not limited to, conversations, advertisements and acts which would lead a reasonable person to conclude that such acts were to be provided or engaged in. (5367)

(O) **PATRON:** Any person who agrees, arranges, contacts, pays or attempts to hire the services of an escort, escort assistant or escort bureau. (5367)
(P) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual (natural person). The definition includes a trustee, receiver, assignee or similar representative. (5367)

(Q) **POLICE DEPARTMENT:** The City of Mesa Police Department. (5367)

(R) **PROSTITUTION:** Engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person. (5367)

(S) **SEXUAL CONDUCT:** Includes any of the following committed by or on a person: (5367)

1. Oral contact with the penis, vulva, breast or anus. This definition does not include an act of breast-feeding by a mother. (5367)

2. Flagellation or torture by or on a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed. (5367)

3. Any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast. (5367)

4. Penetration into the penis, vulva or anus by any part of the body or by any object. (5367)

(T) **SEXUALLY ORIENTED ESCORT:** An escort who: (5367)

1. Works for (as an agent, employee or independent contractor) or is referred to a patron by a sexually oriented escort bureau; (5367)

2. Engages in advertising to make a reasonable person believe that acts of sexual conduct or sexual stimulation will be provided; (5367)

3. Solicits, offers, agrees to provide or does provide acts of sexual conduct to a patron; or (5367)

4. Accepts an offer or solicitation to provide acts of sexual conduct for a fee, in addition to the fee charged by the escort bureau. (5367)

(U) **SEXUALLY ORIENTED ESCORT BUREAU:** An escort bureau which: (5367)

1. Engages in advertising to make a reasonable person believe that acts of sexual conduct or sexual stimulation will be provided by an escort; (5367)

2. Uses as escorts persons known to have violated the law regarding prostitution; (5367)

3. Solicits, offers or agrees to provide or does provide escorts who perform acts of sexual conduct to a patron; or (5367)

4. Employs, contracts with, refers or provides to a patron, a sexually oriented escort. (5367)

(V) **SEXUAL STIMULATION:** To excite or arouse the prurient interest, or to offer or solicit acts of sexual conduct as defined under “offer to provide acts of sexual conduct.” (5367)
6-24-3: ADMINISTRATION (5367)

It shall be the duty and responsibility of the Licensing Administrator to administer the provision of this Chapter. Pursuant to this duty, the Licensing Administrator shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (5367)

6-24-4: LICENSE REQUIRED (5367)

(A) Any person desiring to engage in, conduct or carry on, in or upon any premises or real property located or situated within the City, the activities of an escort, must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to the provisions of this Chapter. (5367)

(B) Any person desiring to work or perform services as, conduct, manage, operate, or maintain an escort bureau located or situated within the City, or whose escorts or escort assistants will work in the City, must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to this Chapter. (5367)

(C) Any person desiring to work or perform services as an escort assistant upon any premises or real property located or situated within the City must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to this Chapter. (5367)

6-24-5: TERM OF LICENSE; LICENSE RENEWAL (5367)

(A) Any license issued pursuant to this Chapter: (i) is non-transferable; (ii) shall be valid for a term of one (1) year from the date of issuance; and (iii) may be renewed by a licensee in accordance with this Chapter and such renewal shall be valid for a term of one (1) year. (5367)

(B) To renew a license, the completed renewal application must be submitted by the licensee, with the applicable fee, no later than forty-five (45) calendar days prior to the expiration of the license; failure to do so shall mean that the license will expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license must file a new application for a license and, if their license has expired, may not operate until a new license has been issued. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. (5367)

6-24-6: LICENSE APPLICATION AND FEES (5367)

(A) Any person desiring to obtain a license or renew an existing license to operate as an escort, escort assistant or escort bureau shall make application to the Licensing Office. An application must be accompanied by the applicable application or renewal fee established by the City. All fees are nonrefundable and are not prorated, except as otherwise required by law. Neither the filing of an application for a license, nor payment of an application or renewal fee, shall authorize the conducting of the business of an escort, escort assistant or escort bureau until such license has been granted or renewed. (5367)

(B) Each application for a license shall consist of the information set forth in the Subsection (B). Each applicant must provide, at a minimum, all of the following information, as applicable, in order to obtain a license: (5367)

1. Applicant’s full legal name, business name, all telephone numbers and email addresses under which applicant will be doing business or advertising, website(s), business entity information, and legal (business) address of the applicant (which may not be a P.O. Box). (5367)
(2) If the applicant is an individual (natural person) or sole proprietorship: (5367)

(a) Applicant’s physical description, and date and place of birth; (5367)

(b) Applicant’s addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application; (5367)

(c) Applicant’s business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment; and (5367)

(d) A current picture identification document, issued by a governmental agency, demonstrating applicant has reached the age of eighteen (18) years. (5367)

(3) If applicant is applying for a license to operate as an escort bureau: (5367)

(a) The address at which the applicant desires to do business that is open to the public or patrons; (5367)

(b) The true names and residential addresses of all persons employed or intended to be employed as escorts; and (5367)

(c) All business names, trade names or fictitious names under which the escort bureau is doing business or advertising. (5367)

(4) The names and contact information of all controlling persons for the applicant. (5367)

(5) Any other names by which the applicant or a controlling person is or has been known. (5367)

(6) The mailing address for the purpose of receiving City notices and other licensing correspondence relating to the applicant/licensee or the enforcement of this Chapter. (5367)

(7) The business or regulatory license history of the applicant for the ten (10) year period immediately preceding the date of application; whether the applicant, while operating under a business or regulatory license issued by a governmental jurisdiction, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation. (5367)

(8) Applicant’s felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, excluding those for civil traffic offenses, and the grounds for such convictions. (5367)

(9) For an applicant that is a business entity, the Articles of Incorporation, Articles of Organization or Certificate of Limited Partnership, together with any amendments thereto. (5367)

(10) A detailed description of the exact nature of the business to be conducted. (5367)

(11) Such other identification or information as the Police Department or Licensing Office may require: (i) in order to discover the truth of the matters required to be set forth in the application; or (ii) that is relevant to the issuance of a license pursuant to the requirements of this Chapter. (5367)
6-24-7: LICENSE APPLICATION INVESTIGATION (5367)

(A) Any applicant for a license shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as prescribed in this Chapter. (5367)

(B) Each person applying for a license and the controlling persons for the applicant shall submit a full set of fingerprints to the City in a manner approved by the Licensing Office. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5367)

(C) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of applicants/licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license. (5367)

(D) The Police Department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license in accordance with this Chapter. (5367)

6-24-8: ISSUANCE OF LICENSE; CHANGE IN INFORMATION (5367)

(A) Every license shall be issued in accordance with the applicable law including, but not limited to, A.R.S. § 41-1080 and Arizona Revised Statutes Title 9, Chapter 7, Article 4 (Municipal Regulations). No license shall be issued to an individual if the individual does not present one (1) or more of the documents listed in A.R.S. § 41-1080, indicating the individual’s presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act. (5367)

(B) When any change occurs regarding the written information provided to the City required in an application, the applicant/licensee shall give written notification of such change to the Licensing Office within ten (10) calendar days after such change. (5367)

6-24-9: ADDITIONAL REGULATIONS (5367)

(A) Any person licensed as provided in this Chapter must operate under the name or conduct business under the designation specified in such license. (5367)

(B) Any escort bureau licensed as provided in this Chapter must only conduct business at the location specified in such license and post their license in a conspicuous place upon the business premises. (5367)

(C) No escort bureau shall employ as an escort any person under eighteen (18) years of age. (5367)

(D) No escort, escort assistant or escort bureau shall furnish any escort or accept employment from any patron or person to be escorted or introduced, who is under eighteen (18) years of age. (5367)

(E) No person is permitted to operate or perform services as a sexually oriented escort or sexually oriented escort bureau, regardless of license. (5367)

(F) Each licensee operating as an escort or escort assistant shall carry their issued license upon his or her person when acting as an escort or escort assistant, and produce the same for inspection upon request, along with a government issued photo identification. (5367)
Escorts are prohibited from: (i) sexual conduct with patrons; (ii) groping the clothing covering a patron’s genitals or groping the clothing covering the breasts of a female patron; (iii) touching himself or herself, or asking a patron to himself or herself, on the genitals, buttocks or breasts (of a female patron); or (iv) requesting that a patron take off his or her clothing so as to expose the patron’s genitals or breasts (female patron). (5367)

**6-24-10: ESCORT BUREAU DUTIES (5367)**

(A) The escort bureau shall provide to each patron a written contract and receipt of payment for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount of money such services shall cost the patron, and any special terms or conditions relating to the service to be performed. (5367)

(B) The escort bureau, in terms of permitting consequences, is responsible and liable for the acts of all its employees, independent contractors and agents while working for the escort bureau including, but not limited to, telephone receptionists and escorts who are referred by the escort bureau with the escort is with the patron. (5367)

(C) An escort bureau shall not advertise, offer, solicit, or agree to provide escorts for sexual conduct. An escort bureau shall employ or provide only escorts who possess an escort license issued pursuant to this Chapter. (5367)

(D) No escort bureau may use, do business under, or advertise a telephone number until that number has first been reported to the Licensing Office on a form prescribed by the Licensing Office for that purpose. (5367)

(E) No escort bureau may use a business name, trade name or fictitious name until that name has first been reported to the Licensing Office on a form prescribed by the Licensing Office for that purpose. (5367)

**6-24-11: ADVERTISING (5367)**

No person is permitted to advertise or hold out to the public the availability of an escort, escort assistant or escort bureau without first obtaining a license therefore as provided in this Chapter, whether the actual business of an escort, escort assistant or escort bureau, as defined in this Chapter, is performed. The license number must be prominently displayed in such advertisements and prefaced with the letters “COM” to indicate a City of Mesa license number. This number must be included in all written, audio or electronic media advertisements. (5367)

**6-24-12: DENIAL, REVOCATION AND SUSPENSION OF LICENSE (5367)**

(A) Denial. In addition to any penalties set forth in this Chapter, a license issued pursuant to this Chapter (renewal or new) will only be granted if all of the below requirements of this Subsection (A) are met; the failure to meet any of the requirements will result in denial of the application. (5367)

(1) The required fees have been paid. (5367)

(2) The application, applicant and activities conform in all respects to the provisions of this Chapter, the ordinances of the City and laws of the State of Arizona. (5367)

(3) The applicant has not made a material misrepresentation of fact in the application. (5367)

(4) The applicant has provided in a timely manner all information required herein or reasonably necessary for issuance of the license. (5367)

(5) Neither the applicant or a controlling person has been convicted, in a court of competent jurisdiction, within the last ten (10) years, of a felony or misdemeanor, involving fraud, prostitution, pimping pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude. (5367)
(6) The applicant has not had a license similar to the one issued pursuant to the provisions of this Chapter issued by another governmental authority, revoked within the ten (10) year period immediately preceding the date of the filing of the application. (5367)

(7) The applicant or a controlling person does not owe a current debt to the City related to any open or closed account maintained or formerly maintained with the City (see Mesa City Code Title 1, Section 32). (5367)

(8) Applicant or a controlling person does not have: (5367)

(a) An outstanding warrant for his or her arrest; or (5367)

(b) Pending charges in a court of competent jurisdiction of the type listed in Section 6-24-12(A)(5). A renewal license may be issued if the licensee or a controlling person has a felony or misdemeanor charge of the aforementioned type pending in a court of competent jurisdiction; however, the issuance of such renewal license shall not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge. (5367)

(B) Suspension. (5367)

(1) In addition to any penalties set forth in this Chapter, a license shall be suspended if, during the term of the license, the Licensing Administrator determines that a licensee or controlling person has violated any of the provisions of this Chapter; however, the violation of certain provisions of this Chapter, as specifically set forth in Subsection (C) below, will result in revocation, rather than suspension, of a license. (5367)

(2) The penalty for a suspension of a license shall be: (5367)

(a) For the first suspension of a license during a twenty-four (24) month period, the license will be suspended up to fourteen (14) calendar days. (5367)

(b) For the second suspension of a license during a twenty-four (24) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5367)

(c) For the third suspension of license during a twenty-four (24) month period, the license will be revoked in accordance with Subsection (C) below. (5367)

(C) Revocation. (5367)

(1) In addition to any penalties set forth in this Chapter, a license shall be revoked if during the term of the license, the Licensing Administrator determines: (5367)

(a) Licensee or a controlling person is convicted of a felony or misdemeanor criminal offense: (5367)

(i) Involving fraud, prostitution, pimping, pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude; (5367)

(ii) Involving untrue, fraudulent, misleading, or deceptive advertising; or (5367)

(iii) Having a reasonable relationship to functions of an escort, escort assistant or escort bureau. (5367)
(b) On two (2) or more occasions within a twenty-four (24) month period, an employee, independent contractor or agent of the licensee, while working for the licensee, is convicted of a felony or misdemeanor offense involving fraud, prostitution, pimping, pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude. For the purpose of this Section 6-24-12(C)(1)(b): (5367)

(i) In applying the twenty-four (24) month provision, the date of the commission of an offense will be used to calculate the time period; and (5367)

(ii) The two (2) or more offenses subjecting the license to revocation do not have to be: (a) violations of the same statute or ordinance so long as they are offenses of the type listed above in Section 6-24-12(C)(1)(b); or (b) committed by the same person, so long as they are committed by an employee, independent contractor or agent of the licensee while working for the licensee. (5367)

(2) If a license is revoked, the licensee and controlling persons may not apply for a license for a period of one (1) year from the date of revocation. (5367)

(D) A licensee will be notified of any denial, suspension or revocation of the license via a mailing method capable of tracking delivery. The cause for such denial, revocation or suspension shall be set forth in the notice. The decision to deny, suspend or revoke a license may be appealed in accordance with Section 6-24-13 (Appeals). (5367)

6-24-13: APPEALS (5367)

(A) Any party aggrieved by a decision of the Licensing Administrator under this Chapter may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of a notice of the decision from the Licensing Administrator or Licensing Office. Service of any notice issued pursuant to this Chapter shall be complete upon mailing to the address of record for the licensee or applicant on file in the Licensing Office. If a hearing is not requested within ten (10) calendar days of issuance of the notice, the decision of the Licensing Administrator will be deemed final, the aggrieved party having waived their right to appeal the decision by failing to request a hearing. (5367)

(B) The appeal must meet the following requirements: (i) it must be mailed to the Licensing Office and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision; and (ii) it must set forth the grounds upon which the person is appealing the decision. If an appeal meets the requirements of this Subsection (B), a hearing with a Hearing Officer will be scheduled within thirty (30) calendar days of receipt of the appeal, or at such later time agreed upon by the aggrieved party and the City. The failure of an appeal to meet the aforementioned requirements shall entitle the Business Services Director to deny the appeal, making the decision of the Licensing Administrator final. (5367)

(C) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. The filing of an appeal will suspend the decision of the Licensing Administrator, except for decisions to deny a new application, until such time as the Hearing Officer has rendered their decision. (5367)

(D) The Hearing Officer will render a decision within sixty (60) calendar days of a hearing, unless the Hearing Officer provides notice to the parties that additional time is needed, but in no event shall a Hearing Officer take longer than one hundred twenty (120) calendar days to render a decision. The decision of the Hearing Officer is final. An appeal of the Hearing Officer’s decision may be made in accordance with Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions). (5367)
6-24-14: PENALTIES (5367)

(A) Among other penalties that may apply, any person who violates any provision of this Chapter, whether or not the act is specifically stated as being unlawful, shall be guilty of a class one misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed the amounts set forth in the Section 6-24-14(A) and may also be punished by an imprisonment for a period not to exceed six (6) months. (5367)

(1) A person convicted of any offense listed in this Chapter shall pay a fine not less than five hundred dollars ($500.00). (5367)

(2) If within a period of thirty-six (36) months a person is convicted of a second violation of this Chapter, the person shall pay a fine not less than one thousand dollars ($1,000.00). (5367)

(3) If within a period of thirty-six (36) months a person is convicted of three or more times of a violation of this Chapter, the person shall pay a fine not less than one thousand five hundred dollars ($1,500.00). (5367)

(B) In addition to the fines set forth in Subsection (A), in accordance with A.R.S. § 13-803, upon conviction of a violation of this Chapter, an enterprise (as that term is defined in A.R.S. § 13-105) may be punished by additional fines, so long as the total amount of fines for the conviction of a violation does not exceed twenty thousand dollars ($20,000). (5367)

(C) Each violation continued shall be a separate offense, punishable as described herein. (5367)

(D) The denial, suspension or revocation of a license is not a defense to prosecution. (5367)

6-24-15: EXCLUSIONS (5367)

The requirements of this Chapter shall have no application, no effect upon, and shall not be construed as applying to any of the following: (5367)

(A) Employment agency services, except that any employment agency which provides escorts as defined herein, must obtain a license as required by this Chapter. (5367)

(B) A sexually oriented business with a valid, unsuspended license to operate issued pursuant to Mesa City Code Title 6, Chapter 16. (5367)

(C) An organization which is qualified for exemption from taxation of income under A.R.S § 43-1201. (5367)

(D) The participants in an auction held for the purpose of raising funds for a charitable cause or organization at which individuals, who personally receive no consideration, are auctioned off to serve as an escort on a one-time-only basis and where no sexual conduct is advertised to or does in fact take place between the participants; such events are commonly referred to as a date auction. (5367)
CHAPTER 1

FIRE PREVENTION STANDARDS

SECTION:

7-1-1: ASSUMING JURISDICTION OF FIRE PREVENTION STANDARDS

Pursuant to the provisions of A.R.S. Section 41-2163(A)(2), the City of Mesa, having in effect a nationally recognized fire code, does hereby assume jurisdiction from the State Fire Safety Committee for prescribing and enforcing fire prevention standards throughout the City. Such standards shall not supersede or exempt State or County owned and operated buildings and public schools from the State Fire Safety Committee’s established fire prevention standards. (2211)

CHAPTER 2

FIRE CODE

(3076,3695,3766,3767,4552,4789,5021,5352,5364,5491)

Section Two. ADOPTED BY REFERENCE

7-2-1: That Title 7, Chapter 2, Section 1 of the Mesa City Code is amended and shall read as follows:

The following publications are hereby adopted by reference as if set out at length in this Code, three copies of which shall be filed in the office of the City Clerk and kept available for public use and inspection: (5491)

2018 International Fire Code, including:

   Appendix B – FIRE-FLOW REQUIREMENTS FOR BUILDINGS
   Appendix C – FIRE HYDRANT LOCATIONS AND DISTRIBUTION
   Appendix E – HAZARD CATEGORIES
   Appendix F – HAZARD RANKING
   Appendix I – FIRE PROTECTION SYSTEMS – NONCOMPLIANT CONDITIONS
   Appendix L – REQUIREMENTS FOR FIRE FIGHTER AIR REPLACEMENT SYSTEMS
   Appendix N – INDOOR TRADE SHOWS AND EXHIBITIONS

Section Three. AMENDMENTS TO THE 2006 INTERNATIONAL FIRE CODE

SECTION 7-2-2 That Title 7, Chapter 2, Section 2 of the Mesa City Code shall now read as follows: (5491)

(A) CHAPTER 1 ADMINISTRATION

(1) Section 101.1 of the 2018 International Fire Code is amended to read, in its entirety, as follows:

   101.1 Title. These regulations shall be known as the Mesa Fire Code, hereinafter referred to as “this code.” (5491)
Section 102.3 of the 2018 International Fire Code is amended to read, in its entirety, as follows:

102.3 Change of use or occupancy. A change of occupancy shall not be made unless the use or occupancy is made to comply with the requirements of this code and the Mesa Existing Building Code. (5491)

Exception: Where approved by the Fire Code Official, a change of occupancy shall be permitted without complying is made to comply with the requirements of this code and the Mesa Existing Building Code, provided that the new or proposed use or occupancy is less hazardous, based on life and fire risk, than the existing use or occupancy. (5491)

Section 102.4 of the 2018 International Fire Code is amended to read, in its entirety, as follows:

102.4 Application of building code. The design and construction of new structures shall comply with the Mesa Building Code, and any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the Mesa Building Code, shall be made in accordance therewith. (5491)

New Section 102.7.3 is added to the 2018 International Fire Code, as follows: (5491)

102.7.3 International codes references. Within the technical codes and the referenced codes and standards therein, specific references to the following International Codes shall be deemed and interpreted to mean the specific City of Mesa Codes as listed herein: (5491)


Section 105.1.2 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

105.1.2 Types of permits. There shall be three types of permits as follows: (5491)

1. Operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by Section 105.6 for either:

   1.1. A prescribed period.

   1.2. Until renewed or revoked.

2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

3. Fire Safety operational permit. A Fire Safety operational permit is required for any inspectable occupancy within the City of Mesa and requires the applicant to provide contact information annually as required by the fire code official. The permit is valid for one year from date of issuance.

   Exception: Home-based businesses are not required to obtain a Fire Safety Operational Permit. (5491)

Section 105.4.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)
105.4.1 Submittals. Construction documents and supporting data shall be submitted electronically for a permit and in such form and detail as required by fire code official. The construction documents shall be prepared by a registered design professional licensed by the State of Arizona to design fire protection systems. (5491)

Exception: The fire code official is authorized to waive the submission of construction documents and supporting data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code. (5491)

105.4.1.1 Examination of documents. The code official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the work indicated and described is in accordance with the requirements of the code. (5491)

(7) Section 105.4.2 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

105.4.2 Information on construction documents. Construction documents shall be drawn to scale. Construction documents shall be submitted electronically and be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations as determined by the fire code official. Fire sprinkler shall comply with NFPA 13 and fire alarm shall comply with NFPA 72 regarding the content required in construction document submittals. (5491)

(8) Section 105.7 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

105.7 Required construction permits. The Mesa Administrative Code shall apply to construction permits for work as set forth in Sections 105.7.1 through 105.7.13. Any conflicts with the provisions of Sections 105.7.1 through 105.7.13 and the Mesa Administrative Code, the Mesa Administrative Code shall take precedence. (5491)

(9) Section 109.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

109.1 Board of Appeals. Orders, decisions, or determinations made by the fire code official may, within thirty (30) days of the receipt of the notice of the decision, be appealed to the Building Board of Appeals, Section 2-11 of the Mesa City Code. The request for an appeal shall be in writing, shall set forth the specific objections to the decision of the fire code official, and this shall form the basis of the appeal. A hearing shall be set as soon as practicable. The decision of the Building Board of Appeals shall be based on the evidence presented. (5491)

(10) Deleted Sections 109.2 and 109.3 (5491)

(11) Section 110.4 of the 2018 International Fire Code is Amended to state, in its entirety, as follows: (5491)

110.4 Violation Penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of Class 1 misdemeanor, punishable by a fine or not more than two thousand five hundred dollars (2,500.00) and/or by imprisonment not exceeding six (6) months, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense. (5491)

(12) Section 112.4. of the 2018 International Fire Code is amended to state, in its entirety, as follows:

112.4 Failure to Comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than five hundred ($500) or more than two thousand five hundred dollars ($2,500.00) (5491)
(B) CHAPTER 2 DEFINITIONS (5491)

(1) The following definitions are added to the 2018 International Fire Code, as follows: (5491)

DIRECTED CARE SERVICE. The care of residents who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions. Directed care services include providing life sustaining programs and services, and may include personal care or supervisory care services. (5491)

GAZEBO. Detached, open-sided, roofed structure. (5491)

(2) The following definitions of the 2018 International Fire Code is amended to state, as follows:

Institutional Group I-4, day care facilities. Institutional Group I-4 shall include buildings and structures occupied by more than ten persons, including not more than 5 infants 2 ½ years of age or less, who receive custodial care for less than 24 hours by persons other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following: (5491)

- Adult day care
- Child day care

Classification as Group E. A child day care facility that provides care for more than ten but not more than 100 children 2 ½ years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E. (5491)

Within a place of religious worship. Rooms and spaces within places of religious worship providing such care during religious functions shall be classified as part of the primary occupancy. (5491)

Five or fewer occupants receiving care. A facility having ten or fewer persons receiving custodial care shall be classified as part of the primary occupancy. (5491)

Five or fewer occupants receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having ten or fewer persons receiving custodial care shall be classified as a Group R-3 or R-5 occupancy as applicable. (5491)

Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I. (5491)

(3) The following definitions of the 2018 International Fire Code is amended to state, as follows:

Residential Group R-4 Residential Group R-4. Residential Group R-4 shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive custodial care. Building of Group R-4 shall be classified as one of the occupancy conditions indicated below. This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Group Home
- Halfway Houses
- Residential board and care facilities
- Social rehabilitations

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 or R-5, except as otherwise in provided in the Mesa Building Code. (5491)
Assisted living homes located in residentially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health Services with more than 5 but not more than 10 residents. (5491)

Assisted living centers located in commercially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health with more than 5 but not more than 16 residents. (5491)

(4) New definitions added to the 2018 International Fire Code is amended to state, as follows: (5491)

Residential Group R-5. Residential Group R-5 occupancies where the occupants are primarily permanent as detached one- and two-family dwellings and multiple single-family dwellings (townhouses) and their accessory structures conforming with the Mesa Residential Code. R-5 occupancies may include: (5491)

Adult care facilities providing accommodations for ten or fewer persons of any age for less than 24 hours within a single residence.
Childcare facilities providing accommodations for ten or fewer persons of any age for less than 24 hours within a single residence.
Assisted living homes with 5 or fewer residents capable of self-preservation or responding to an emergency situation without physical assistance from staff.
Assisted living homes including facilities providing directed care services, with 5 or fewer residents that are not capable of self-preservation or responding to an emergency situation without physical assistance from staff. Such assisted living homes shall be protected with automatic sprinkler systems in accordance with section 903.3 and a smoke alarm system in accordance with section 907.2.10.1.3.
Congregate living facilities with 16 or fewer occupants.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care service includes assisting with activities of daily living that can be performed by persons without professional skills or professional training and may include the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed by the State. (5491)

RAMADA. See definition for Gazebo. (5491)

READILY ACCESSIBLE. Access that is capable of being reached safely and quickly for operation, repair or inspection without requiring those to whom ready access is requisite to climb over or remove obstacles, or to resort to the use of portable access equipment. (5491)

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care, supervisory care or directed care services. This classification shall include, but not be limited to, the following: assisted living facilities, residential board and care facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities. (5491)

SUPERVISORY CARE SERVICE. The care of residents who require general supervision, including providing daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications. Provision of any of the following services shall constitute supervisory care: cooking or meal service, laundry service, linen or maid service. (5491)

(C) CHAPTER 3 GENERAL REQUIREMENTS

(1) New section 315.3.5 is added to the 2018 International Fire Code, as follows: (5491)
315.3.5 Storage Under Stairways. Storage is prohibited under stairways. (5491)

Exception: Storage is allowed under interior or exterior stairways when spaces are protected below by one-hour fire-resistance-rated construction as specified in the MBC or are protected by fire sprinklers. (5491)

(D) CHAPTER 5 FIRE SERVICE FEATURES

(1) New section 501.5 is added to the 2018 International Fire Code, as follows: (5491)

501.5 Fire protection in Recreational Vehicle, Mobile Home and Manufactured Housing Parks, Sales Lots and Storage Lots. Recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with Sections 503 through 508. (5491)

Exception: Recreational vehicle parks located in remote areas shall be provided with fire hydrant protection and access roadways as required by the Fire Code Official. (5491)

(2) Section 503.1.1 of the 2018 International Fire Code, is amended to state, in its entirety, as follows:

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. (5283) (5491)

Exceptions:

The fire code official is authorized to increase the dimension to 300 feet (91 400 mm) where any of the following conditions occur: (5491)

1. The fire code official is authorized to increase the dimension to 300 feet (91 400 mm) where any of the following conditions occur:
   1.1. The building is equipped throughout with approved automatic sprinkler system in accordance with Section 903.3.1.1., 903.3.1.2 or 903.3.1.3 (This is an exception that the applicant may select and is not intended to be a direct or indirect requirement to install automatic fire sprinklers)
   1.2. Fire Apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.
   1.3. Group R-3/R-5 or Group U occupancies.
   1.4. When the applicant selects and receives approval by the fire code official for alternative means outlined (or “as prescribed”) in Sections 104.6.4. through 104.9 of the Mesa Fire Code.

2. Where approved by the fire code official, fire apparatus access roads shall be permitted to be exempted or modified for solar photovoltaic power generation facilities.

(3) New section 503.1.4 is added to the 2018 International Fire Code, as follows: (5491)

503.1.4 Storage Yards. Approved fire access shall be provided where required by the fire official for all new and existing, outdoor storage areas. This includes, but is not limited to, storage piles throughout automotive wrecking yards, junkyards, and recycling facilities. (5491)

(4) Section 503.2.1. of the 2018 International Fire Code is amended to state, in its entirety, as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 15 feet (4572 mm). (5491)
(5) Section 503.2.3 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

**503.2.3 Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities as determined by the fire code official. (5491)

(6) Section 503.2.7 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

**503.2.7 Grade.** Whether temporary or permanent, fire apparatus access roads with grades equal to or less than 6% may be designed with materials such as materials or compacted ABC or compacted decomposed granite. All fire apparatus access roads that exceed 6% shall be designed with paved materials such as concrete or asphalt. All fire apparatus access roads with grades that exceed 12% shall be subject to the approval of the Fire Code Official. (5491)

(7) New Section 503 is added to the 2018 International Fire Code, as follows:

**503.7 Commercial and Industrial Developments** (5491)

503.7.1 **Building exceeding three stories or 30 feet in height.** Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have not few than two means of fire apparatus access for each structure. (5491)

503.7.2 **Buildings exceeding 62,000 square feet (5760 m²) in area.** Buildings or facilities having gross building area of more than 62,000 square feet (5760 m²) shall be provided with two separate and approved fire apparatus access roads. (5491)

503.7.3. **Remoteness.** Where two fire apparatus access are required, they shall be placed distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses. (5491)

(8) New sections 503.8 through 503.10 is added to the 2018 International Fire Code, as follows:

**503.8 Aerial Fire Apparatus Access Roads.** (5491)

503.8.1 **Where Required.** Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater. (5491)

503.8.2 **Width.** Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm), exclusive of shoulders, in the immediate vicinity of the building or portion thereof. (5491)

503.8.3 **Proximity to building.** One or more of the required access routes meeting this condition shall be located not less than 15 feet (4572 mm) and not greater than 30 feet (9144 mm) from the building, and shall be positioned parallel to one entire side of the building, the side of the building on which the aerial fire apparatus access road is positioned shall be approved by the fire code official. (5491)

503.8.4 **Obstructions.** Overhead utility and power lines shall not be located over the aerial fire apparatus access road or between the aerial fire apparatus road and the building. Other obstructions shall be permitted to be placed with the approval of the fire code official. (5491)

**503.9 Residential Access Roads.** Access to residential developments shall comply with this section. A residential development may have public or private streets. (5491)

503.9.1 **Multiple access roads.** Residential developments where the number of dwelling units exceeds 30 shall be provided with a minimum of two separate and approved fire apparatus access roads. (5491)
503.9.2 Parking. Fire department access shall have an unobstructed width of not less than 20 feet (6096 mm). Road widths shall be as follows: (5491)

1. No parking on either side of the roadway when the road is at least 20 feet (6096 mm) to less than 28 feet (8,534 mm) wide. (5491)
2. No parking on one side of the roadway when the road is between at least 28 feet (8534 mm) and less than 34 feet (10,363 mm) wide. (5491)
3. Parking is not restricted when a road is 34 feet (10,363 mm) wide or greater. (5491)

503.9.2.1 Maintenance of parking restrictions. Maintenance of fire department access parking restrictions as initiated by the Fire Department will be the responsibility of the homeowners’ association or individual property owner of the property affected by the restriction. If there is not a homeowners’ association or individual property owner, the City of Mesa shall be responsible for the maintenance of the fire department access parking restrictions. (5491)

503.9.3 Queuing distance. The queuing distance between the open gate swing and aerial roadway shall be no less than 50 feet (15,240 mm) in length to accommodate a fire apparatus. This distance is not required for automatic gates when no manual action is required to close and lock the gate. (5491)

503.9.4 Fire Lane Turning Radius. Residential developments shall comply with Mesa Fire and Medical Detail. (5491)

503.10 Multiple-Family Residential Developments. Multiple-family residential projects having more than 30 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads. (5491)

(9) New section 504.4 is added to the 2018 International Fire Code, as follows:

504.4 Ladder access to the roof. Buildings 3 stories above grade and less, shall have approved flat stable area 10 feet (3028 mm) wide by 30 percent building height at the exterior building corners on two sides. (5491)

(10) Section 505.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

505.1 Address identification. New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 12 inches (304.8 mm) high with a minimum stroke width of 2 inches (12.7 mm). Numbers shall not be spelled out. Each character shall be not less than 12 inches (102 mm) high with a minimum stroke width of 2 inches (50.8 mm). Address identification shall be approved, and where required by the fire code official, shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building cannot be viewed from the public way a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained. (5491)

(11) Section 505.1.1 and 505.1.2 is added to the 2018 International Fire Code, as follows:

505.1.1 Suite identification. New and existing buildings shall be provided with approved suite identification. Suite identification shall be legible and stenciled on or near the outside portion of all entrance and exit doors. Suite identification characters shall contrast with their background and shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 3 inches (76.2 mm) tall with a minimum stroke width of ½ inch (12.7 mm). Numbers shall not be spelled out. Suite identification shall be approved, and where required by the fire code official, shall be provided in additional approved locations to facilitate emergency response. (5491)

505.1.2 Multiple Tenant Buildings. Strip malls and other multiple tenant buildings shall their address and suite number posted on all rear doors of each tenant space. (5491)

(12) Section 506.1.1 and 506.1.2 of the 2018 International Fire Code remain unchanged. (5491)
(13) New section 507.2.1.1. is added to the 2018 International Fire Code, as follows:

**507.2.1.1 Detectible Underground Locator Device.** Underground nonmetallic water piping larger than two (2) inches (50.8 mm) in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial. (5491)

(14) Section 507.3 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

**507.3 Fire flow.** Fire-flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B. (5491)

**507.3.1. Residential developments.** The plat for residential sub-divisions shall have the following completed statement: (5491)

“Fire hydrant spacing:
This sub-division has fire hydrants spaced at an average spacing of ( ) feet.
This allows the largest home on the lots to be a maximum of ( ) square feet under roof.
Constructed per the Mesa Building Code of at least Type ( ) construction.”

(15) New section 507.5.1.2 is added to the 2018 International Fire Code, as follows:

**507.5.1.2 Phased systems.** Phased systems with piping looped through a future phase shall have the complete looped piping system installed prior to any combustible construction above ground. The loop connection may be installed with the next phase of the development if it can be shown through calculation that the system can deliver the required fire flow without the loop connection. (5491)

(16) Section 510.13 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

**510.1 Emergency responder radio coverage in new buildings.** New buildings shall have approved radio coverage for emergency responders within the building based on the existing coverage levels of the public safety communication systems utilized by the jurisdiction, measured at the exterior of the building. This section shall not require improvement of the existing public safety communication systems. All buildings and structures with the following characteristics shall comply with Section 510: (5491)

1. Buildings or structures more than 3 stories above ground level;
2. Buildings or structures totaling 45,000 square feet (13 716 m²) or more on any single floor;
3. Buildings or structures that include a basement or other subterranean space totaling 250 square feet (76.2 m²) or more; or
4. Buildings or structures where fire code official has determined to have been constructed in a manner or with materials likely to limit the ability of emergency response personnel to effectively use radio communication while within that building or structure.

**Exceptions:**
1. Where approved by the building official and the fire code official, a wired communication system in accordance with Section 907.2.13.2 shall be permitted to be installed or maintained in lieu of an approved radio coverage system.
2. Where it is determined by the fire code official that the radio coverage system is not needed.
3. In facilities where emergency responder radio coverage is required and such systems, components or equipment required could have a negative impact on the normal operations of that facility, the fire code official shall have the authority to accept an automatically activated emergency responder radio coverage system.
4. Groups R-3, R-4, R-5, and U occupancies
5. Buildings and structures utilizing only wood framing
6. Buildings and structures less than thirty-five (35) feet (10 668 mm) above ground level and do not utilize any metal framing or metal roofing.
(17) Section 510.4.1.1. of the 2018 International Fire Code is amended to state, in its entirety, as follows:

510.4.1.1 Minimum signal strength into the building. The minimum inbound signal strength shall be sufficient to provide usable voice communications throughout the coverage area as specified by the fire code official. The inbound signal level shall be sufficient to provide not less than a minimum signal strength of -95 dBm in 95% of the area on each floor when transmitting to and from a Public Safety Radio System. Applicable to the technology for either analog or digital signals. (5491)

(18) New section 510.4.1.1.1 is added to the 2018 International Fire Code, as follows:

510.4.1.1.1 Minimum Delivered Audio Quality (DAQ). A minimum DAQ of 3.4 for signal strength and intelligibility when utilizing the Public Safety Radio System. For public safety, the accepted objective is to provide DAQ 3.4 over the service area. DAQ 3.4 is defined as “speech understandable with repetition only rarely required, and with some noise and/or distortion” and represents a Bit Error Rate (BER) of 2%. (5491)

(19) Section 510.4.2.2 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

510.4.2.2 Technical criteria. The fire code official shall maintain a document providing the specific technical information and requirements for the emergency responder communications coverage system. This document shall contain, but not be limited to, the various frequencies required, the location of radio sites, the effective radiated power of radio sites, the maximum propagation delay in microseconds, the applications being used and other supporting technical information necessary for system design. (5491)

1. The Topaz Regional Wireless Cooperative (TRWC) will provide which donor site will be utilized for any installation of a 700/800 MHz BDA/DAS system that will be using the TRWC public safety network. (5491)

2. The TRWC Administration Manager will approve any enhancements for Simplex VHF Hazard Zone Fire network. (5491)

(E) CHAPTER 7 FIRE-RESISTANCE-RATED CONSTRUCTION

(1) Section 703.4 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

703.4 Testing. Horizontal and vertical sliding and rolling fire doors, smoke and/or fire dampers, fire shutters and smoke vents shall be inspected and tested annually to confirm proper operation and full closure. Resetting of the release mechanism shall be done in accordance with the manufacturer’s written instructions. A written record shall be maintained and be available to the fire code official. (5491)

(F) CHAPTER 9 FIRE PROTECTION AND LIFE SYSTEMS

(1) Deleted sections 903.2 through 903.2.11.5, in its entirety, from the 2018 International Fire Codes. (5491)

(2) New section 903.2 is added to the 2018 International Fire Code, as follows:

Section 903.2 Where Required. Approved automatic sprinkler systems shall be provided in the locations described in this Section. (5491)

903.2.1 New buildings or structures. All areas of new buildings or structures, and other locations required by this Chapter or the Mesa Fire Code, shall be provided with an automatic fire sprinkler system complying with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 as applicable. (5491)

Exceptions: Unless the use of the facility otherwise requires automatic fire sprinkler protection, fire sprinkler systems shall not be required for the following: (5491)
1. R-3 and R-5 not including residential care or assisted living facilities. (5491)

2. Detached, non-residential buildings not exceeding 500 square feet (152.4 m²) in floor area and not closer than 5 feet (1524 mm) to any building or property line. (5491)

3. Detached, gazebos, ramadas, and canopies not greater than 5,000 square feet (1524 m²) in roof area, no combustible storage, or cooking beneath, and not closer than five feet to any building, property line, or other shade canopy. (5491)

4. Other buildings or structures accessory to and located on the same lot with R-3, R-4, or R-5 occupancies. (5491)

5. Portable storage containers used for storage purposes and not closer than 5 feet (1524 mm) to any building, property line or other container. (5491)

6. Exterior covered/enclosed walkways of Type I, II or III construction, not greater than 12 feet (3657.6 mm) in width, no combustible storage beneath, and with enclosing walls that are at least 50 percent open. (5491)

903.2.2 One and Two-Family Dwelling Sprinkler Option (R5). All home builders of one and two-family dwellings (R5 occupancies) shall provide an option for residential fire sprinklers. The contractor or their agent shall provide an informational packet containing educational materials approved by the Fire Code Official, including a form explaining the option for residential sprinklers, to all prospective buyers and shall obtain a signed receipt for the educational material from the prospective buyer. Copies of the signed forms shall be kept on file and available for review upon request by the Mesa Fire Department. Upon the request and execution of a purchase agreement by the homebuyer, the home builder shall install the residential fire sprinklers. Such fire sprinkler systems shall comply with the requirements of Section 903.3.1.1 or 903.3.1.3. (5491)

903.2.3 Group H-5 occupancies. An automatic sprinkler system shall be installed throughout buildings containing Group H-5 occupancies. The design of the sprinkler system shall not be less than that required under the Mesa Building Code for the occupancy hazard classifications in accordance with Table 903.2.5.2. (5491)

Where the design area of the sprinkler system consists of a corridor protected by one row of sprinklers, the maximum number of sprinklers required to be calculated is 13. (5491)

TABLE 903.2.3 (5491)

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>OCCUPANCY HAZARD CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fabrication areas</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Service corridors</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Storage rooms without dispensing</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Storage rooms with dispensing</td>
<td>Extra Hazard Group 2</td>
</tr>
<tr>
<td>Corridors</td>
<td>Ordinary Hazard Group 2</td>
</tr>
</tbody>
</table>

903.2.4 Change of occupancy. An existing building or portion thereof undergoing a change of occupancy shall provide an automatic sprinkler system complying with the requirements of this chapter. (5491)

903.2.5 Additions. All additions to existing buildings shall be provided with an automatic fire protection system throughout the existing building and addition compliant with Section 903.3 as applicable. (5491)

Exceptions: (5491)

1. Additions of 1,000 sq. ft. (304.8 m²) or less. The aggregate of multiple additions shall not exceed 1,000 sq. ft. (304.8 m²).

2. Additions to R-3 and R-5 occupancies, not including residential care or assisted living facilities.

903.2.6 Rubbish and linen chutes. An automatic sprinkler system shall be installed at the top of rubbish and linen chutes and in their terminal rooms. Chutes shall have additional sprinkler heads installed at alternate floors.
and at the lowest intake. Where a rubbish chute extends through a building more than one floor below the lowest intake, the extension shall have sprinklers installed that are recessed from the drop area of the chute and protected from freezing in accordance with Section 903.3.1.1. Such sprinklers shall be installed at alternate floors beginning with the second level below the last intake and ending with the floor above the discharge. Access to sprinklers in chutes shall be provided for servicing. (5491)

903.2.7 Other hazards. Automatic sprinkler protection shall be provided for the hazards indicated in Sections 903.2.8.1 and 903.2.8.3. (5491)

903.2.7.1 During construction. Automatic sprinkler systems required during construction, alteration and demolition operations shall be provided in accordance with Section 3313. (5491)

903.2.7.2 Ducts conveying hazardous exhausts. Where required by the Mesa Mechanical Code, automatic sprinklers shall be provided in ducts conveying hazardous exhaust, flammable or combustible materials. (5491)

Exceptions: Ducts in which the largest cross-sectional diameter of the duct is less than 10 inches (254 mm). (5491)

903.2.7.2.1 Protection of sprinklers. Automatic sprinklers installed in flammable vapor areas shall be protected from the accumulation of residue from spraying operations in an approved manner. Bags used as a protective covering shall be 0.003-inch-thick (0.076 mm) cellophane or shall be thin paper bag. Automatic sprinklers contaminated by overspray particles shall be replaced with new automatic sprinklers. (5491)

903.2.7.3 Commercial cooking operations. An automatic sprinkler system shall be installed in commercial kitchen exhaust hood and duct system where an automatic sprinkler system is used to comply with Section 904. (5491)

903.2.8 Other required suppression systems. In addition to the requirements of Section 903.2, the provisions indicated in Table 903.2.11.6 also require the installation of a suppression system for certain buildings and areas.

(3) Renumbered Table 903.2.11.6 to Table 903.2.9 of the 2018 International Fire Code. (5491)

(4) Section 903.3.1.1. of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Section 903.3.1.1.1. and 903.3.1.1.2. (5491)

Exempt locations. Automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas, when approved by the fire code official, are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance rated construction or contains electrical equipment. (5491)

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard. (5491)

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the fire code official.

3. Generator and transformer rooms separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. Rooms or areas that are of noncombustible construction with wholly noncombustible contents.

5. Fire service access elevator machine rooms and machinery spaces.
6. Machine rooms, machinery spaces, control rooms and control spaces associated with occupant evacuation elevators designed in accordance with Section 3008 of the International Building Code. (5491)

(5) New section 903.3.1.1.3 is added to the 2018 International Fire code, as follows: (5491)

903.3.1.1.3 Minimum design requirements. The minimum design requirements for fire sprinkler systems shall be as determined by the Mesa Fire Code or as defined in Section 903.3.1.1.3 whichever is greater. (5491)

903.3.1.1.3.1 Shell buildings. The minimum fire sprinkler system design for shell buildings shall be Ordinary Group II as defined in 903.3.1.1. (5491)

903.3.1.1.3.2 Buildings with roof structure over 20 feet (6096 mm). The minimum design requirements for buildings with the roof structure over 20 feet (6096 mm) above the finished floor shall be for rack storage of Group IV commodities as defined in Chapter 32 and Section 903.3.1.1. (5491)

(6) Section 903.3.1.2.3. of the 2018 International Fire Code is amended to state, in its entirety, as follows:

903.3.1.2.3 Attics. Attic protection shall be provided as follows: (5491)

1. Attics that are used or intended for living purposes or storage shall be protected by an automatic sprinkler system.
   2. Where fuel-fired equipment is installed in an unsprinklered attic, not fewer than one quick-response intermediate temperature sprinkler shall be installed above the equipment.
   3. Where located in a building of Type III, Type IV or Type V construction designed in accordance with Section 510.2 or 510.4 of the International Building Code, attics not required by Item 1 to have sprinklers shall comply with one of the following:
      3.1. Provide automatic sprinkler system protection.
      3.2. Construct the attic using noncombustible materials.
      3.3. Construct the attic using fire-retardant-treated wood complying with Section 2303.2 of the International Building Code.
      3.4. Fill the attic with noncombustible insulation.

   The height of the roof assembly shall be determined by measuring the distance from the lowest required fire vehicle access road surface adjacent to the building to the eave of the highest pitched roof, the intersection of the highest roof to the exterior wall, or the top of the highest parapet, whichever yields the greatest distance. For the purpose of this measurement, required fire vehicle access roads shall include only those roads that are necessary for compliance with Section 503.

4. Group R4, Condition 2 occupancy attics not required by Item 1 to have sprinklers shall comply with one of the following:
   4.1. Provide automatic sprinkler system protection.
   4.2. Provide a heat detection system throughout the attic that is arranged to activate the building fire alarm system.
   4.3. Construct the attic using noncombustible materials.
   4.4. Construct the attic using fire-retardant-treated wood complying with Section 2303.2 of the International Building Code.
   4.5. Fill the attic with noncombustible insulation.

(7) New sections 903.3.1.2.4 and 903.3.1.2.5 is added to the 2018 International Fire Code, as follows: (5491)

903.3.1.2.4 Required fire protection systems. For the purpose of inspection, testing, or maintenance of NFPA
13R fire protection systems in R-1 and R-2 occupancies, there shall be provided, at the time of construction, an exterior access door on the side of the building next to the fire sprinkler riser of adequate size to allow for valves and gauges to be accessed, repaired and viewed from the exterior for testing and maintenance purposes. The dimensions of the access door will be dependent upon the design of the riser and system devices but shall, in no case, require that service personnel must enter a private dwelling or garage to reach the riser for service and/or repair. (5491)

903.3.1.2.5. Attached garages and carports. Attached garages and carports shall be provided with sprinkler protection. (5491)

(8) Section 903.3.5 of the 2018 International Fire code is amended to state, in its entirety, as follows: (5491)

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of City of Mesa Standard Detail M-31.06. For connections to public waterworks systems, the water supply test used for design of fire protection systems shall be adjusted to account for seasonal and daily pressure fluctuations based on information from the water supply authority and as approved by the fire code official. (5491)

(9) New section 903.3.5.3 is added to the 2018 International Fire Code, as follows: (5491)

903.3.5.3 Detectible Underground Locator Device. Underground nonmetallic water and irrigation system piping larger than two (2) inches (50.8 mm) in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial. (5491)

(10) Section 903.3.6 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

903.3.6 Hose threads. Fire hose threads and fittings used in connection with automatic sprinkler systems shall be National Standard Thread. (5491)

(11) New section 903.3.7.1 is added to the 2018 International Fire Code, as follows: (5491)

903.3.7.1. Fire department connection sizing. The size of the fire department connection and piping is dependent on the automatic sprinkler design flow. The maximum design flow for a 2-½ inch Siamese connection is 500 GPM (1892.71 LPM). For design flows greater than 500 GPM (1892.71 LPM) install a single 2-½ inch (63.5 mm) Siamese connection and 5-inch (127 mm) Storz connection. (5491)

(12) New sections 903.3.9 through 903.3.11 is added to the 2018 International Fire Code, as follows: (5491)

903.3.9 Safety Factor. All fire sprinkler designs shall have a 10 percent (pressure) safety margin.

903.3.10 Remodel. Fire sprinkler design drawings shall be required for tenant improvement or remodeling projects when 10 or more sprinkler heads are relocated and/or added.

Exception. Group F, H, I, and S or as required by the fire official.

903.3.11 Freeze Protection. Exterior sprinkler piping with a minimum of 2 inches (50.8 mm) may be used in lieu of freeze protection required by Section 903.3.1.1.

(13) Sections 903.4 through 903.4.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

903.4 Sprinkler system supervision and alarms. Valves controlling the water supply for automatic sprinkler systems, pumps, tanks, water levels and temperatures, critical air pressures and waterflow switches on all sprinkler systems shall be electrically supervised by a listed fire alarm control unit.

Exceptions:
1. Automatic sprinkler systems protecting one- and two-family dwellings, other than R-4.
2. Group R occupancies containing 15 or less dwelling or sleeping units and not exceeding an aggregate area of 12,000 square feet.
3. Jockey pump control valves that are sealed or locked in the open position.
4. Trim valves to pressure switches in dry, preaction and deluge sprinkler systems that are sealed or locked in the open position.

903.4.1 Monitoring. Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an Underwriters Laboratory listed or Factory Mutual approved supervising station or, where approved by the fire code official, shall sound an audible signal at a constantly attended location. (5491)

Exceptions: (5491)
1. Underground key or hub valves in roadway boxes provided by the municipality or public utility are not required to be monitored.
2. Backflow prevention device test valves located in limited area sprinkler system supply piping shall be locked in the open position. In occupancies required to be equipped with a fire alarm system, the backflow preventer valves shall be electrically supervised by a tamper switch installed in accordance with NFPA 72 and separately annunciated.

(14) New section 905.13 is added to the 2018 International Fire Code, as follows: (5491)

905.13 Standpipe Hose. The fire hose and nozzle as part of Class II or Class III wet standpipe system(s) may be removed or eliminated with written approval of the Fire Code Official.

(15) Section 912.3 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

912.3 Fire hose threads. Fire hose threads used in connection with standpipe systems shall be National Standard Thread (NST).

(16) Section 912.6 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

912.6 Backflow protection. The potable water supply to automatic sprinkler and standpipe systems shall be protected against backflow as required by the Mesa Standard Details.

(G) CHAPTER 11 CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS

(1) Section 1103.5.3 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

1103.5.3 Group I-2 Condition 2. In addition to the requirements of Section 1103.5.2, existing buildings of Group I-2 Condition 2 occupancy shall be equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1. The automatic sprinkler system shall be installed as established by the adopting ordinance. This shall become effective eighteen (18) months from the adoption date of this ordinance.

(H) CHAPTER 24 FLAMMABLE FINISHES

(1) New section 2404.10 is added to the 2018 International Fire Code, as follows: (5491)

2404.10 Exterior finishing operations. Flammable spray-finishing operations shall not be conducted outside of approved structures.

(I) CHAPTER 28 LUMBER YARDS AND WOODWORKING FACILITIES

(1) Section 2809.5 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

2809.5 Fire protection. An approved hydrant or portable fire-extinguishing equipment suitable for the fire hazard involved shall be provided for open storage yards. Hydrant systems shall be installed in accordance with NFPA 24. Portable fire extinguishers complying with Section 906 shall be located so that the travel distance to the nearest unit does not exceed 75 feet (22 860 mm).
(J) CHAPTER 31 TENTS, TEMPORARY SPECIAL EVENT STRUCTURES AND OTHER MEMBRANE STRUCTURES

(1) Section 3103.2 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

3103.2 Approval required. Tents and membrane structures having an area in excess of 400 square feet (37 m²) and tents without walls (canopies) in excess of 1200 square feet (148 m²) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

Exceptions:
1. Tents used exclusively for recreational camping purposes.
2. Tents open on all sides that comply with all of the following:
   2.1. Individual tents having a maximum size of 700 square feet (65 m²) total.
   2.2. The aggregate area of multiple tents placed side by side without a fire break clearance of 12 feet (3658 mm), not exceeding 700 square feet (65 m²) total.
   2.3. A minimum clearance of 12 feet (3658 mm) to all structures and other tents.

(K) CHAPTER 32 HIGH-PILED COMBUSTIBLE STORAGE

(1) Section 3206.4 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

3206.4 Automatic sprinklers. Automatic sprinkler systems shall be provided in accordance with Sections 3207, 3208 and 3209.

3206.4.1 Identification of sprinkler system capabilities and limitations. An adhesive label shall be permanently installed at or adjacent to each sprinkler riser. When a building contains more than four risers, the sign shall be located at an approved location inside the building. When sprinkler risers are located outside of the building, the sign shall be stamped metal. The minimum sign dimension is 6-inches (152.4 mm) high by 4-inches (101.6 mm) wide. The sign shall specify the capabilities and limitations of the automatic sprinkler system. The sign shall include the following information: (5491)

1. The design base or basis, including the edition used
2. A statement indicating if the sprinkler design is control mode density area method, control mode specific application, suppression mode, or any combination thereof.
3. When used, all of the storage conditions stipulated NFPA 13, Section 12.7 for special designs.
4. The maximum storage height
5. The minimum required aisle width
6. If storage is in racks, the maximum rack width and minimum transverse and longitudinal flue widths.
7. Commodities that can be protected by the automatic sprinkler system
8. Commodities that cannot be protected by the automatic sprinkler system
9. Limits on storage heights of idle wood and plastic storage
10. Limits on storage heights of miscellaneous Group A plastic, tire and rolled paper storage
11. Locations where in-rack sprinklers are required
12. Locations where horizontal and/or vertical barriers are required
13. Information explaining the manufacturer, sprinkler identification number, k-factor, and operating temperature of the overhead sprinklers protecting the high pile storage.
The following example illustrates a suggested format label or sign:

<table>
<thead>
<tr>
<th>Automatic Sprinkler System Capabilities &amp; Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stored Commodity</td>
</tr>
<tr>
<td>Class I water miscible flammable liquid in 1 &amp; 5</td>
</tr>
<tr>
<td>gallon polyethylene containers in fiberboard</td>
</tr>
<tr>
<td>cartons</td>
</tr>
<tr>
<td>Design Documents</td>
</tr>
<tr>
<td>NFPA 13, 2019 edition &amp; NFPA 30, 2018 edition,</td>
</tr>
<tr>
<td>Table 4.8.2 (g) and section 4.8.6.2 (Scheme B)</td>
</tr>
<tr>
<td>Design Type</td>
</tr>
<tr>
<td>25 feet</td>
</tr>
<tr>
<td>Min. Aisle Width</td>
</tr>
<tr>
<td>8 feet</td>
</tr>
<tr>
<td>Max. Rack Width</td>
</tr>
<tr>
<td>9 feet</td>
</tr>
<tr>
<td>Flue Dimensions</td>
</tr>
<tr>
<td>Longitudinal: min. 6 inches</td>
</tr>
<tr>
<td>Transverse: Min. 3 inches</td>
</tr>
<tr>
<td>System Capabilities</td>
</tr>
<tr>
<td>Class I-IV commodities, stored commodity, solid</td>
</tr>
<tr>
<td>pile or palletized Group A plastics to 12 feet; rack</td>
</tr>
<tr>
<td>storage of Group A plastics to 25 feet.</td>
</tr>
<tr>
<td>System Limitations</td>
</tr>
<tr>
<td>No level 2 or 3 aerosols, Class 2, 3, or 4 oxidizers</td>
</tr>
<tr>
<td>Idle Pallets</td>
</tr>
<tr>
<td>6 feet maximum storage height</td>
</tr>
<tr>
<td>Tire Storage</td>
</tr>
<tr>
<td>5 feet maximum storage height</td>
</tr>
<tr>
<td>Roll Paper Storage</td>
</tr>
<tr>
<td>5 feet maximum storage</td>
</tr>
<tr>
<td>In-Rack Sprinklers</td>
</tr>
<tr>
<td>In-rack sprinklers are required at each of 3 rack</td>
</tr>
<tr>
<td>tiers containing the storage commodity. In-rack</td>
</tr>
<tr>
<td>sprinklers are Tyco/Central FS-B, 17/32-inch</td>
</tr>
<tr>
<td>orifice, QR 155°F elements, SIN TY0041</td>
</tr>
<tr>
<td>Horizontal Barriers</td>
</tr>
<tr>
<td>Required at each rack tier containing the stored</td>
</tr>
<tr>
<td>commodity.</td>
</tr>
<tr>
<td>Ceiling Sprinklers</td>
</tr>
<tr>
<td>Tyco ELO-231B, ⅜-inch orifice, SR 286°F element,</td>
</tr>
<tr>
<td>upright, SIN TY0030</td>
</tr>
</tbody>
</table>

3206.4.2 Pallets. Automatic sprinkler system requirements based on the presence of pallets shall be in accordance with NFPA 13. (5491)

3206.4.2.1 Plastic pallets. Plastic pallets listed and labeled in accordance with FM 4996 or UL 2335 shall be treated as wood pallets for determining required sprinkler protection. (5491)

(L) CHAPTER 33 FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION

(1) Section 3310.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

3310.1 Required access. Approved vehicle access for firefighting shall be provided to all construction or demolition sites and shall comply with Mesa Fire and Medical Department standard detail FPD 3310.1.

(2) Section 3312.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

3312.1 When required. An approved water supply for construction site shall meet the requirements of Appendix Chapters B and C. The minimum fire flow requirement when contractor or developer brings combustible materials on site is 1,500 GPM (5678.12 LPM) at 20 psi. At least one fire hydrant shall be within 500 feet (152.4 m) of any combustible materials and capable of delivering the minimum fire flow requirement. This hydrant or hydrants may be either temporary or permanent as the project schedule permits.
(M) CHAPTER 50 HAZARDOUS MATERIALS - GENERAL PROVISIONS

(1) New section 5001.5.2.1 is added to the 2018 International Fire Code, as follows: (5491)

5001.5.2.1 Changes to Hazardous Materials Inventory Statements. An amended hazardous materials inventory statement shall be provided to the fire official by facilities that store or handle hazardous materials within thirty (30) days of a change or addition of hazard class, or in amounts sufficient to cause an increase or decrease in the aggregate quantity that exceeds five percent (5%) for any physical or health class.

(N) CHAPTER 56 EXPLOSIVES AND FIREWORKS

(1) Section 5601.1.3 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

Exceptions:
1. Storage and handling of fireworks as allowed in Section 5604.
2. Manufacture, assembly, and testing of fireworks as allowed in Section 5605.
3. The use of fireworks for fireworks displays as allowed in Section 5608.
4. The possession, storage, sale, handling and use of specific types of Division 1.4G fire fireworks where allowed by applicable laws, ordinances and regulations, providing that such fireworks and facilities comply with NFPA 1124, CPSC 16 CFR Parts 1500 and 1507, and DOTn 49 CFR Parts 100-185, as applicable for customer fireworks.
5. The use, discharge or ignition of fireworks are prohibited except as allowed under Mesa City Code 6-21.

(2) New section 5601.9 is added to the 2018 International Fire Code, as follows: (5491)

5601.9 Abandonment. Explosive materials shall not be abandoned per sections 311.4 and 5001.6.

(O) CHAPTER 57 FLAMMABLE AND COMBUSTIBLE LIQUIDS

(1) New section 5706.5.1.19 is added to the 2018 International Fire Code, as follows: (5491)

5706.5.1.19 Time limit for unloading. Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring the liquid between tank cars and permanent storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than 24 hours while connected for transfer operations.

(P) CHAPTER 80 REFERENCED STANDARDS

(1) Revised the following NFPA Standards of the 2018 International Fire Code: (5491)

11 - 19 Low Medium- and High-Expansion Foam
13 - 19 Installation of Sprinkler Systems
13D - 19 Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes
13R - 19 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.
14 - 19 Installation of Standpipe, Private Hydrants and Hose Systems
20 - 19 Installation of Stationary Pumps for Fire Protection
24 - 19 Installation of Private Fire Service Mains and their Appurtenances
52 - 19  Compressed Natural Gas (CNG) Vehicular Fuel Systems
72 - 19  National Fire Alarm Code
110 - 19 Emergency and Standby Power Systems
111 - 19 Standard on Storage Electrical Energy Emergency and Standby Power Systems
211 - 19 Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances
484 – 19 Standard for Combustible Metals

(Q) APPENDIX B FIRE-FLOW REQUIREMENTS FOR BUILDINGS

(1) Table B105.2 of the 2018 International Fire Code is amended to state, in its entirety, as follows:

Table B105.2:

<table>
<thead>
<tr>
<th>AUTOMATIC SPRINKLER SYSTEM (Design Standard)</th>
<th>MINIMUM FIRE FLOW (gallons per minute)</th>
<th>FLOW DURATION (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No automatic sprinkler system</td>
<td>Value in Table B105.1(2)</td>
<td>Duration in Table B105.1(2)</td>
</tr>
<tr>
<td>Section 903.3.1.1 of the Mesa Fire Code</td>
<td>50% of the value in Table B105.1(2)²</td>
<td>Duration in Table 105.1(2) at the reduced flow rate</td>
</tr>
<tr>
<td>Section 903.3.1.2 of the Mesa Fire Code</td>
<td>50% of the value in Table B105.1(2)²</td>
<td>Duration in Table 105.1(2) at the reduced flow rate</td>
</tr>
</tbody>
</table>

Footnote:

a. The reduced fire flow shall be not less than 1,000 gallons (3785.41 L) per minute.
b. The reduced fire flow shall be not less than 1,500 gallons (5678.12 L) per minute.

(R) APPENDIX C FIRE HYDRANT LOCATIONS AND DISTRIBUTION

(1) Table C105.1 footnotes of the 2018 International Fire Code is amended to state, in its entirety, as follows:

Table C105.1 Footnotes:

a. Reduce by 100 feet (30 480 mm) for dead-end streets or roads.
b. Where streets are provided with median dividers that cannot be crossed by fire fighters pulling hose lines, or where arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet (15 240 mm) on each side of the street and be arranged on an alternating basis.
c. Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 500 feet (152.4 m²) to provide for transportation hazards.
d. Reduce by 50 feet (15 240 mm) for dead-end streets or roads.
e. One hydrant for each 1,000 gallons (3785.41 L) per minute or fraction thereof.
f. A 5-percent spacing increase shall be permitted where the buildings is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the Mesa Fire Code.
g. A 25-percent spacing increase shall be permitted where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.2 or 903.3.1.3 of the Mesa Fire Code International Fire Code or Section P2904 of the Mesa Residential Code.
h. The fire official is authorized to modify the location, number and distribution of fire hydrants based on site-specific constraints and hazards.

(S) APPENDIX CHAPTER L – REQUIREMENTS FOR FIRE FIGHTER AIR REPLENISHMENT SYSTEMS

(1) New section L104.1.2 is added to the 2018 International Fire Code, as follows: (5491)

\textbf{L104.1.2 When Required.} Buildings and structures five (5) floors or more above grade or high-rise buildings as defined by the Mesa Building Code; or underground buildings and structures, or components thereof, totaling ten thousand (10,000) square feet (3048 m$^2$) or more that are either more than two (2) floors below grade or more than thirty (30) feet (9144 mm) below grade.

(2) Section L104.13.1 of the 2018 International Fire Code is amended to state, in its entirety, as follows: (5491)

\textbf{L104.13.1 Location.} Fill stations for refilling breathing air cylinders shall be located as follows:

1. Fill stations shall be provided at the fifth floor above and below the ground level floor and every third level thereafter.
2. On floor levels requiring fill stations, one fill station shall be provided adjunct to a required exit stair at a location designated by the fire code official. In buildings required to have multiple exits, additional fill stations shall be provided at every stairways.

(3) New section L108.1 is added to the 2018 International Fire Code, as follows: (5491)

\textbf{L108.1 Markings and record keeping.} The fire department air connection panel and the remote air fill panels shall be clearly identified by means of permanently installed signage which says: “FIREFIGHTER AIR SYSTEM” in minimum letters 1½ inch high with a ¼ inch stoke and be located where plainly visible. The building or structure owner shall keep the area in and around the fire department air connection panel and the remote air fill panels free of objects that may block use of these panels and shall maintain and test the FBAR System in accordance with NFPA Standards and manufacturer specifications. Records of all maintenance and testing of the FBAR System shall be kept on-site for a minimum of three (3) years and be available to fire department personnel upon request.
Section Four. DIGITAL/ELECTRONIC DRAWING FILE SUBMISSIONS

SECTION 7-2-3. That Title 7, Chapter 2, Section 3 of the Mesa City Code shall now read as follows: (5491)

(A) General. Projects requiring a construction permit from Development Services, including projects performed under annual facilities permits shall be submitted in digital/electronic format. Other than construction permits, drawing shall not be required for the following: (5491)

1. R3 occupancies.
2. R4 occupancies.
4. Other buildings or structures accessory to and located on the same lot with one- and two-family dwellings.
5. Projects not required to submit drawings to obtain a permit. (Refer to Title 4, Chapter 1, Mesa Administrative Code)

The digital/electronic copy of the permit drawings shall be submitted to Mesa Fire and Medical Department (MFMD) through Development Services DIMES database for approval by MFMD Technical Services prior to the issuance of the certificate of occupancy/completion by the Development Services Director.

(B) Required Format. All submittals shall be digital/electronic files in one of the following formats: (.dwg) or (.dxf). If submitted files are embedded with external references (example: .xref), such drawings shall also be uploaded in DIMES. Cryptic naming of layers/files shall include a "definition key." All digital/electronic files shall be drawn in "feet" at a 1:1 scale. (5491)

(1) Required Information. At minimum, each file shall contain the following information: (5491)

(a) Floor Plans:
   (i) One plan for each building floor.
   (ii) All exterior and interior walls.
   (iii) All door locations (ingress/egress) throughout the building, including roll up doors and roof hatch/doors.
   (iv) Stairs and elevator locations.
   (v) Room/suite's names and/or numbers.
   (vi) Utility shut-off locations (water, electric and gas).
   (vii) Special hazards and high-piled stock/racks, if any.
   (viii) Fire Department items shall include, but are not limited to, standpipes, fire sprinkler risers, alarm panels, fire department connections, and Knox boxes.

(b) Site Plan:
   Including parking lot, building numbers, parking garages, fire lanes and hydrants.

(c) Roof Plan:
   Layout and access (ladder/hatch locations).

(2) Not Required. Layers listing furnishings, floor coverings, ceiling styles/grids, plumbing fixtures, electrical (lights, switches, outlets), wall coverings, or landscape information. (5491)
CHAPTER 3

FIRE CALLS OUTSIDE CITY LIMITS

SECTION:

7-3-1: FIRE CALLS OUTSIDE CITY LIMITS

The Fire Chief of the City is hereby authorized and directed, at his discretion, to respond to fire calls outside the City limits with such equipment and men, either regular firemen or volunteer, as may be necessary or reasonable under the circumstances. (220)

CHAPTER 4

FIRE INVESTIGATORS

SECTION:

7-4-1: DUTIES; POWERS; LIMITATIONS:

(A) The City Manager may designate certain members of the Mesa Fire Department as fire investigators. A fire investigator is authorized to investigate, detect, and, where appropriate, cite persons, companies or corporations who have violated or are suspected of violating any provision of Title 13, Chapter 17 of the Arizona Revised Statutes as amended or any provision of the Mesa Fire Code as adopted and amended by the City. (2589,3042,4478)

(B) While engaged in fire investigations and related fire code enforcement duties in this State, members of the Fire Department designated and appointed as fire investigators pursuant to the provisions of Subsection (A) possess and may exercise law enforcement powers of peace officers of this State. (2589,3042)

(C) This Section does not grant any powers of peace officers of this State to fire investigators other than those necessary for the investigation, detection, and citation authority under Subsection (A). (2589,3042)

(D) Any individual designated as a fire investigator shall have law enforcement training under the provisions of Arizona Revised Statutes Section 41-1822. (2589,3042)
CHAPTER 5

COST RECOVERY (5239, 5357)

SECTION:

7-5-1: PURPOSE (5239, 5357)
7-5-2: DEFINITIONS (5239, 5357)
7-5-3: BILLABLE COSTS AND RATES (5239, 5357)
7-5-4: PROCEDURE FOR BILLING (5239)

7-5-1: PURPOSE
The purpose of this Chapter is to allow the City of Mesa, by and through its Fire and Medical Department to recover costs associated with the provision of medical services, including transport services to and between health care facilities. (5239, 5357)

7-5-2: DEFINITIONS
In this Chapter, the following words and phrases shall have the meanings stated in this section unless the context otherwise requires:

(A) Billable Costs means the reasonable costs incurred in providing medical services including, but not limited to, labor, equipment usage, disposable supplies, medical supplies, medications, oxygen-related costs, mileage, fuel, and any other costs not prohibited by state or federal law. (5239, 5357)

(B) Medical Services means services provided when responding to an emergency medical situation or a 911 call for on-site emergent or low-acuity medical care; initial care; follow-up care; and/or preliminary treatment procedures by emergency medical treatment providers, including, but not limited to, emergency medical technicians, paramedics, licensed nurses, nurse practitioners, physician assistants, and behavioral health crisis counselors; and/or transport services to and between health care facilities. (5357)

(C) Third Party Payer means an insurance carrier or other coverage provider, including a private insurance carrier, Medicare or Medicaid. (5239, 5357)

7-5-3: BILLABLE COSTS AND RATES

(A) The Mesa Fire and Medical Department is authorized to bill individuals and third party payers for all reasonable billable costs incurred in or related to the provision of medical services. (5239, 5357)

(B) At the time service is provided or as soon as practicable thereafter, the Mesa Fire and Medical Department shall obtain all pertinent insurance and payment information from the individual to whom service is provided, or from the individual’s family member, agent, or other representative, to facilitate billing for such services. (5239, 5357)

(C) The Mesa Fire and Medical Department may adopt billing rates set by a state agency or a state or federal insurance program, as applicable, set billing rates through contracts with third party payers, or establish reasonable rates to recover billable costs, so long as such rates do not violate state or federal laws or regulations. Such rates shall be set forth in a Schedule of Fees and Charges and adopted by a resolution of the City Council. (5239, 5357)
7-5-4: PROCEDURE FOR BILLING

(A) The City of Mesa, through its Fire and Medical Department, is authorized to enter into a contract with a third party billing agency for performance of the billing authorized under this Chapter; provided, however, that the following standards for such third party billing contracts are met: (5239)

1. All third party billing services are to be provided at an amount consistent with fair market value for services rendered. The City may contract for such services on a percentage of collections basis or other manner consistent with the third party billing agency’s practice. (5239)

2. The third party billing agency has in place a compliance program conforming to standards set forth in the Office of Inspector General’s Compliance Program Guidance for Third Party Medical Billing Companies, 63 Federal Register 70138, as amended. (5239)

3. Funds payable to the City of Mesa by third party payers and/or carriers are not negotiated by billing agencies but are instead deposited directly into a designated City of Mesa account, through lock box or similar arrangement. (5239)

4. Neither the billing agency nor any of its employees are subject to exclusion from any state or federal health care program. (5239)

5. The billing agency is bonded and/or insured in amounts satisfactory to the City of Mesa. (5239)

(B) Nothing in this Section shall prohibit the City of Mesa, through its Fire and Medical Department, from performing the billing services set forth herein in lieu of contracting with a third party billing agency. (5239)
CHAPTER 1

BACK FLOW PROTECTION

SECTION:

8-1-1: PUBLIC WATER SUPPLY PROTECTION
8-1-2: APPROVAL
8-1-3: INSTALLATION
8-1-4: MAINTENANCE, TESTING, AND RECORDS
8-1-5: APPROVED BACK FLOW PREVENTIVE DEVICES
8-1-6: PREMISES REQUIRING APPROVED BACK FLOW PREVENTIVE DEVICES
8-1-7: FIRE SYSTEMS
8-1-8: TERMINATION OF WATER SERVICE
8-1-9: DEPARTMENT MODIFICATION
8-1-10: INFORMATION REQUESTS
8-1-11: STANDARDS TO BE MET
8-1-12: EXISTING CUSTOMERS
8-1-13: LATE FEE, CIVIL SANCTIONS
8-1-14: HABITUAL OFFENDER

8-1-1: PUBLIC WATER SUPPLY PROTECTION:
The City Water Resources Department, hereinafter called the "Department," is responsible for protecting the quality of the public water supply. No water service connection to premises of a type specified in Section 8-1-6 shall be installed or maintained unless the public water supply is protected as required by this Chapter. This article shall be construed and applied consistent with the requirements of AAC R18-4-215. (1823,2491,5336/Reso. 10804)

8-1-2: APPROVAL:

(A) Each back flow preventive device required hereunder shall be approved by the Department prior to installation and shall be installed by and at the expense of the customer. (1823)

(B) The Department shall approve back flow preventive devices when such devices have received approval by the Foundation for Cross Connection Control Research of the University of Southern California and the manufacturer has a local parts and service center. (1823)

8-1-3: INSTALLATION:

(A) Devices shall be installed at the service connection in an accessible location approved by the Department. A reduced-pressure principle back flow preventive device shall be installed above ground. Double-check valve devices may be installed below the ground in a vault if approved in writing by the Department. Approval is on a case-by-case basis. Approval shall be obtained prior to issuance of a building/engineering permit. (1823)

(B) Back flow preventive devices shall have at least the same cross sectional area as the water meter. In those instances where it is determined that a continuous water supply is necessary, two (2) sets of back flow preventive devices shall be installed in parallel. Where parallel devices are required, the sum of the cross sectional areas of the devices shall be at least equivalent to the cross sectional area of the meter. (1823)

(C) No bypass shall be installed around back flow preventive devices. (1823)
8-1-4: MAINTENANCE, TESTING, AND RECORDS:

(A) The customer shall test and service such devices at least once each year, shall maintain them in satisfactory operating condition, and shall overhaul, repair, or replace such devices if they are found to be defective within such yearly period. (1823,5336/Reso. 10804)

(B) Records of such tests, service, repairs, and overhauls shall be kept by the customer on forms approved by the Department. A copy of such records shall be sent to the Department within ten business days after completion of the testing. If any overhaul, repair, or replacement is performed, a certified tester must retest the assembly immediately and submit the additional test results within ten days. Failure to timely submit test records will result in assessment of the Backflow Compliance Late Fee and subject the customer to civil sanction pursuant to Section 8-1-13. (1823,5336/Reso. 10804)

(C) Tests shall be conducted and reported in a manner prescribed by, and/or by persons certified or approved by, the Department. (1823,5336/Reso. 10804)

(D) Water meters shall be owned, maintained, and read by the Department. (1823,5336/Reso. 10804)

8-1-5: APPROVED BACK FLOW PREVENTIVE DEVICES:

As designated in Section 8-1-6, the standard installation at each service connection to premises or systems requiring an approved back flow preventive device shall be one of the following types: (1823)

(A) Approved "Reduced Pressure Principle" back flow device (hereinafter "RP"), which shall mean a device containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent 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. (1823)

(B) Approved "Double Check Valve" assembly back flow preventive device (hereinafter "DC"), which shall mean an assembly composed of two (2) single, independently acting, approved check valves, including tightly closing shutoff valves located at each end of the assembly and fitted with properly located test cocks. (1823)

(C) Approved "Double Check Detector" assembly, which shall mean a mainline double check valve assembly as defined in Section 8-1-5(B) with a bypass consisting of an approved double check valve assembly, City-approved meter, and shutoff valves. This assembly is used on fire systems to protect against back flow and detect unauthorized water consumption. (1823)

(D) In certain cases an "Air-Gap Separation" may be used in lieu of an RP. Air-gap separation shall mean a physical separation between the free flowing discharge of a potable water supply and an open or nonpressure-receiving vessel. The separation shall be at least double the diameter of the supply pipe measured directly above the rim of the vessel. Requests for an air-gap separation will be considered on a case-by-case basis, and approval by the Department shall be in writing. (1823)

(E) Approved "Detector Check Assembly," which shall mean a M.A.G.-approved check valve and Department-approved bypass meter. All requirements of Section 8-1-4 shall pertain to this assembly. (1823)
8-1-6: PREMISES REQUIRING APPROVED BACK FLOW PREVENTIVE DEVICES:

An approved back flow preventive device of the type specified in this Subsection shall be the standard installation of each service connection (whether from a fire hydrant or temporary, regular, or other water service connection) to the following type of premises or systems: (1823)

(A) Aircraft and missile plants - RP. (1823)

(B) Automotive plants - RP. (1823)

(C) Auxiliary water systems (interconnected) - RP (does not include Maricopa County Health Department approved municipal and private water systems). (1823)

(D) Auxiliary water systems (not interconnected) - DC (does not include Maricopa County Health Department-approved municipal and private water systems). (1823)

(E) Beverage bottling plants - DC. (1823)

(F) Breweries - RP. (1823)

(G) Buildings greater than three (3) stories or greater than thirty-four feet (34') in height from curb level - DC. (1823)

(H) Buildings with house pumps and/or potable water storage tank - DC. (1823)

(I) Buildings with sewage ejectors (inadequate on-site protection) - RP. (1823)

(J) Buildings with sewage ejectors (adequate on-site protection) - DC. (1823)

(K) Canneries, packing houses, and reduction plants - RP. (1823)

(L) Car wash with water reclamation system - RP. (1823)

(M) Centralized heating and air conditioning plants - RP. (1823)

(N) Chemical plants - RP. (1823)

(O) Chemically treated potable (or nonpotable) water systems - RP. (1823)

(P) Civil works - RP. (1823)

(Q) Commercial laundries - DC. (1823)

(R) Dairies and cold storage plants - DC. (1823)

(S) Dye works - RP. (1823)

(T) Film processing laboratories - RP. (1823)
(U) Food processing plants - DC. (1823)
(V) High schools and colleges - DC. (1823)
(W) Holding tank disposal stations - RP. (1823)
(X) Hospitals (major complexes) and mortuaries - RP. (1823)
(Y) Medical and dental buildings, sanitariums, and rest and convalescent homes - DC. (1823)
(Z) Irrigations systems (premises having separate systems - such as parks, playgrounds, cemeteries, golf courses, schools, estates, ranches, etc.) - RP. (1823)
(AA) Laboratories using toxic materials - RP. (1823)
(BB) Manufacturing, processing, and fabricating plants using toxic materials - RP. (1823)
(CC) Manufacturing, processing, and fabricating plants using nontoxic materials - RP. (1823)
(DD) Motion picture studios - RP. (1823)
(EE) Oil and gas production facilities - RP. (1823)
(FF) Paper and paper production plants - RP. (1823)
(GG) Plating plants - RP. (1823)
(HH) Radioactive materials processing facilities - RP. (1823)
(II) Restricted, classified, or other closed facilities - RP. (1823)
(JJ) Rubber plants - RP. (1823)
(KK) Sand and gravel plants - RP. (1823)
(LL) Sewage and storm drainage facilities - RP. (1823)
(MM) Any premises where a cross connection is maintained - RP. (1823)
(NN) Water trucks, hydraulic sewer cleaning equipment - RP or Air-Gap. (1823)
(OO) Any premises where water supplied by the City is subject to deterioration in sanitary quality and its entry into the public water system is permitted. (1823)
8-1-7: FIRE SYSTEMS:
Fire systems shall have the following devices: (1823)

(A) Fire Systems - DC. If the potential for unauthorized water usage exists, a double check detector assembly will be installed in place of a DC. (1823)

(B) Fire systems with pump and/or storage tank - RP. (1823)

(C) Fire Systems With Auxiliary Supply - RP. When the potential for unauthorized water usage exists in the systems requiring an RP, the customer may also be required to install a detector check assembly in addition to an RP (M.A.G. Detail 346). (1823)

8-1-8: TERMINATION OF WATER SERVICE:

(A) Service of water to any premises may be terminated by the Department if it is found that a back flow preventive device is not installed as required, has been removed or bypassed, has not been properly maintained or is malfunctioning, has not been tested annually, test records have not been provided to the Department, or if unprotected cross connections exist on the premises. (1823,5336/Reso. 10804)

(B) If a violation of Section A presents an imminent hazard to the health and safety of the water supply, the City may issue an Immediate Notice of Termination and act immediately to terminate service, and may also take such other actions as are necessary to abate and correct the conditions or defects and violations described in the Notice. The Department will also provide written notice to the person of the violation in the manner set forth in 8-1-14. Thereafter, services will not be restored until such conditions or defects are corrected and all penalties and other fees and charges are paid, or a hearing in accordance with Title 1, Chapter 27 results in a final finding of no violation. (5336/Reso. 10804)

8-1-9: DEPARTMENT MODIFICATION:
In those instances where conditions warrant, the Department may modify the standard installation herein indicated as appropriate to provide a degree of protection commensurate with the degree of hazard. (1823)

8-1-10: INFORMATION REQUESTS:
Upon request, the Department will provide interested parties with copies of rules and regulations for the testing and maintenance of devices and such other advice, information, illustrative sketches, drawings, and data as may be necessary to familiarize the customers, engineers, architects, and others with Department requirements. (1823)

8-1-11: STANDARDS TO BE MET:
If the Department determines that a customer’s back flow preventive device does not meet current standards, the customer shall upgrade his device so that it will meet current standards. (1823)

8-1-12: EXISTING CUSTOMERS:
Customers that have water service prior to the effective date of this Chapter are subject to all requirements imposed by this Chapter if the Department determines the degree of hazard requires a device be installed. (1823)
8-1-13: LATE FEE, CIVIL SANCTIONS

(A) A Backflow Compliance Late Fee will be assessed against each connection when the customer fails to timely meet the requirements imposed by this Article 1 at Section 8-1-4. The Backflow Compliance Late Fee shall be as set forth in the schedule of Utility Service Fees and shall be in addition to all other applicable rates, fees and charges. (5336/Reso. 10804)

(B) The Department Director and inspectors within the Department, or such other persons as the City Manager may designate, are authorized to commence a civil code violation action under this Chapter as provided in Title 1, Chapter 27 of this Mesa City Code. (5336/Reso. 10804)

(C) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5336/Reso. 10804)

(D) In addition to the Backflow Compliance Late Fee established above, a civil action for violations of this Chapter may be commenced by issuance of a complaint in the manner set forth in Section 1-27-2. The complaint shall direct the person to appear at the time and place stated before the Mesa City Court or a Hearing Officer appointed as provided in Section 1-27-8. The complaint shall be served and administered in accordance with Sections 1-27-3 and 1-27-7. (5336/Reso. 10804)

(E) All hearings before the Mesa City Court or a Civil Hearing Officer shall be in accordance with Section 1-27-7 and Title 1, Chapter 27 generally. Hearings shall be informal, except that testimony shall be given under oath or affirmation. The technical rules of evidence shall not apply, except for statutory provisions related to privileged communications. The City shall have the burden of proving all violations charged by a preponderance of the evidence. No prehearing discovery shall be permitted except under extraordinary circumstances as determined by the Court or Civil Hearing Officer. (5336/Reso. 10804)

(F) Upon an admission of the allegations of the complaint or a finding of violation in favor of the City by the Mesa City Court or Civil Hearing Officer, the Court or Hearing Officer shall enter a finding of responsibility and judgment against the person for civil sanctions in an amount not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198) (5336/Reso. 10804)

(G) An appeal from a final judgment of the Court of Civil Hearing Officer may be taken in accordance with Title 1, Chapter 27 of this Mesa City Code and pursuant to the rules of procedure for special actions of the Arizona Supreme Court. (5336/Reso. 10804)

8-1-14: HABITUAL OFFENDER:

An person who violates a provision in this Chapter after previously having been found responsible for committing three (3) or more civil violations, whether by admission, payment of a fine, default, or judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. (5336/Reso. 10804)
CHAPTER 2

ENVIRONMENTAL PROTECTION

ARTICLE I

PARTICULATE POLLUTION SOURCES

SECTION:

8-2-1: PURPOSE AND APPLICABILITY
8-2-2: DEFINITIONS
8-2-3: PERMITS AND DUST CONTROL PLAN REQUIRED FOR DUST GENERATING OPERATIONS (5061)
8-2-4: COMPLIANCE LIMITS
8-2-5: REQUIRED CONTROL MEASURES
8-2-6: POSTING, RECORD KEEPING, AND RECORDS RETENTION
8-2-7: AUTHORITY TO INSPECT (5061)
8-2-8: COMMENCEMENT OF AN ACTION (5061)
8-2-9: REMEDIES NOT EXCLUSIVE (5061)
8-2-10: DEFENDANTS AND RESPONSIBLE PARTIES (5061)
8-2-11: CIVIL VIOLATIONS AND CITATION (5061)
8-2-12: CIVIL PENALTIES (5061)
8-2-13: (RESERVED) (5061)
8-2-14: HABITUAL OFFENDER (5061)
8-2-15: FAILURE TO PROVIDE EVIDENCE OF IDENTITY (5061)
8-2-16: ABATEMENT (5061)
8-2-17: REQUEST FOR ABATEMENT HEARING (5061)
8-2-18: RECORDING AN ABATEMENT VIOLATION (5061)
8-2-19: EMERGENCY ABATEMENT (5061)
8-2-20: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE (5061)

8-2-1: PURPOSE AND APPLICABILITY:
To limit the amount of particulate matter (PM10 or less) entrained into the ambient air from any property, operation, or activity as a result of the impact of human activities by requiring measures to prevent, reduce, or mitigate particulate matter emissions. These requirements shall apply to any activity, equipment, operation, and/or man-made or man-caused condition or practice that is capable of generating fugitive dust. (3465)

8-2-2: DEFINITIONS:
For the purpose of this Article the following definitions shall apply: (3465)

BULK MATERIAL: Any organic or inorganic material that is capable of producing fugitive dust, including earth, rock, silt, sediment, sand, gravel, soil, fill, aggregate, dirt, mud, demolition debris, cotton trash, ABC, cinders, pumice, sawdust, feeds, grains, fertilizers, and dry cement. (3465)

CITY MANAGER: The City Manager appointed in accordance with Article III of the City of Mesa City Charter. (5061)
CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5061)

CONTROL MEASURE: A technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension, or airborne transport of fugitive dust. (3465)

DISTURBED SURFACE AREA: A portion of the earth’s surface or material placed thereupon which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition to an extent that it increases the potential for the emission of fugitive dust. Disturbed surface areas include shoulders of paved roads; unpaved roads; haul roads; access points where unpaved traffic surfaces join paved roads; construction and demolition sites; unpaved parking, storage, and staging areas; bulk material stockpiles; wind and water erodible soils; vacant parcels; urban or suburban open areas, whether public or private lands. (3465)

DUST: Particulate matter which is capable of temporary suspension in air excluding that material emitted directly into the atmosphere in the exhaust of motor vehicles and other internal combustion engines. (3465)

DUST CONTROL PLAN: A written report that is required to be prepared by Maricopa County Air Pollution Control Rule 310 that describes all control measures to be implemented at a work site or in transit to and from a work site for any dust-generating operation. (3465)

DUST-GENERATING OPERATION: Any activity capable of generating fugitive dust, including, but not limited to, land clearing, earth moving, weed abatement, farming operations, excavating, construction, demolition, material handling, storage and transporting, vehicle use and movement, or the operation of any outdoor equipment, facilities, or unpaved parking or staging areas. (3465)

EARTH-MOVING OPERATION: The use of any equipment in a dust-generating operation. (3465)

FREEBOARD: The measured vertical distance taken where the bulk material touches the vertical sides of an unroofed enclosure or truck bed. (3465)

FUGITIVE DUST: Dust which is not collected by a capture system and is suspended in the ambient air. (3465)

GRAVEL PAD: A layer of at least one inch (1") or larger diameter washed gravel, rock, or crushed rock maintained at the point of intersection of a public access roadway and a work site entrance to dislodge mud, dirt, or debris from the tires of motor vehicles or haul trucks prior to leaving the site. (3465)

GRIZZLY: A mechanical device to dislodge mud, dirt, or debris from the tires and undercarriage of motor vehicles and haul trucks prior to leaving the work site. (3465)

HAZARD: A condition that presents a risk to the public health or the environment. (3465, 5061)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing harm to the public health or the environment. (3465, 5061)

HAUL ROAD: Any on-site unpaved road used by commercial, industrial, institutional, or governmental traffic. (3465)
HAUL TRUCK: Any fully or partially open-bodied, self-propelled vehicle including any nonmotorized attachments, such as trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle. (3465)

LANDSCAPE DEBRIS: Debris generated or accumulated as a result of or moved in the course of landscape operations. (4820)

MOTOR VEHICLE: Every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (3465)

NOTICE TO ABATE: A notice issued to a responsible party concerning a violation of this Chapter of the Mesa City Code. (5061)

OFF-ROAD VEHICLE: Any self-propelled conveyance which includes off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motor buggies. (3465)

OPACITY: Entrained particulate pollution that results in an increased optical density. (3465)

PARTICULATE MATTER: Any solid material which has a nominal aerodynamic diameter smaller than one hundred (100) microns (micrometers), and which exists in a finely divided form. (3465)

PERSON: Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, state, municipality, Indian tribe, political subdivision of the state, federal government agency, or any other legal entity, including their legal representatives, agents, or assigns. (3465)

PM10: Particulate matter with an aerodynamic diameter smaller than or equal to ten (10) microns (micrometers) as measured by the applicable state and federal reference test methods. (3465)

PUBLIC STREET: A road, highway or thoroughfare that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicle travel. (4820)

RESPONSIBLE PARTY: A person who knows or has reason to know of the existence of any violation of this Chapter on that person’s property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5061)

STABILIZED SURFACE: A portion of the earth’s surface or material placed thereupon with a visible crusted surface that has been made resistant to the formation of windblown dust pursuant to this Article. (3465)

TRACK-OUT: Any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, or equipment (including tires) and that has fallen onto a public access roadway. (3465)

TRACK-OUT CONTROL DEVICE: A gravel pad, grizzly, wheel wash system, or a paved or otherwise stabilized area located at the point of intersection of an unpaved area and a paved roadway. (3465)

UNPAVED ROAD: Any road, equipment path, or driveway that is not covered by asphalt, asphaltic concrete, concrete pavement. (3465)
URBAN OR SUBURBAN OPEN AREA: An unsubdivided or undeveloped tract of land adjoining a residential, industrial, or commercial area. (3465)

VACANT PARCEL: A subdivided residential, industrial, institutional, governmental, or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature. (3465)

WINDBLOWN DUST: Visible emissions from any disturbed surface area which are generated by wind action alone. (3465)

WORK SITE: The real property upon which dust-generating operations occur. (3465)

8-2-3: PERMITS AND DUST CONTROL PLAN REQUIRED FOR DUST GENERATING OPERATIONS: (5061)

(A) No person shall commence any earth-moving operation or dust-generating operation that will disturb 0.1 contiguous acre or greater without meeting the requirements of, obtaining, and submitting to the City Manager or designee any and all dust control permits and permits to operate required by Rule 200 of the Maricopa County Air Pollution Control Regulations. A properly executed Maricopa County dust control permit including the dust control plan shall be submitted to the City Manager or designee. The City of Mesa will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until an approved dust control permit with dust control plan have been submitted to the City. (3465, 4254, 5061)

(B) Provisions of Subsection (A) of this Section shall not apply to the following: (3465)

1. During emergency, life-threatening situations or in conjunction with any officially declared disaster or state of emergency. (3465)

2. To operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water, and sewerage during service outages and emergency disruptions. (3465)

3. To nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)

4. To vehicle test and development facilities and operations if both of the following conditions apply: (3465)

   (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and (3465)

   (b) Such testing is not feasible within enclosed facilities. (3465)
8-2-4: COMPLIANCE LIMITS:

(A) No person shall cause, suffer, allow, or engage in any dust-generating operation which causes fugitive dust emissions to exceed twenty percent (20%) opacity. (3465)

1. Opacity shall be determined by observations for visible emissions of stationary sources of fugitive dust and shall be conducted in accordance with techniques specified in Reference Method 9 adopted by the United States Environmental Protection Agency or by an equivalent method approved by the City of Mesa. (3465)

2. Opacity observations for intermittent sources of fugitive dust shall be conducted in accordance with this Section and shall not exceed twenty percent (20%) opacity for three (3) minutes within a thirty- (30-) minute period. (3465)

(B) No person shall allow any machinery or vehicles to exit from a construction or development site or from a special event site disturbed surface area and thereby cause to be deposited upon a street any accumulation of soil. (3465)

1. In addition, all work sites five (5) acres or larger must have a suitable track-out control device installed at all entrances to a public access roadway. (3465)

2. When spillage or track-out occurs onto any public access roadway, such deposits shall be cleaned up implementing control measures so as to prevent or minimize fugitive dust. Cleanup shall occur at the following frequency: (3465)

   (a) When deposits extend a cumulative distance of fifty (50) linear feet or greater onto any public access roadway, such deposits shall be cleaned up immediately. (3465)

   (b) All other deposits onto a public access roadway shall be cleaned up within two (2) hours of their occurrence. (3465)

   (c) Deposition onto roadways temporarily restricted from public access shall be cleaned up prior to resuming public access. (3465)

(C) No person shall cause, suffer, or allow the deposition of bulk materials onto any paved roadway, paved parking, or paved staging area from adjacent real property, whether by natural or man-caused forces of erosion. In the event that such deposits originating from the real property occur, the property owner, operator, or designated agent thereof shall undertake all of the following actions: (3465)

1. Remove any and all deposits utilizing the appropriate control measures within twenty-four (24) hours of the deposit’s occurrence or prior to the resumption of traffic on pavement where the pavement area has been closed to traffic. City operations to clean streets after storm events when no party responsible for the deposits can be located are exempt from this requirement. (3465)

2. Dispose of the bulk materials resulting from the removal of these deposits in such a manner so as not to cause or become another source of fugitive dust. (3465)
(D) No person shall cause, suffer, or allow an unpaved or unstabilized vacant parcel or an urban or suburban open area to be driven over or used by motor vehicles or off-road vehicles without first implementing control measures to effectively prevent or minimize fugitive dust. (3465, 4820)

(E) No person shall operate, maintain, use, or allow the use of any unpaved area for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at any developments, other than residential buildings with four (4) or fewer units, without first implementing one or more of the following dustproof paving methods: (4820, 5061)

1. Asphaltic concrete
2. Cement concrete
3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
4. A stabilization method approved by the City Manager or Designee. (4820)

(F) No person shall operate, maintain, use, or allow the use of any unpaved area greater than three thousand (3,000) square feet, at residential buildings with four (4) or fewer units, for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at developments, without first implementing one or more of the following dustproof paving methods: (5061)

1. Asphaltic concrete
2. Cement concrete
3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
4. A stabilization method approved by the City Manager or Designee. (4820)

(G) No person shall cause or allow any vacant parcel to remain unoccupied, unused, vacant, or undeveloped for more than fifteen (15) days without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(H) No person shall remove vegetation from any vacant parcel by blading, diskng, plowing under, or any other means that disturbs 0.10 acres or more of soil surface without first obtaining a dust control permit with its applicable dust control plan from Maricopa County. Any person engaged in weed abatement activity shall implement control measures to effectively prevent or minimize fugitive dust. This Subsection shall not apply to City operations to create firebreaks by order of the Fire Department. (3465, 5061)

(I) No person shall disturb or remove soil, natural ground cover, or vegetation from any real property area without first implementing control measures to effectively prevent or minimize fugitive dust for the entire duration of the project including after-work hours, weekends, and holidays. (3465)
(J) Within four (4) months of the termination of activities on the property described in Subsection (A) of this Section, the owner or operator of such property shall implement permanent control measures to achieve a stabilized surface. (3465)

(K) No person shall cause, suffer, or allow the operation, use, or maintenance of any permanent haul road of more than fifty feet (50') in length at any work site unless the person implements control measures which effectively prevent or minimize fugitive dust. (3465)

(L) No person shall operate, maintain, use, or allow the use of any commercial feedlot or commercial livestock area for purposes of farming, feeding, or displaying animals, or engage in other activity such as racing and exercising, without first implementing control measures to effectively prevent or minimize fugitive dust as specified in Sections 8-2-4-(A), (B), and (C) of this Article. (3465)

(M) No person shall cause, suffer, allow, or engage in the handling of bulk materials including stacking, loading, unloading, conveying, and reclaiming, without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(N) No person shall cause, suffer, allow, or engage in the transportation of bulk materials unless in compliance with applicable requirements of this Section and without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(O) No person shall cause, suffer, allow, or engage in the use or operation of any haul truck within the boundaries of a work site or on a public access roadway in such manner as to cause the emission of fugitive dust from its cargo space. The following requirements shall apply to the use and operation of any haul truck: (3465)

1. The cargo compartment of a haul truck shall be constructed and maintained so that no spillage or loss of bulk materials can occur from holes or other openings in the cargo compartment's floor, sides, or tailgate. (3465)

2. Any haul truck shall be cleaned or kept covered once emptied or between cargoes when the residual particulate matter remaining in the cargo space is capable of becoming fugitive dust. (3465)

3. All haul trucks shall be properly loaded so that the freeboard is not less than three inches (3") and shall be effectively covered with a tarp or other suitable enclosure; and (3465)

4. All haul trucks and motor vehicles shall pass over or through a track-out control device so as to effectively remove particulate matter from the exterior surfaces. (3465)

(P) No person shall cause, suffer, allow, or engage in the use, repair, construction, reconstruction, or improvement of any road, roadway, street, highway, or alley without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(Q) No person shall at any time blow landscape debris into any public roadway. (4820)
The provisions of this Section shall not apply to the following: (3465)

1. When the average wind speed is greater than twenty-five (25) miles per hour, provided that all dust-control measures including contingency measures contained in the approved dust control plan are implemented. The average wind speed determination shall be based on a sixty- (60-) minute average from the nearest Maricopa County Air Quality Department monitoring station or as approved by the City of Mesa by a wind instrument located at the site being checked. (3465, 5061)

2. Nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)

3. Vehicle test and development facilities and operations if both of the following conditions apply: (3465)
   (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and (3465)
   (b) Such testing is not feasible within enclosed facilities. (3465)

**8-2-5: REQUIRED CONTROL MEASURES:**

(A) No person shall conduct any dust-generating operations without implementing control measures to effectively control or minimize fugitive dust. (3465)

(B) Persons subject to Subsection A of this Section shall select and effectively and appropriately implement control measures either individually or in combination in a manner that will control fugitive dust emissions to a level that shall not exceed the compliance limits prescribed in Section 8-2-4. If selected measures are not effective in preventing unacceptable emissions of fugitive dust, additional measures shall be implemented until compliance with Subsection A of this Section is achieved. (3465)

**8-2-6: POSTING, RECORD KEEPING, AND RECORDS RETENTION:**

(A) A copy of the Maricopa County dust control permit and/or permit to operate as well as the approved dust control plan required by Section 8-2-3 must be kept readily available on site at all times. (3465, 5061)

(B) Any person subject to the requirements of Section 8-2-3 shall keep a daily written log recording the actual application or implementation of the control measures delineated in the approved dust control plan. This log and supporting documentation shall be kept on site and made available for review on request. (3465)

**8-2-7: AUTHORITY TO INSPECT:** (5061)

(A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. (5061)

(B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5061)
8-2-8: COMMENCEMENT OF AN ACTION: (5061)

(A) The City Manager or designee is authorized to commence an enforcement action under this Chapter by issuing a Notice of Abatement under this Chapter or a citation for civil sanctions under this Chapter, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter. (5061)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (3465, 5061)

8-2-9: REMEDIES NOT EXCLUSIVE: (5061)
Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (3465, 5061)

8-2-10: DEFENDANTS AND RESPONSIBLE PARTIES: (5061)
Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter, is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (3465, 4074, 5061)

8-2-11: CIVIL VIOLATIONS AND CITATION: (5061)

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5061)

(B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code Section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-2-12 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5061)
The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, through an attorney or by e-mail with the clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. (5061)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by e-mail and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-2-12; or, (5061)

2. If the responsible party appears in person, through an attorney or by e-mail and denies the allegations contained in the citation, the clerk of the Civil Hearing Officer shall set the matter for hearing. (5061)

(D) If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5061)

(E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. (5061)

(F) Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the Court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5061)

8-2-12: CIVIL PENALTIES: (5061)

(A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5061)
(B) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-2-12(A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5061)

1. Written and notarized confirmation from the City inspector that the violation has been successfully abated, and (5061)

2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5061)

If either item has not been received by the Civil Hearing Officer 7 calendar days before, then the compliance hearing shall take place as previously scheduled. (5061)

(C) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5061)

(D) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5061)

8-2-13: (RESERVED) (5061)

8-2-14: HABITUAL OFFENDER: (5061)

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a Class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (3465, 5061)
(B) Upon conviction of a violation of this Section, the court may impose a sentence authorized by the laws of the State of Arizona for a Class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all Sections of this Chapter within 90 days of sentencing. (3465, 5061)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (3465, 5061)

8-2-15: FAILURE TO PROVIDE EVIDENCE OF IDENTITY: (5061)
A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (3465, 5061)

8-2-16: ABATEMENT: (5061)

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a notice to abate any violation of this Chapter. (5061)

(B) The notice to abate shall set forth the following information: (5061)

1. The responsible party has 30 calendar days from service of the notice to abate or correct the violation. (5061)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map and parcel number. (5061)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5061)

4. Reinspection date and time. (5061)

5. Name, business address, and business phone number of the City inspector who issued the notice to abate. (5061)

6. A warning stating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the responsible party for the cost of such abatement, and record a lien on the property for the assessment. (5061)

7. Hearing procedures. (5061)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5061)
(C) If the responsible party or other person served a notice to abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served pursuant to the Arizona Rules of Civil Procedure. That statement shall further set forth the following: (5061)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5061)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay. (5061)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5061)

4. Appeal procedures. (5061)

(D) The notice to abate and the statement of abatement costs shall be served to the responsible party pursuant to the Arizona Rules of Civil Procedure. (5061)

8-2-17: REQUEST FOR ABATEMENT HEARING: (5061)

The responsible party receiving a notice to abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development and Sustainability Department within 15 calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development and Sustainability Department, then the notice of abatement or statement of costs is final and binding. (5061)

8-2-18: RECORDING AN ABATEMENT VIOLATION: (5061)

The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (5061)
8-2-19: EMERGENCY ABATEMENT: (5061)

(A) If a situation presents an imminent hazard to life or public safety, the City may issue a notice to abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City’s right under this Section to correct or abate the emergency itself. (5061)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-2-16(C). The responsible party may appeal the City’s emergency abatement action under this Section or the City’s statement of costs for an emergency abatement in the same manner as provided for in Section 8-2-17. (5061)

8-2-20: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE: (5061)

Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Sections 8-2-3, 8-2-4 or 8-2-5 of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (3465, 5061)
CHAPTER 3
SOLID WASTE (3198)

ARTICLE I
GENERAL PROVISIONS

SECTION:

8-3-1: RESPONSIBILITY
It shall be the responsibility of every person, owner, tenant, or occupant of all premises within the City limits, hereinafter referred to as the customer, to properly control and dispose of all solid waste produced or occurring in or upon any and all premises owned, leased, or occupied by or for them in the manner provided herein. It shall be the duty of the municipal staff to provide for and enforce the provisions herein. (764,1969,3813)

8-3-2: DEFINITIONS:
"Solid waste" is defined as garbage, trash, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or pollution control facility and other discarded material, including solid, contained liquid, semisolid, or contained gaseous material but not including domestic sewage or dangerous hazardous wastes. Use of the term "refuse" or "garbage" in definitions and policy is synonymous with "solid waste." The subcategories of solid waste are as follows: (1969,3813)

APPLIANCES AND SMALL HOUSEHOLD EQUIPMENT: Examples of appliances include, but are not limited to, washers, dryers, refrigerators, and freezers. Examples of small household equipment include, but are not limited to, a generator, lawn mower, and wet/dry shop vacuum. Appliances and small household equipment shall be considered solid waste if they are not in use, are in a state of disrepair, and are not properly stored, thereby causing an unsightly or hazardous condition to exist. (1969,3813)

BULKY REFUSE: All large trimmings from trees and shrubbery, rugs, furniture, major appliances, mattresses, and other materials which are inappropriate or too large to be deposited into containers. (1969,3813)

BUSINESS OR COMMERCIAL ESTABLISHMENT: A structure or premises used for retail, wholesale, warehouse, store, factory, production, processing, manufacturing, restaurant, construction, service, hospitals, governmental entities, public authorities (schools), apartments (5 or more units) for rent or lease that are subject to Title 33, Chapter 10 of the Arizona Revised Statutes, or office uses. (2374,2931,3813,5305)
CONSTRUCTION AND DEMOLITION DEBRIS: Any solid waste resulting from a construction demolition project which would include lumber, scraps, shingles, plaster, brick, or concrete. This list is not inclusive but provides examples of typical construction debris. (1969,3813)

CONTAINER: Shall include sixty- (60-), ninety- (90-), three hundred- (300-), and four hundred forty- (440-) gallon plastic barrels; two- (2-), three- (3-), four- (4-), six- (6-), and eight- (8-) cubic-yard metal bins; twenty- (20-), thirty (30-), and forty (40-) cubic-yard roll-off containers (approximate sizes); and compactors. (3813)

DANGEROUS OR HAZARDOUS WASTE: Any solid waste that can cause damage or injury to property or persons and is dangerous or hazardous by reason of its pathological, explosive, flammable, reactive, radiological, or toxic nature, including, but not limited to, all wastes defined by the provisions of A.A.C. Title 18, Chapter 8, Article 2. (494,1969,3813)

GARBAGE: All nonhazardous putrescible wastes, excepting sewage and body wastes, and the wrappings and containers resulting from the storage, preparation, serving, and otherwise using of foods in or upon all premises. (1969,3813)

GREEN WASTE: Lawn and shrubbery clippings, leaves, weeds, and all large trimmings from trees and shrubbery. (3813)

RECYCLABLE MATERIALS: Any solid waste consisting of post-consumer materials which may be collected, separated, cleansed, treated, or reconstituted and returned to the economic stream in the form of raw materials or products. (3198)

RESIDENCE: Any structure or premises used as a domicile, dwelling, or habitation, including single-family dwellings, duplexes, tri-plexes, quad-plexes, patio homes, mobile home parks, trailer courts, rooming houses, boardinghouses, assisted living facilities, condominiums, townhouses, or any complex of the foregoing, and apartments (4 units or less). (2374,3813,5305)

SHARPS: Objects such as syringes, needles, and lancets that are used for insulin intake, blood samples, and for other medical purposes. (3813)

8-3-3: COLLECTION AGENCY:
Solid waste shall only be collected by the City or by private haulers (business establishments only) that have obtained a permit, license, franchise, or contract from the City authorizing private collection. Solid waste deposited for collection shall become the property of the City, or authorized private hauler when approved by the City, upon collection. No person shall remove any or all such solid waste so collected. Pursuant to Section 8-3-9 of this Article, the City retains the ability to recover solid waste and recycling program costs. The City may provide collection services outside its borders in an unincorporated territory that is within three (3) miles of its border and within its municipal planning area. (764,1969,2290,3813)

8-3-4: PREPARATION OF SOLID WASTE:
All solid waste shall be prepared for collection or disposed of as follows: (1776,1969)
(A) Solid Waste. The City shall furnish containers to commercial and residential customers, for the accumulation, storage, and collection of all solid waste. Customers will make every effort to keep such containers in good repair and in a sanitary condition. Containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition will be replaced by the City and may be subject to the appropriate solid waste fees. All refuse must be bagged and tied, and placed in a container to be acceptable for collection to prevent the attraction of any flies or vectors. The City reserves the right to remove containers due to violations of this Chapter that result in endangerment to public health. (1969,3813)

(B) Bulky Refuse. Bulky refuse and furniture shall be placed at the front curb, unless otherwise designated by the Solid Waste Division, tied in bundles or placed in boxes by the customer. Boxes and bundles shall not exceed four (4) square feet by four (4) square feet deep in measurement and not to exceed sixty (60) pounds in weight. Customers wishing to retain disposal boxes should mark the box "SAVE" in a readily visible manner. If the loads are not bundled or contained, the City will assess appropriate collection fees and disposal fees for program cost recovery. The Development Services Manager or designee may provide bulk item service to any residential or commercial customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health or safety hazard exists in a public right-of-way. (1969,3198,3766,3813)

(C) Green Waste. Green waste cut for disposal shall be bundled by the customer. Bundles must be tied securely by heavy twine or rope, with each bundle not to exceed four (4) square feet by four (4) square feet deep and not to exceed a weight of sixty (60) pounds. When bundles do not meet these requirements, charges for whatever method is necessary to collect the brush will be assessed to the property owner. Brush trimmed by contractors must be removed by the contractors. Brush may be placed in regular refuse containers but must readily fall out when emptied and shall not extend twelve inches (12") over the top edge of the container or be compacted or wedged in a manner which would impede collection. Upon notification by the Solid Waste Division, residents have ten (10) days to remove brush that does not conform to the requirements of this Subsection. Should the resident fail to comply, the City will remove the brush and charge the customer. (1969,3198,3813)

(D) Appliances and Small Household Equipment. The City will collect discarded appliances from dwelling premises, subject to the appropriate solid waste fees, that two (2) persons can readily lift into a collection vehicle. The customer shall remove or cause to be removed all other appliances, vehicles, or equipment classified as solid waste from their premises or the public right-of-way. Doors shall be removed from appliances or secured in such a way no one can enter. (1969,3198,3813)

(E) Dangerous and Hazardous Waste. The placement of dangerous and hazardous waste in solid waste containers is prohibited. No one shall collect, cause to be collected, place, or cause to be placed any dangerous or hazardous waste or similar materials from or in any container or from or upon any public or private property except as specifically permitted by the Arizona Department of Environmental Quality or the Federal Environmental Protection Agency. Oil shall be placed in a separate container, not inside refuse containers, and disposed of according to law. Sharps shall be placed inside puncture-resistant containers and disposed of according to law. (1969,3813)
(F) Cactus. All cacti shall be placed in separate sealed cardboard boxes apart from other refuse. A cardboard box containing cactus shall be sealed and in condition to sustain the weight of the cactus when lifted. Failure to properly contain cactus will result in denial of service for collection. (1969,3813)

(G) Soil and Concrete. Waste soil, concrete, masonry blocks, sod, and rocks shall be disposed of by the owner, tenant, or occupant of the premises and not placed in City bins or barrels. Specific City roll-off service is available for this type of material. (1969,3813)

(H) Unsanitary, Offensive, and Animal Waste. Dead animals, excrement (pet waste only), and offal are the responsibility of the owner, tenant, or occupant of the premises and must be disposed of in a sanitary manner as follows. Collection by the Solid Waste Division of small domesticated (no farm animals) dead animals (weighing less than twenty-five (25) pounds), excrement (pet waste only), or offal will be made only if placed in a heavy-gauge plastic bag that will sustain the weight of the contents when lifted and will not be offensive to collection personnel or harmful to collection equipment. Dead animals (weighing less than one hundred fifty (150) pounds) will be removed by a contractor for City Animal Control upon request. (1969,3198,3813)

(I) Ownership of Solid Waste. Solid waste will remain the property and responsibility of the homeowner or City customer until collected by the City, wherein it becomes the property of the City. (1969,3198,3813)

(J) Abatement of Health Hazard. In addition to the other remedies provided for in this Section, if the Development Services Manager or designee determines that a customer's solid waste is creating a health hazard, the City may collect the customer's containers, subject to the appropriate solid waste fees, as often as necessary in an attempt to abate the health hazard. (3198,3766,3813)

8-3-5: CONTAINER PLACEMENT AND LOCATION FOR PICKUP:

(A) All solid waste containers prepared for the City collection service shall be placed at the front curb, unless otherwise designated by the Solid Waste Division, in an easily accessible manner. The containers shall be set out after six (6:00) P.M. of the day preceding regular collection and no later than six (6:00) A.M. of the designated regular collection day. The containers shall be removed to no less than six feet (6') from the curb by six (6:00) A.M. of the day after collection. If a violation of this Subsection necessitates the City pullback of a container from the front curb, the City shall assess the charges for such pullback to the property owner. This Subsection shall not apply to containers that the City has placed permanently at the front curb. All containers and piles of refuse shall be so located as to not block the alley, sidewalk, mailbox, driveway, or gutter or otherwise be a hazard to pedestrian or vehicular traffic. (1969,3198,3813)

8-3-6: CLEANUP AND BURNING MATERIAL:

The customer shall keep clean the area where the container is set out for pickup and also where a City container is stored. The customer shall keep solid waste from scattering from the pickup point to other premises and the public right-of-way. (1969,3813)

Hot coals or ashes shall not be placed in containers. (1969)
8-3-7: UNATTENDED CONTAINERS: (2568)
No person shall place, display, or maintain any unattended container for soliciting deposit of recyclable materials or donated items in any exterior location within the City limits, except in conformance with all of the following provisions: (2143)

(A) Such unattended containers may be located only within the parking lot of private property lawfully zoned, developed, and used for commercial or industrial purposes or at schools, churches, or charitable organizations which have similar parking facilities. (2143)

(B) Such unattended containers may be located only with the permission of the property owner, his agent, or the person in possession of the property, and the container owner’s name and current telephone number shall be displayed thereon in a conspicuous location that is large enough to read. (2143,3813)

(C) The owner of such unattended container and the property owner shall jointly or severally maintain all exterior areas within twenty-five feet (25') of the container free from litter. (2143)

8-3-8: INDISCRIMINATE DUMPING: (2568)
It shall be the responsibility of the owner, tenant, or occupant of all premises in the City limits to be sure that solid waste is properly placed for collection. No person, without permission from any of the above, may dump into commercial dumpsters or residential containers. (1969)

No person may dump any unauthorized items in any alleys, streets, vacant lots, or premises. (1969,3813)

8-3-9: CHARGES FOR SOLID WASTE SERVICE: (2568)
The City Council shall by resolution set such rates for solid waste service and disposal as are necessary to produce adequate revenue to cover the cost of services rendered. If the City is required to remove solid waste or dangerous or hazardous waste that does not meet the requirements of this Chapter, the Development Services Manager or designee may assess charges for such removal to the property owner involved. (1969,3198,3766,3813)

8-3-10: SCAVENGING: (3198)

(A) No person, unless authorized by the owner of the solid waste, may remove, collect, or disturb solid waste in a container that is set out for collection for the purposes of recycling or disposal by the City, its agents, or a permittee. (3198,3813)

(B) No person, unless authorized by the City, may remove, collect, or disturb recyclable materials deposited for collection at any of the City's designated recycling drop-off and collection centers. (3198)

(C) City employees acting within the scope of their employment are not subject to the prohibitions described in this Section. (3198)
ARTICLE II

PERMITS FOR COMMERCIAL OR INDUSTRIAL SOLID WASTE MANAGEMENT SERVICES AND RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL RECYCLING SERVICES

SECTION:

8-3-11: DEFINITIONS
8-3-12: PERMIT REQUIRED FOR REFUSE SERVICE; EXEMPTIONS
8-3-13: INTEREST IN MULTIPLE PERMITS PROHIBITED
8-3-14: PERMIT APPLICATION
8-3-15: PERMIT REQUIREMENT FOR ANNEXED AREAS
8-3-16: EVALUATION AND DISPOSITION OF PERMIT APPLICATIONS; TERMS AND CONDITIONS
8-3-17: RENEWAL OF PERMITS
8-3-18: TRANSFER OF PERMITS PROHIBITED
8-3-19: INSURANCE
8-3-20: REVOCATION OF PERMIT
8-3-21: APPEAL FROM DENIAL OR REVOCATION; PROCEDURE AND NOTICE
8-3-22: DANGEROUS OR HAZARDOUS WASTE (3813)
8-3-23: VIOLATIONS (REPEALED BY 3198)
8-3-24: (RESERVED)
8-3-25: (RESERVED)
8-3-26: (RESERVED)
8-3-27: (RESERVED)

8-3-11: DEFINITIONS: (2568)
In this Article, unless the context otherwise requires: (2374)

BUSINESS OR COMMERCIAL ESTABLISHMENT: A structure or premises used for retail, wholesale, warehouse, store, factory, production, processing, manufacturing, restaurant, construction, service, hospitals, governmental entities, public authorities (schools), apartments (5 or more units) for rent or lease that are subject to Title 33, Chapter 10 of the Arizona Revised Statutes, or office uses. (2374,2931,5305)

COMMERCIAL OR INDUSTRIAL REFUSE: Any refuse generated by a business establishment. (2374)

COMMERCIAL OR INDUSTRIAL SOLID WASTE MANAGEMENT SERVICES: The collection, storage, processing, transportation, treatment, reclamation, or disposal of commercial or industrial refuse. (2374,2761)
CONTAINER: Shall include sixty- (60-), ninety- (90-), three hundred- (300-), and four hundred forty- (440-) gallon plastic barrels; two- (2-), three- (3-), four- (4-), six- (6-), and eight- (8-) cubic-yard metal bins; twenty- (20-), thirty (30-), and forty (40-) cubic-yard roll-off containers (approximate sizes); and compactors and other containers approved by the City. (3813)

DANGEROUS OR HAZARDOUS WASTE: Any solid waste that can cause damage or injury to property or persons and is hazardous by reason of its pathological, explosive, flammable, radiological, or toxic nature, including, but not limited to, all wastes defined by the provisions of A.A.C. Title 18, Chapter 8, Article 2. (2374,3813)

DEVELOPMENT SERVICES MANAGER: The Manager of the Development Services Department or his/her representative. (2374,3766,3813)

DISPOSAL: The physical transfer of refuse for purposes of recovery, other processing, or for placement at a site approved by the Arizona Department of Environmental Quality or other agency having jurisdiction. (2374)

PERMITTEE: A person who engages in, owns, or operates a service to collect, transport, dispose, or recycle commercial or industrial refuse generated within the City and has obtained a valid permit pursuant to the provisions of this Article. (3813)

PERSON: A corporation, company, partnership, firm, association, or society, as well as a natural person. (2374)

RECYCLE: Any manual or mechanical process which involves the collection or transportation of one (1) or more of the various components of recoverable refuse which have been or will be separated, concentrated, or sold. (2374)

RESIDENCE: Any structure or premises used as a domicile, dwelling, or habitation, including single-family dwellings, duplexes, tri-plexes, quad-plexes, patio homes, mobile home parks, trailer courts, rooming houses, boardinghouses, assisted living facilities, condominiums, townhouses, or any complex of the foregoing, and apartments (4 units or less). (2374,3813,5305)

RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL SOLID WASTE RECYCLING SERVICES: The recycling of any residential, commercial, or industrial refuse. (2761)

RESIDENTIAL REFUSE: Any refuse generated by a residence. (2761)

8-3-12: PERMIT REQUIRED FOR REFUSE SERVICE; EXEMPTIONS: (2568)

(A) Except as otherwise provided in this Section, no person shall engage in, operate as, or represent himself to the public as one who collects, transports, disposes, or recycles residential, commercial, or industrial refuse generated within the City unless that person has obtained a valid permit pursuant to the provisions of this Article. (2374,2761)
(B) Any community, charitable, philanthropic, or similar organization may collect, transport, dispose of, or recycle residential, commercial, or industrial refuse without a permit upon approval of the Development Services Manager provided that no part of the earnings or receipts from such activities inure to the benefit of any private shareholder, individual, or corporation and provided that the organization was not established to circumvent the requirements of this Article. (2374,2761,3766,3813)

(C) Governmental agencies engaged in the collection, transportation, disposal, or recycling of residential, commercial, or industrial refuse within the City shall be exempt from the provisions of this Article. If, however, a private refuse collector that has a contract with a governmental entity also collects private commercial or industrial refuse or recycles residential, commercial, or industrial refuse within the City limits, such private commercial enterprise is required to make application for a permit to operate within the City limits and to comply with all other provisions of this Article. (2374,2761)

(D) This Section shall not be construed to prevent individual property owners from hauling their own refuse from their own premises to a legal point of disposal or recycling. (2374,2761)

(E) All persons who primarily collect and dispose of or recycle scrap metal, scrap plastic, waste motor oil, human excreta, animal excreta or remains, yard wastes, medical wastes, infectious wastes, hazardous wastes, toxic wastes, residual construction debris, or any other similar category of solid waste that either requires a special state, county, or federal permit to handle or constitutes a limited category of waste that the private hauler specializes in collecting shall be exempt from the permit provisions of this Article. (2374,2761)

8-3-13: INTEREST IN MULTIPLE PERMITS PROHIBITED: (2568)
No person shall have an interest in more than one (1) permit issued pursuant to the provisions of this Article. For the purposes of this Section, the word "interest" includes ownership or control of five percent (5%) or more of any joint venture, partnership, or limited partnership or of the outstanding shares of a corporation. (2374)

8-3-14: PERMIT APPLICATION: (2568)

(A) Every applicant for a permit under this Article or for renewal thereof shall file an application with the City Development Services Manager on the form provided by that officer and shall provide the following information and declarations: (2374,3766,3813)

1. The name, local address, permanent home and business address, and local telephone number(s) of the individual applying and of the organization or persons on whose behalf the application is made. (2374)

2. If the organization on whose behalf the application is made is a joint venture, partnership, or limited partnership, the names, local and permanent street addresses, and local telephone numbers of all partners and their percentage of participation. If the organization is a corporation, the names, local and permanent street addresses, and local telephone numbers of all officers and the names, local and permanent street addresses, and telephone numbers of all shareholders owning an interest of five percent (5%) or more of the outstanding shares and their percentage of participation. (2374)
3. The names, local and permanent street addresses, and local telephone numbers of all officers of the organization on whose behalf the application is made. (2374)

4. Facts demonstrating that the applicant has arranged for the disposal or recycling of all residential, commercial, or industrial refuse collected and the location of such disposal or recycling site. (2374,2761)

5. A description of all vehicles and equipment that the applicant owns or has under his control that will be used for the collection, transportation, disposal, or recycling of residential, commercial, or industrial refuse; the address(es) where all such vehicles will be kept and the land use classification under the Mesa Zoning Code of such location(s); a declaration that the applicant has sufficient equipment in good mechanical condition to adequately conduct the business of commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services if granted a permit; and facts demonstrating that said vehicles and equipment conform to all applicable provisions of A.R.S. Title 28 as amended. (2374,2761)

6. A plan for the recycling of the residential, commercial, or industrial refuse that indicates, at a minimum: (2374,2761)

   (a) How such refuse shall be sorted and separated for recycling purposes and who shall do the sorting and separating; (2374)

   (b) How such refuse shall be collected and transported for recycling purposes; (2374)

   (c) Where such refuse shall be disposed of and processed for recycling purposes and who shall do the processing; (2374)

   (d) Whether the applicant proposes to offer any incentives to encourage recycling and if so, the nature of such incentives; (2374,2761)

   (e) Any other information demonstrating what the applicant will do to promote the availability of commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and to stimulate competition in rendering such services. (2374,2761)

7. Other information and identification as the Development Services Manager may require in order to discover the truth of the matters set forth in the application or to determine whether a permit should be granted. This may include submission to fingerprinting and photographing by the Mesa Police Department for the purpose of a police investigation in cases where there is reason to doubt the truthfulness of the application or reason to require further information regarding the qualifications and capabilities of the applicant. (2374,3766,3813)

8. Other information as the Development Services Manager may require which demonstrates that the applicant is able to render efficient and effective commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and that the public health, safety, and welfare would be served by the granting of the permit to the applicant. (2374,2761,3766,3813)
9. Whether the applicant has ever had any application for a like permit denied, revoked, suspended, or canceled by any public entity and the reason given therefor. (2374)

10. Proof that the applicant has obtained all insurance as required by State law. (2800)

11. The applicant shall provide the City with an emergency notification number (twenty-four- [24-] hour availability). In the event of an emergency, the Police or Fire Department may need to contact a representative of the company. (3813)

(B) Every permittee, as a condition to retention of such status, shall immediately file with the Development Services Manager any changes in the information and declarations furnished under Subsection (A), as such occur from time to time. (2374,3766,3813)

(C) A nonrefundable application fee shall be paid to the City with each initial and each renewal application for purposes of paying for the cost of processing such application and ensuring compliance with the permit. The application fee shall be calculated by adding a two hundred dollar ($200.00) base charge plus two hundred dollars ($200.00) for each vehicle to be used under the permit. If, however, new information which requires an investigation is submitted to or discovered by the Development Services Manager upon application for renewal of a permit or at any other time, an investigation fee sufficient to cover the City’s investigative costs shall be required upon completion of such investigation. (2374.3454,3766,3813)

8-3-15: PERMIT REQUIREMENT FOR ANNEXED AREAS: (2568,2800)

With respect to any person providing commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services in any area at the time of its annexation by the City, all such persons shall be subject to the requirements of this Article. Within thirty (30) days of the effective date of annexation, persons engaging in commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services in the annexed area who wish to continue operating after annexation shall apply to the Development Services Manager for a permit pursuant to Section 8-3-14. (2374,2761,2800,3766,3813)

8-3-16: EVALUATION AND DISPOSITION OF PERMIT APPLICATIONS; TERMS AND CONDITIONS: (2568,2800)

(A) The Development Services Manager shall issue or reissue a permit only after the applicant/permittee demonstrates that it is capable and qualified to render reliable commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and that the public health, safety, and welfare will be substantially served by the issuance or reissuance of the permit. (2374,2761,3766,3813)

(B) In making the determination required above, the Development Services Manager may consider, among other things, the application, all pertinent information, and whether: (2374,3766,3813)

1. The applicant/permittee has been convicted of a felony within five (5) years prior to application. (2374)
2. The applicant/permittee has had a civil judgment entered against him within five (5) years of the date of the application in a case involving allegations of misrepresentation, fraud, dishonesty, or price-fixing where the subject matter involved the rendering of refuse collection, transportation, or recycling services. (2374)

3. The applicant/permittee has violated or failed to comply with this Article or any sanitation law of this state or any other state. (2374)

4. The applicant/permittee has been delinquent for more than forty-five (45) days in the payment of taxes or fees to the City or to any unit of government having jurisdiction. (2374)

5. The applicant/permittee has filed with the City or any other city any document which contains information which is false or misleading. (2374)

6. The applicant/permittee is unable to pay debts as they fall due in the regular course of business or is otherwise in such financial condition that he cannot continue in business with safety to his customers or the public. (2374)

(C) In case of a partnership, corporation, or any other group or association, it is sufficient cause for denial or revocation of a permit if any member of such persons or officer or director thereof has performed an act or failed to perform an act which would be cause for denying or revoking a permit of an individual agent for such person. (2374)

(D) Permits issued under this Article shall have a term of twelve (12) months from the date of issuance. The permit shall authorize commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services Citywide subject to the permittee’s compliance with the permit, all requirements of this Chapter, and all requirements of county, state, and federal law. (2374,2761)

(E) All permittees shall furnish their customers with containers consistent with the permit issued under this Article and necessary and appropriate to maintain a clean and sanitary condition on the customers' premises. Such containers shall display conspicuously the business name of the permittee and telephone number and shall be located so as: (2374,2761,2800,3813)

1. Not to interfere with vehicular or pedestrian traffic; (2761)

2. Not to interfere with City-owned containers; and (2761,3813)

3. To conform with all requirements of law. (2374,2761)

(F) Permittees shall not remove refuse from any business establishment that is located within five hundred feet (500') of a residence between the hours of seven (7:00) P.M. and six (6:00) A.M. Failure to comply with this Section will result in a civil citation under Section 8-3-41. (2374,3813)
(G) Except as authorized for recycling purposes under this Article, no permittee shall collect, remove, salvage, transport, or dispose of any refuse or other waste of any kind produced by, kept on, or accumulated within or upon any residence, including single-family dwellings, multifamily dwelling units, duplexes, patio homes, mobile home parks, trailer courts, rooming houses, boardinghouses, apartments, condominiums, townhouses, assisted living facilities, or complexes of any of the foregoing. (2374,2761,3813)

(H) All contracts for service executed by a permittee under this Article shall contain a clause subjecting the contract to cancellation by the customer in the event the permittee’s permit is revoked by the City. (2374)

(I) In the event the City Council determines that legitimate governmental purposes would be advanced by having the City exclusively provide residential, commercial, or industrial solid waste recycling services and it is not otherwise prohibited by law, the Council may act to prohibit the issuance of permits to perform such services. The City shall not be liable to any permittee for any damages of any kind claimed to result from the actions taken pursuant to this Section. All permits issued for residential, commercial, or industrial solid waste recycling services shall bear a statement indicating that the permit shall expire at the end of twelve (12) months and that it is not automatically renewable. The permit shall indicate that the permittee understands that it will not be entitled to damages of any kind in the event that the City Council determines that such permits will not be issued in the future. All permits shall be acknowledged. (2761)

(J) All permittees engaging in recycling shall report annually to the Development Services Manager on forms provided stating the amounts and type of refuse collected for recycling during the preceding year. (2761,3766,3813)

8-3-17: RENEWAL OF PERMITS: (2568,2800)
Permits may be renewed annually by the Development Services Manager or designee upon application by a permittee and if the Development Services Manager or designee makes the findings required by Section 8-3-16 of this Article. Application for permit renewal shall be submitted by permittees not less than forty-five (45) days prior to the expiration of the current permit and shall be submitted in the same manner as prescribed in Section 8-3-14. (2374,2800,3766,3813)

8-3-18: TRANSFER OF PERMITS PROHIBITED: (2568,2800)
Permits issued under the provisions of this Article and all other rights or privileges created under this Article shall have no property value to the holder and may not be sold, transferred, or assigned. (2374)

8-3-19: INSURANCE: (2568,2800)
All permittees for residential, commercial, or industrial solid waste management or recycling services shall secure, maintain, and keep in force throughout the term of the permit insurance coverages as required by State law. (2374,2761,2800)
8-3-20: REVOCATION OF PERMIT: (2568,2800)

Any permittee that is found responsible for three (3) civil citations pursuant to the Mesa City Code within six (6) months may have the permit revoked for a period of twelve (12) months. Notice of proposed revocation shall be served by personally delivering or by mailing by registered mail to the permittee, with service becoming effective either immediately upon personal service or five (5) calendar days from the date of mailing. The revocation shall become effective eleven (11) calendar days after receipt unless permittee has filed a request for a hearing pursuant to Section 8-3-21 of this Article. Once a permit has been revoked, the permittee must wait twelve (12) months before reapplying for a permit with the Solid Waste Division. (2374,2761,2800,3766,3813)

8-3-21: APPEAL FROM DENIAL OR REVOCATION; PROCEDURE AND NOTICE: (2568,2800)

Any person whose request for a permit is denied or who has received notice of proposed revocation may, within ten (10) calendar days after receipt of notice of such denial or revocation, file in the office of the Development Services Manager a written request for a hearing before the Development Services Manager. Such request shall contain the name and address of the person, together with a brief statement as to why such denial or proposed revocation should be reversed. The decision of the Development Services Manager may be appealed by the applicant or permittee within seven (7) days after receipt thereof to the City Manager. The decision of the City Manager shall be final. (2374,3766,3813)

8-3-22: DANGEROUS OR HAZARDOUS WASTE: (2568,2800,3813)

No permittee shall collect, cause to be collected, place, or cause to be placed any dangerous or hazardous waste or similar materials from or in any container or from or upon any public or private property except as specifically permitted by the Arizona Department of Environmental Quality or the federal Environmental Protection Agency. (2374,3813)

8-3-23: VIOLATIONS (REPEALED BY 3198)

8-3-24: (RESERVED)

8-3-25: (RESERVED)

8-3-26: (RESERVED)

8-3-27: (RESERVED)
ARTICLE III

RESIDENTIAL RECYCLING PROGRAM

SECTION:

8-3-28: DEFINITIONS
8-3-29: COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS
8-3-30: RECYCLING PROGRAM NONPARTICIPANTS
8-3-31: RE-ENTRY AS A PARTICIPANT
8-3-32: APPEAL PROCESS

8-3-28: DEFINITIONS:
In addition to the other terms defined in this Chapter, the following terms shall mean: (2863)

BLUE BARREL: A blue sixty- (60-), ninety- (90-), or three hundred- (300-) gallon container (approximate sizes) to be used for collection of residential recyclable materials by the City. (2863, 3198, 3813)

BLACK BARREL: A black sixty- (60-), ninety- (90-), or four hundred forty- (440-) gallon container (approximate sizes) to be used for collection of nonrecyclable materials by the City. (2863, 3813)

NONPARTICIPANT: A residential customer within any area of the City where the residential recycling program is in effect who is not participating in the residential recycling program, either by choice or by action of the City. (2863)

NONRECYCLABLE MATERIALS: Solid waste that the City has not deemed recyclable under Section 8-3-29 of the Mesa City Code. (2863)

RESIDENTIAL RECYCLABLE MATERIALS: Solid waste generated by a residential customer that the City deems acceptable for recycling as described in Section 8-3-29 of the Mesa City Code. (2863, 3198)

RESIDENTIAL RECYCLING PROGRAM: A method of solid waste collection developed by the City to integrate recycling into the mechanized residential collection system used in the City. (2863)

8-3-29: COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS: (3198)

(A) Under the residential recycling program, the City will provide residential customers a second clearly identified blue barrel in which to place specified residential recyclable materials. (2863, 3198)

(B) The following items, if clean, are residential recyclable materials. Other recyclable commodities may be added to or deleted from the program with the approval of the City's materials recycling facility vendor. (2863, 3198, 3813)

1. Newspaper; (2863)
2. Writing/computer paper; (2863)

3. Plastic bottles, jugs, and jars; (2863,3813)

4. Glass; (2863)

5. Corrugated cardboard; (2863)

6. Aluminum; (2863,3198)

7. Metal cans; (2863,3198,3813)

8. Chipboard; and (3198)

9. Magazines. (3198)

(C) Residential customers participating in the residential recycling program shall receive from the City once-per-week collection of residential recyclable materials placed into blue barrels and once-per-week collection of nonrecyclable materials placed into black barrels. The Development Services Manager will designate specific collection days each week, including holidays. (2863,3198,3766,3813)

(D) Residential recyclable materials placed inside a blue barrel shall not be bagged or contained and should conform to all residential recycling program guidelines consistent with this Article. (2863,3198)

(E) Residential customers participating in the residential recycling program shall bag and securely tie their garbage and place it inside a black barrel. (2863)

8-3-30: RECYCLING PROGRAM NONPARTICIPANTS:

(A) A nonparticipant shall not receive a blue barrel and shall receive once-per-week solid waste collection consistent with Article I of this Chapter. If twice-per-week collection is desired by the nonparticipant, it will be made available and an extra fee charged. The City will assess this fee on a monthly basis in addition to the regular monthly service fee, and in part, this will offset the additional collection charge associated with a second weekly pickup. (2863,3198)

(B) Residential customers not complying with this Article will be notified in writing by the City of their status as nonparticipants after a minimum of two (2) notifications have been given explaining their lack of compliance with this Article, and the blue barrel will be retrieved by the City. (2863)
1. The City may make such notification based upon a determination that a violation of this Article has occurred, including any of the following actions: (2863)

   (a) Placing anything other than residential recyclable materials into the blue barrel. (2863, 3198)

   (b) Placing dangerous or hazardous waste in the blue barrel. (2863)

   (c) Depositing residential recyclable materials into the black barrel. (2863, 3198)

2. The Development Services Manager or designee may deliver twice-per-week collection of residential waste (black barrel) to any residential customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health hazard exists. (2863, 3198, 3766, 3813)

8-3-31 RE-ENTRY AS A PARTICIPANT:

(A) Residential customers determined by the City to be nonparticipants may notify the City that they desire to re-enter the residential recycling program. Such notification may occur no earlier than three (3) months after being designated by the City as a nonparticipant. The Development Services Manager or designee may waive this three- (3-) month period based upon a determination that special circumstances exist and that it would be in the best interest of the City to allow re-entry sooner. (2863, 3198, 3766, 3813)

(B) The Development Services Manager or designee also may designate a fee to cover costs associated with distributing blue barrels and information by City personnel to residents re-entering the recycling program. (2863, 3766, 3813)

8-3-32 APPEAL PROCESS:

Any person who has been designated by the City as a nonparticipant may file, within ten (10) calendar days after receipt of notice from the City of such designation, in the Development Services Manager's office a written request for a hearing before the Development Services Manager or designee. Such request shall contain the name and address of the person, together with a brief statement as to why such designation should be reversed. The decision of the Development Services Manager or designee may be appealed to the City Manager by the residential customer within seven (7) days after receipt thereof. The decision of the City Manager shall be final. (2863, 3198, 3766, 3813)
ARTICLE IV (3813)

RESIDENTIAL GREEN WASTE RECYCLING PROGRAM (3813)

SECTION:

8-3-33: DEFINITIONS
8-3-34: COLLECTION OF RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS
8-3-35: RECYCLING PROGRAM NONPARTICIPANTS
8-3-36: RE-ENTRY AS A PARTICIPANT
8-3-37: APPEAL PROCESS
8-3-38: (RESERVED)
8-3-39: (RESERVED)

8-3-33: DEFINITIONS: (3813)
In addition to the other terms defined in this Chapter, the following terms shall mean: (3813)

**GREEN BARREL**: A green ninety- (90-) gallon container (approximate size) to be used for collection of residential green waste materials by the City. (3813)

**BLACK BARREL**: A black sixty- (60-), ninety- (90-), three hundred- (300-), or four hundred forty- (440-) gallon container (approximate sizes) to be used for collection of nonrecyclable materials by the City. (3813)

**NONPARTICIPANT**: A residential customer within any area of the City where the residential green waste recycling program is in effect, who is not participating in the residential green waste recycling program; either by choice or by action of the City. (3813)

**NONRECYCLABLE MATERIALS**: Solid waste that the City has not deemed recyclable under Section 8-3-34 of the Mesa City Code. (3813)

**RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS**: Solid waste generated by a residential customer that the City deems acceptable for green waste recycling as described in Section 8-3-34 of the Mesa City Code. (3813)

**RESIDENTIAL GREEN WASTE RECYCLING PROGRAM**: Collection of acceptable green waste recyclable materials by the mechanized residential collection system used in the City. (3813)
8-3-34: COLLECTION OF RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS: (3813)

(A) Under the residential green waste recycling program, the City will provide residential customers, upon request, a clearly identified green barrel in which to place specified residential green waste recyclable materials. The City retains the ability to recover costs associated with this program subject to City Council approval. (3813)

(B) The following items are residential green waste recyclable materials: (3813)

1. Grass, (3813)

2. Leaves, (3813)

3. Tree branches, (3813)

4. Clippings, (3813)

5. Prunings, and (3813)

6. Cacti. (3813)

(C) In addition to the standard once-per-week collection of nonrecyclable materials in black barrels and recyclable materials in blue barrels, residential customers participating in the residential green waste recycling program shall receive once-per-week collection of residential green waste recyclable materials placed into green barrels from the City. The Development Services Manager or designee will designate specific collection days each week, including holidays. (3813)

(D) Residential green waste recyclable materials placed inside a green barrel shall not be bagged or contained and should conform to all residential green waste recycling program guidelines consistent with this Article. (3813)

(E) Residential customers participating in the residential green waste-recycling program shall bag and securely tie their garbage and place it inside a black barrel. (3813)

8-3-35: RECYCLING PROGRAM NONPARTICIPANTS: (3813)

(A) Residential customers not in compliance with this Article will be notified in writing by the City of their status as nonparticipants after a minimum of two (2) notifications (tags) have been issued explaining their lack of compliance with this Article, and the green barrel will be removed by the City after the written notice is mailed. (3813)

1. The City may make such notification based upon a determination that a violation of this Article has occurred, including any of the following actions: (3813)

   (a) Placing anything other than residential green waste recyclable materials into the green barrel. (3813)

   (b) Placing dangerous or hazardous waste in the green barrel. (3813)
2. The Development Services Manager or designee may deliver twice-per-week collection of residential waste (black barrels) to any residential customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health hazard exists. (3813)

8-3-36: RE-ENTRY AS A PARTICIPANT: (3813)

(A) Residential customers determined by the City to be nonparticipants may notify the City that they desire to re-enter the residential green waste recycling program no earlier than three (3) months after being designated by the City as a nonparticipant. The Development Services Manager or designee may waive this three-(3-) month period based upon a determination that special circumstances exist and that it would be in the best interest of the City to allow early re-entry. (3813)

(B) The Development Services Manager or designee also may designate a fee to cover costs associated with distributing green barrels and information by City personnel to residents re-entering the recycling program. (3813)

8-3-37: APPEAL PROCESS: (3813)

Any person who has been designated by the City as a nonparticipant may file a written request for a hearing before the Development Services Manager or designee within ten (10) calendar days of receipt of nonparticipant designation. Such a request shall contain the name and address of the person, together with a brief statement as to why such designation should be reversed. The decision of the Development Services Manager or designee may be appealed to the City Manager by the residential customer within seven (7) days after receipt thereof. The decision of the City Manager shall be final. (3813)

8-3-38: (RESERVED)
8-3-39: (RESERVED)
ARTICLE V (3813)

ENFORCEMENT

SECTION:

8-3-40: COMMENCEMENT OF AN ACTION
8-3-41: CIVIL SOLID WASTE VIOLATIONS
8-3-42: HABITUAL OFFENDER
8-3-43: FAILURE TO PROVIDE EVIDENCE OF IDENTITY

8-3-40: COMMENCEMENT OF AN ACTION:

(A) The Solid Waste Management Director and the inspectors within the Solid Waste Division or such other persons as the City Manager may designate are authorized to commence an enforcement action under this Chapter, including requesting that the Mesa City Prosecutor issue a complaint for criminal prosecution. (3198,3813)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (3198)

8-3-41: CIVIL SOLID WASTE VIOLATIONS:

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation that is substantially in the form established or approved by the Solid Waste Management Director. The citation shall include relevant information about the violator, such as full name, residence address, driver’s license number (if any), and vehicle license number (if applicable), and shall advise the person of the violation(s) committed. The citation shall direct the person within ten (10) calendar days to pay a fine of fifty dollars ($50.00) or appear before a City employee designated by the City Manager as a Civil Hearing Officer. The citation shall be served by delivering or mailing a copy to the person, with service becoming effective either immediately upon personal service or five (5) calendar days from the date of mailing. (3198,3813)

(B) Within ten (10) days of receipt of a citation issued under Subsection (A), a person shall either pay the civil fine or appear in person or through an attorney before a Civil Hearing Officer. At such an appearance, the person shall either admit or deny the allegations contained in the citation. If the person pays the fine, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense described in the citation. If the person appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the person in the amount of fifty dollars ($50.00). If the person appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing. (3198)
(C) All hearings before the Civil Hearing Officer shall be informal, except that testimony shall be given under oath or affirmation. The technical rules of evidence shall not apply, except for statutory provisions relating to privileged communications. The City shall have the burden of proving all violations by a preponderance of the evidence. No prehearing discovery shall be permitted except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. Upon a finding by the Civil Hearing Officer after the conclusion of the hearing that the person violated this Chapter, the Civil Hearing Officer shall enter a finding of responsibility and judgment against the person in an amount not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198)

(D) An appeal from a final judgment of the Civil Hearing Officer may be taken pursuant to the rules of procedure for special actions of the Arizona Supreme Court. (3198)

(E) If a person served with a citation fails to pay the fine or to appear on or before the time directed to appear or at the time set for hearing, the allegations shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsibility and judgment against the person in an amount not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198)

(F) Any civil fine or judgment for civil sanctions issued pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the fine or judgment with the Maricopa County Recorder. Any judgment for civil fines pursuant to this Chapter may be collected as any other civil judgment. (3198)

8-3-42: HABITUAL OFFENDER:

(A) Any person who violates a provision in this Chapter after previously having been found responsible for committing three (3) or more civil violations under Section 8-3-41 within a twenty-four- (24-) month period, whether by admission, payment of a fine, default, or judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. For purpose of calculating the twenty-four- (24-) month period under this Subsection, the dates of the commission of the offenses shall be the determining factor. (3198)
(B) Upon conviction of a violation of this Section, the Court may impose a sentence of incarceration not to exceed six (6) months in jail or a fine not to exceed two thousand five hundred dollars ($2,500.00), exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than five hundred dollars ($500.00) for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection. (3198)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (3198)

8-3-43: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:
A person who fails or refuses to provide evidence of the person’s identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe that the person has committed a violation of this Chapter, shall be guilty of a criminal misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (3198)
CHAPTER 4
SANITARY SEWER REGULATIONS

SECTION:

8-4-1: DEFINITIONS
8-4-2: TREATMENT OF POLLUTED WATERS REQUIRED
8-4-3: DISPOSAL OF POLLUTANTS
8-4-4: DIGGING UP STREETS WITHOUT A PERMIT; TAMPERING WITH EQUIPMENT PROHIBITED
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8-4-6: SANITARY SEWERS OUTSIDE CITY
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8-4-30: VIOLATIONS; CIVIL AND CRIMINAL ACTIONS
8-4-31: ENFORCEMENT OF CHAPTER

8-4-1: DEFINITIONS:

APPROVAL AUTHORITY: The E.P.A. Regional Administrator. (2809/Reso. 6567)

BEST MANAGEMENT PRACTICES (BMP): Schedules of activities, pollution treatment practices or devices, prohibition of practices, general good housekeeping practices, pollution prevention, waste minimization, educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the amount of pollutants entering the sanitary sewer system, surface water, air, land, or groundwater. Best management practices may include a physical, chemical, structural, or managerial practice or device that can help to achieve compliance with this Chapter. (4330)
B.O.D. (BIOCHEMICAL OXYGEN DEMAND): 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 degrees centigrade (20°C), reported in milligrams per litre. (2809/Reso. 6567)

BRANCH SEWER: A sewer which receives wastewater from lateral sewers from a relatively small area. (2809/Reso. 6567)

BUILDING CONNECTION: The connection to the public sewer and the extension therefrom of the sewer to the property line in an alley or street or to the easement line in an easement, whichever is applicable, depending on the location of the public sewer. (2809/Reso. 6567)

BUILDING SEWER: The extension from the building drain to the building connection or other place of disposal. (2809/Reso. 6567)

BYPASS: The intentional diversion of wastewater from any portion of a pretreatment process. (2809/Reso. 6567)

CATEGORICAL STANDARDS: National/federal categorical pretreatment standards promulgated by the E.P.A. under the authority of D.W.A. §307(b) and (c) which apply to a specific category of industry and which are published in 40 C.F.R. Chapter I, Subchapter N (Parts 401 et seq.) issued in accordance with §307 of the Clean Water Act. (1703,2809/Reso. 6567)

CITY: City of Mesa, Arizona. (2809/Reso. 6567)

CITY MANAGER: The City Manager pursuant to Section 1-20-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567)


COOLING WATER: The clean wastewater discharged from any heat transfer system. (2809/Reso. 6567)

COMPOSITE SAMPLE: A combination of individual samples obtained at regular intervals over a specified time period, with the volume of each individual sample either proportional to the flow rate during the sample period (flow composite) or constant and collected at equal time intervals during the composite period (time composite) as defined in the Industrial Wastewater Discharge Permit. (2809/Reso. 6567)


DEVELOPMENT SERVICES DEPARTMENT: The Department of Development Services of the City of Mesa created by Section 3-4-1 of the Mesa City Code. (2809/Reso. 6567,3766)

DEVELOPMENT SERVICES MANAGER: The Development Services Manager pursuant to Section 3-4-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567,3766)
**DISCHARGE:** The disposal of wastewater into the POTW. (2809/Reso. 6567)

**DOMESTIC WASTEWATER:** Any wastewater derived from the ordinary living processes in a residential dwelling unit of such character as to permit satisfactory disposal, without special treatment, by conventional POTW processes. (2809/Reso. 6567)

**EFFLUENT:** Wastewater that has been treated in a POTW. (2809/Reso. 6567)

**E.P.A. (ENVIRONMENTAL PROTECTION AGENCY):** Federal agency charged with primary enforcement of the C.W.A. (2809/Reso. 6567)

**GRAB SAMPLE:** An individual sample of effluent collected in less than fifteen (15) minutes. (2809/Reso. 6567)

**INDUSTRIAL DISCHARGE:** Any introduction into the POTW of wastewater other than domestic wastewater which either:

(A) 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 or (2809/Reso. 6567)

(B) Contains any substance or pollutant for which a discharge limitation or prohibition has been established by any categorical standard or pretreatment requirements. (1703,2809/Reso. 6567)

**INDUSTRIAL USER:** Any one (1) or more of the following: (2809/Reso. 6567)

(A) A source of indirect discharge of pollutants into a POTW from a person other than a POTW user who discharges only domestic wastewater regulated under C.W.A. §307(b), (c), and (d); (1703,2809/Reso. 6567)

(B) Any nonresidential POTW user of the sewer system which discharges more than the equivalent strength of twenty-five thousand (25,000) gallons per day of domestic wastewater; (1703,2809/Reso. 6567)

(C) Has control over the disposal of a waste as described in (A) and (B) above; or (1703,2809/Reso. 6567)

(D) Has the right of possession and control over any property which produces wastewater as described in (A), (B), or (C) above. (1703,2809/Reso. 6567)

**INDUSTRIAL WASTEWATER DISCHARGE PERMIT:** A written authorization issued by the Utilities Manager categorized as either Class I or Class II allowing a Class I or Class II industrial user to discharge wastewater into a sanitary sewer owned or operated by the City. (2809/Reso. 6567)

**INFLOW:** Water other than wastewater that enters the POTW, including sewer service connections, from sources such as roof leaders, cellar drains, foundation 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. (2809/Reso. 6567)
INTERFERENCE: A discharge which, alone or in conjunction with a discharge from other sources, both:

(1703,2809/Reso. 6567)

(A) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and (2809/Reso. 6567)

(B) Violates any requirement of any environmentally related permit issued by a governmental entity (including an increase in the magnitude or duration of a violation) or prevents sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): C.W.A. §405, the Solid Waste Disposal Act (SWDA) (Including Title II, more commonly referred to as the Resource Conservation and Recovery Act; and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act. (2809/Reso. 6567)

LATERAL SEWER: A sewer which discharges into a branch or other sewer and has no common sewer tributary to it. (2809/Reso. 6567)

MAIN SEWER: A sewer which receives wastewater from one (1) or more branch sewers as tributaries. (2809/Reso. 6567)

MAINTENANCE: Keeping the POTW in a state of repair, including expenditures necessary to maintain the capacity for which such works were designed and constructed. (2809/Reso. 6567)

NEW SOURCE: (4330)

(A) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under C.W.A. §307(c), which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that: (2809/Reso. 6567,4330)

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or (4330)

2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or (4330)

3. The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered. (4330)

(B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (A)2 or (A)3 of this Subsection but otherwise alters, replaces, or adds to existing processes or production equipment. (4330)
Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous onsite construction program:
   
   (a) Any placement, assembly, or installation of facilities or equipment; or
   
   (b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

NPDES PERMIT: A National Pollutant Discharge Elimination System Permit issued to the City by the E.P.A. or an Arizona Pollutant Discharge Elimination System Permit (AZPDES), issued to the City by the State of Arizona, which imposes standards governing the quality of the treated effluent discharged from the POTW into a navigable water of the United States.

PARAMETER: A fundamental characteristic of wastewater around which treatment is designed, such as flow, B.O.D., S.S., and phosphorus.

PASS-THROUGH: A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of any requirement of the POTW’s NPDES Permit (including an increase in the magnitude or duration of a violation) or which causes or contributes to a violation of an applicable numeric or narrative water quality standard.

PERMITTEE: Any person who owns, operates, processes, or controls an establishment or plant being operated under a valid Industrial Wastewater Discharge Permit to discharge wastewater into the POTW.

PERSON: Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, state, municipality, Indian tribe, political subdivision of the state, federal governmental agency, or any other legal entity, including their legal representatives, agents, or assigns.

pH: The logarithm of the reciprocal of the weight of hydrogen ions in grams per litre of solution.

POLLUTANT: Any dredged spoil, solid waste, incinerator residue, wastewater sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes. This includes any substance for which an effluent limitation is identified in Chapter 4 of the Mesa City Code.
POTW: 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 wastewater collection and disposal services. (2809/Reso. 6567)

POTW USER: Any person, lot, parcel of land, building, or premises that discharges or causes or permits the discharge of wastewater into the POTW. (2809/Reso. 6567)

PRETREATMENT: The physical, chemical, biological, or other treatment of any industrial discharge prior to the POTW for the purpose of any one (1) or more of the following activities: (2809/Reso. 6567)

(A) Reducing the amount of concentration of any pollutant; (2809/Reso. 6567)

(B) Eliminating the discharge of any pollutant; or (2809/Reso. 6567)

(C) Altering the nature of any pollutant characteristic to a less harmful state. (2809/Reso. 6567)

PRETREATMENT REQUIREMENTS: All of the duties or responsibilities imposed upon POTW users by this Chapter. (2809/Reso. 6567)

PRETREATMENT STANDARDS: Any regulation containing pollutant discharge limits promulgated by the E.P.A. in accordance with C.W.A. §307(b) and (c) which applies to industrial users. (2809/Reso. 6567)

PROCESS WASTEWATER: Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. (2809/Reso. 6567)

PUBLIC SEWER: A lateral, branch, main, or trunk sewer controlled and maintained by the City. (2809/Reso. 6567)

REPLACEMENT: Those expenditures made for obtaining and installing equipment, accessories, and/or appurtenances during the useful life of the POTW which are necessary to maintain the capacity and performance of the POTW for which they were designed and constructed. (2809/Reso. 6567)

SANITARY SEWER: A sewer which carries wastewater and to which storm water, surface water, and groundwater are not intentionally admitted. (2809/Reso. 6567)

SEWER: A pipe or conduit for carrying wastewater. (2809/Reso. 6567)

SIGNIFICANT INDUSTRIAL USER: An industrial user, identified for purposes of this Chapter as a Class I industrial, that meets either of the following classifications: (2809/Reso. 6567)

(A) Any industrial user subject to categorical standards; or (2809/Reso. 6567)
(B) Any other industrial user that meets any one (1) or more of the following criteria: (2809/Reso. 6567)

1. Contributes process wastewater which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of any of the POTW's treatment plants; (2809/Reso. 6567)

2. Discharges to the POTW an average of twenty-five thousand (25,000) gallons per day or more of process wastewater, excluding sanitary wastewater and boiler blowdown wastewater that is the minimum discharge from boilers of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice; or (2809/Reso. 6567)

3. As designated by the Utilities Manager upon a finding that the industrial user has a reasonable potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement. (2809/Reso. 6567)

**SIGNIFICANT NONCOMPLIANCE:** As determined by a compliance assessment at the end of each calendar quarter using a six- (6-) month period which includes the present quarter and the previous quarter, any one (1) or more of the following situations will be considered significant noncompliance: (2809/Reso. 6567)

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six- (6-) month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter; (2809/Reso. 6567)

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six- (6-) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (one and four-tenths [1.4] for B.O.D., S.S., fats, oil, and grease and one and two-tenths [1.2] for all other pollutants except pH); (2809/Reso. 6567)

(C) Any other violation of a pretreatment standard, daily maximum, or longer-term average that the Utilities Manager determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public; (2809/Reso. 6567)

(D) Any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (2809/Reso. 6567)

(E) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone developed under this Chapter for starting construction, completing construction, or attaining final compliance; (2809/Reso. 6567)

(F) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety- (90-) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules; (2809/Reso. 6567)
(G) Failure to accurately report noncompliance; or (2809/Reso. 6567)

(H) Any other violation or group of violations which the Utilities Manager determines will adversely affect the operation or implementation of this Chapter. (2809/Reso. 6567)

SLUG LOAD: 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-(24-) hour concentration, quantity, or flow rate for such pollutant during normal operations. (2809/Reso. 6567)

S.S. (SUSPENDED SOLIDS): Solids measured in milligrams per litre that either float on the surface of or are in suspension in wastewater or other liquids and which are largely removable by a laboratory filtration device as defined in the most current edition of "Standard Methods for the Examination of Water and Wastewater" 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 E.P.A. (2809/Reso. 6567)

STANDARD INDUSTRIAL CLASSIFICATION: A coded classification of industries based upon economic activities developed by the U.S. Department of Commerce as published in the Standard Industrial Classification Manual, 1987, Office of Management and Budget. (2809/Reso. 6567)

STORM SEWER: A sewer which carries storm and surface waters and drainage, but does not include wastewater containing pollutants. (2809/Reso. 6567)

TRUNK SEWER: A sewer which receives wastewater from many tributary main sewers and serves as an outlet for a large territory. (2809/Reso. 6567)

UPSET: An exceptional incident in which there is unintentional and temporary noncompliance with a technology-based permit effluent limitation because of factors beyond the reasonable control of the permittee, excluding such factors as operational error, improperly designed or inadequate treatment facilities, or improper operation and maintenance or lack thereof. (2809/Reso. 6567)

USER CHARGE: A portion of the sewer fee levied by the City which shall be sufficient to fund the estimated annual operation and maintenance (including replacement) cost of the POTW. (2809/Reso. 6567)

USER CLASS: Any grouping as determined by the Utilities Manager of POTW users, including Class I, II, and III industrial users. (2809/Reso. 6567)

UTILITIES DEPARTMENT: The Utilities Department of the City of Mesa, created by Section 3-3-1 of the Mesa City Code. (2809/Reso. 6567)

UTILITIES MANAGER: The Utilities Manager pursuant to Section 3-3-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567)

WASTEWATER: The spent or used water of a community or industry which contains dissolved and suspended matter. (2809/Reso. 6567)
8-4-2: **TREATMENT OF POLLUTED WATERS REQUIRED:**

It shall be unlawful to discharge to any outlet into a ditch a channel in which a flow of water occurs, either continuously or intermittently, or to any body of surface water or groundwater within the City or in any area under the jurisdiction of the City any wastewater or other polluted waters except where suitable treatment has been provided in accordance with the provisions of this Chapter. (771,2809/Reso. 6567)

8-4-3: **DISPOSAL OF POLLUTANTS:**

(A) It shall be unlawful for any trucked or hauled pollutant to be discharged into the POTW unless previously approved by the City Manager. (2809/Reso. 6567)

(B) It shall be unlawful to dispose of any pollutant by means other than those authorized by applicable federal, state, and local requirements. (2809/Reso. 6567)

8-4-4: **DIGGING UP STREETS WITHOUT A PERMIT; TAMPERING WITH EQUIPMENT PROHIBITED:**

It shall be unlawful to: (2809/Reso. 6567)

(A) Dig up or cause to be dug up any street or alley in the City for the purpose of connecting to the POTW without first obtaining a permit from the City Engineer; (2809/Reso. 6567)

(B) Having a permit, dig up any portion of any street or alley of the City for the purpose of connecting to the POTW and fail or neglect to place the street or alley in its original condition; or (2809/Reso. 6567)

(C) Maliciously or willfully break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the POTW. (2809/Reso. 6567)

8-4-5: **PRIVATE WASTEWATER SYSTEMS:**

(A) Except as provided in this Chapter, it shall be unlawful to construct or maintain within the City any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater. (2809/Reso. 6567)

(B) Where a public sanitary sewer is not available within the City or in any area under the jurisdiction of the City, the building sewer shall be connected to a private wastewater disposal system, complying with the provisions and recommendations of the Arizona Department of Environmental Quality and the Sanitary Code of Maricopa County. Such private wastewater disposal system shall be constructed, maintained, and operated at all times in a sanitary manner. (2809/Reso. 6567)

8-4-6: **SANITARY SEwers OUTside CITY:**

Any POTW user located outside of the City limits who discharges wastewater into a sanitary sewer owned or operated by the City shall be bound by the requirements of this Chapter. (2809/Reso. 6567)

8-4-7: **SANITARY SEWERS; DESIGN, CONSTRUCTION, AND INSPECTION:**

(A) The City shall have the authority to approve the design, issue permits, and conduct inspections of sewer facilities that are to be connected to the City’s existing sanitary sewer system. (2809/Reso. 6567)
(B) 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, Mesa Standard Details, and the Arizona Department of Environmental Quality Bulletin No. 11. (2809/Reso. 6567)

(C) All sewers to be attached directly or indirectly to the POTW shall be inspected by personnel of the City during construction. The City shall be notified at least forty-eight (48) hours prior to cutting into the POTW. In making a connection to the POTW, no physical alteration shall commence until an inspector is present. No wastewater shall be discharged into the POTW prior to obtaining City approval of sewer construction. (2809/Reso. 6567)

(D) Following satisfactory completion of construction, the City will issue a construction inspection certificate upon request. (2809/Reso. 6567)

8-4-8: BUILDING CONNECTIONS; PERMIT, APPROVAL, RECORDS, AND RESPONSIBILITY:

(A) No authorized person shall make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Development Services Department. (2809/Reso. 6567,3766)

(B) Each person making application for a building connection shall obtain a valid plumbing permit from the City as a prerequisite for the approval of the required building connection. All applications for building connections to be constructed by the Development Services Department shall be accompanied by the current fee for such work. (2809/Reso. 6567,3766)

(C) The number, location, manner of connection, and size of all building connections shall be subject to the approval of the Development Services Manager. (2809/Reso. 6567,3766)

(D) The Development Services Department shall keep a record of all building connections made and the purpose for which they are to be used, together with the name of the owner of the property, the owner's agent, or a representative. (2809/Reso. 6567,3766)

(E) The property owner shall be responsible for the cleaning, unstopping, maintenance, and repair of the building connection piping serving the property from the owner’s home or building to the public sewer, except as provided in Subsection (F) of this Section. (2809/Reso. 6567)

(F) Where the correction of a stoppage requires the repair or replacement of a damaged or broken section of the building connection and the damaged or broken section is located off-property in a street or alley, the Utilities Department shall make the repair or replacement. (2809/Reso. 6567)
OWNERSHIP OF PUBLIC SEWER LINES AND OTHER EQUIPMENT MAINTAINED BY THE UTILITIES DEPARTMENT:
The ownership of all public sewer lines, pumping stations, treatment facilities, and equipment and other appurtenances to the sewer system maintained or accepted for maintenance by the Utilities Department shall be vested in the City, and in no case shall the owner of any premises have the right to claim any part except where otherwise provided in this Code. (2809/Reso. 6567)

SEWER CHARGES SET BY SEPARATE ORDINANCE:

(A) The Council shall at least biennially by separate ordinance set the fee to be made for sewer service and use. Such fee shall be apportioned to include not only a user charge, which shall be used exclusively to generate revenues sufficient to pay the total operation and maintenance (including replacement) costs of the treatment works, but also other sewer service charges as desired by the Council. The user charge shall be allocated in such a manner that is proportionate to the cost of providing wastewater service to each POTW user or user class insofar as those costs can reasonably be determined. Further, the user charge shall be based upon the volume and strength, including B.O.D. and S.S., of the wastewater discharged. (2809/Reso. 6567,4038)

(B) Charges for monthly sewer service and use shall be imposed as follows: (4065)

1. Until February 26, 2003, those residential customers not connected to the POTW but with an active utility account and a usable City sewer main adjoining the premises shall pay, in lieu of the user charge and in addition to the charge levied to offset capital expenses, an amount equal to the user charge as stated on the applicable rate schedule, subject to the refund provisions of paragraph (B)5 hereof. (4065)

2. A "usable City sewer main" is defined for purposes of paragraph (B)1 as one that is adjacent to the parcel and which has a service line extended to the property line of the parcel. (4065)

3. In situations where a monthly charge is imposed but the person is not connected to the public sewer, a credit shall be given toward the payment of the sewer development fee when a connection is made. Such credit will be in the sum of the payments previously paid for monthly sewer services, but in no case shall it exceed the amount of the sewer development fee in effect at the time connection to the public sewer is made. (4065)

4. After February 26, 2003, monthly charges for sewer service and use shall only be imposed on a parcel at such time as that parcel is connected to the public sewer. (4065)

5. A person shall be entitled to a refund of the monthly charges for sewer service paid during the period of time beginning March 1, 2000 and ending February 26, 2003, without interest if: (4065)

   (a) The person had an active utility account and a usable City sewer main adjoining the premises; (4065)

   (b) The person paid a monthly charge for sewer, but was not connected to the public sewer; and (4065)

   (c) Such charges have not been credited against a sewer development fee as allowable under paragraph (B)1 hereof. (4065)
The refund shall in no case exceed the actual amount paid by the person submitting the application for refund. In order to be eligible to receive such refund, the person who paid such charges shall be required to submit an application for such refund to the Utilities Department within one (1) year after February 26, 2003. (4065)

(C) Although the City strongly encourages that persons should connect to the public sewer system when it becomes available to them, persons with existing septic tanks may continue to use them as long as they function in a manner which does not violate Maricopa County health standards. However, at such time as Maricopa County determines that the septic tanks violate the standards, the person shall connect to the public sewer system. (2809/Reso. 6567,4038,4065)

(D) Upon appeal and presentation of satisfactory evidence by any customer, an adjustment of the established sewer rate schedules may be granted provided that such adjustment is proportional among POTW users or user classes and includes, at a minimum, a user charge component. (2809/Reso. 6567,4038,4065)

(E) Excessive revenues collected from a POTW user or user class through the user charge shall be applied to that POTW user or user class when the user charge portion of the sewer fee is established. (2809/Reso. 6567,4038,4065)

8-4-11: USER CHARGE FORMULA:

In calculating a POTW user or user class sewer fee, the following formula shall be used to determine the user charge portion of the total sewer fee: (2809/Reso. 6567)

\[
\text{USER CHARGE FORMULA: } \text{Flow mg x flow rate + B.O.D. (mg/l) x 8.34 x flow mg x B.O.D. rate - 1000 + S.S. (mg/l) x 8.34 x flow mg x S.S. rate - 1000 + fixed charges. (2809/Reso. 6567)}
\]

WHERE:

\[
\begin{align*}
\text{FLOW MG} & = \text{The total volume of flow for the year in millions of gallons. (2809/Reso. 6567)} \\
\text{FLOW RATE} & = \text{O & M (FLOW) divided by flow mg. (2809/Reso. 6567)} \\
\text{B.O.D. RATE} & = \text{O & M (B.O.D.) divided by B.O.D. 1000 lbs. (2809/Reso. 6567)} \\
\text{S.S. RATE} & = \text{O & M (S.S.) divided by S.S. 1000 lbs. (2809/Reso. 6567)} \\
\text{FIXED CHARGES} & = \text{O & M (FIXED) divided by the number of customers. (2809/Reso. 6567)} \\
\text{O & M (FLOW)} & = \text{The operating and maintenance cost of treating the flow portion of wastewater. (2809/Reso. 6567)} \\
\text{O & M (B.O.D.)} & = \text{The operating and maintenance cost of treating the B.O.D. portion of wastewater. (2809/Reso. 6567)} \\
\text{O & M (S.S.)} & = \text{The operating and maintenance cost of treating the S.S. portion of wastewater. (2809/Reso. 6567)}
\end{align*}
\]
O & M (FIXED) = The operating and maintenance cost of processing sewer bills. (2809/Reso. 6567)

B.O.D. 1000 LBS. = The total amount of B.O.D. in thousands of pounds. (2809/Reso. 6567)

S.S. 1000 LBS. = The total amount of S.S. in thousands of pounds. (2809/Reso. 6567)

NUMBER OF CUSTOMERS = The total number of sewer customers being billed. (2809/Reso. 6567)

B.O.D. (MG/L) = The concentration of biochemical oxygen demand in milligrams per litre of wastewater. (2809/Reso. 6567)

S.S. (MG/L) = The concentration of S.S. in milligrams per litre of wastewater. (2809/Reso. 6567)

8-4-12: BILLING FOR USER CHARGE:
Each POTW user shall be notified on an annual basis, in conjunction with their regular monthly bill, of the portion of their monthly bill that is attributable to the user charge. Such notice shall state that the revenues derived by the user charge are to be used exclusively for the operation and maintenance (including replacement) of the POTW. (2809/Reso. 6567)

8-4-13: DISTRIBUTION OF WASTEWATER SYSTEM REVENUES AND UTILIZATION OF FUNDS:
Revenues attributable to user charges shall be allocated to the Sewer Use Accounts of the Sewer Enterprise Account of the City of Mesa Utility Fund. Such revenues shall be restricted to paying the expenses incurred in the operation and maintenance (including replacement) of the POTW. Additional revenues derived by the charge for sewer service and use shall be allocated to the Sewer Service Account of the Sewer Enterprise Account of the City’s Utility Fund. The Sewer Service Account revenues may be used for any one (1) or more of the following activities: (2809/Reso. 6567)

(A) The expansion or improvement of the sanitary and storm sewer systems operated by the City; (2809/Reso. 6567)

(B) Servicing the debt or retiring sanitary and storm sewer bonds; and (2809/Reso. 6567)

(C) Providing for other pertinent costs as determined by the City Council. (2809/Reso. 6567)

8-4-14: WASTEWATER TREATMENT BY-PRODUCTS:
All revenue from the sale of treatment-related by-products shall be used to offset the cost of operating and maintaining the POTW. User charges shall be proportionally reduced for all POTW users. Total annual revenues received from the sale of a by-product shall be credited to the works treatment operation and maintenance cost no later than the fiscal year immediately following their receipt. (2809/Reso. 6567)

8-4-15: PROHIBITED SUBSTANCES AND DISCHARGE LIMITATIONS:

(A) No person shall discharge or cause to be discharged at any entry point into the public sewer system any of the following: (2809/Reso. 6567)

1. Wastewater which could cause interference or pass-through with POTW operations. (2809/Reso. 6567)
2. Unless otherwise approved by the Utilities Manager, storm water, surface water, groundwater, roof runoff, subsurface drainage, single-pass cooling water, or condensate that may constitute inflow. (2809/Reso. 6567)

3. Pollutants which create a fire or explosion hazard to the system or POTW. In no case shall pollutants be discharged either: (2809/Reso. 6567,4330)

   (a) With a closed cup flashpoint less than one hundred forty degrees Fahrenheit (140o F) (sixty degrees Centigrade [60o C]); or (2809/Reso. 6567)

   (b) Which would cause an exceedance of ten percent (10%) of the lower explosive limit (lel) at any point within the POTW for any single reading or more than five percent (5%) for any two (2) consecutive readings. (2809/Reso. 6567)

4. Solid or viscous pollutants, animal fats, oils and grease, petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause any one (1) or more of the following: (2809/Reso. 6567,4330)

   (a) Interference; (2809/Reso. 6567)

   (b) Pass-through; or (2809/Reso. 6567)

   (c) Obstruction to the flow in sewers or other interference or damage with the system or POTW. (2809/Reso. 6567,4330)

5. Any waters containing a toxic, radioactive, poisonous, or other substance in sufficient quantity to injure or interfere with any POTW process, cause corrosive structural damage, constitute a hazard to humans, or create any hazard to the POTW or in the receiving waters of the POTW; or pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. (2809/Reso. 6567,4330)

6. Wastewater with a pH less than five (5.0) standard units (SU) or greater than ten and one-half (10.5) SU. (2809/Reso. 6567)

7. Wastewater with a temperature greater than one hundred fifty degrees Fahrenheit (150°F) or heat in amounts which will inhibit biological activity in the POTW resulting in interference; but in no event, heat in such quantities that the temperature at the headworks of the POTW exceeds one hundred four degrees Fahrenheit (104°F) (forty degrees Centigrade [40°C]). (2809/Reso. 6567)

8. Wastewater that has been diluted in any way 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. (2809/Reso. 6567)
9. Wastewater that could cause a violation of any categorical standard or pretreatment requirement. (2809/Reso. 6567)

10. A discharge, other than domestic wastewater, that exhibits a characteristic of a hazardous waste or contains a substance that is listed as a hazardous waste pursuant to either Arizona Administrative Code R18-8-261, as amended, or 40 C.F.R. Part 261, as amended, whichever is applicable, whether or not the discharge is otherwise subject to hazardous waste regulations. The Utilities Manager may allow a discharge of such wastes if, upon written request of the affected person, the Utilities Manager determines that the discharge would not cause interference or pass-through with POTW operations. (2809/Reso. 6567,4330)

11. Wastewater sampled using the following specified sample type which exceeds the limits for the following parameters, expressed in the total form as micrograms per liter (ug/L): (2809/Reso. 6567)

(a) The instantaneous effluent limitation shall be the maximum allowable concentration permitted in a discharge at any time as measured in a grab sample. The instantaneous effluent limitation for the following parameters shall be: (2809/Reso. 6567)

<table>
<thead>
<tr>
<th>Substance</th>
<th>Limitation</th>
<th>Sample Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Benzene</td>
<td>35</td>
<td>Grab</td>
</tr>
<tr>
<td>(ii) Chloroform</td>
<td>2,000</td>
<td>Grab</td>
</tr>
</tbody>
</table>

(b) The following parameters shall have a limit of zero and are therefore prohibited: (2809/Reso. 6567,4330)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>4,4’ – DDE</td>
</tr>
<tr>
<td>(ii)</td>
<td>4,4’ – DDT</td>
</tr>
<tr>
<td>(iii)</td>
<td>Aldrin</td>
</tr>
<tr>
<td>(iv)</td>
<td>BHC – Alpha</td>
</tr>
<tr>
<td>(v)</td>
<td>BHC - Beta</td>
</tr>
<tr>
<td>(vi)</td>
<td>BHC – Gamma (Lindane)</td>
</tr>
<tr>
<td>(vii)</td>
<td>Heptachlor</td>
</tr>
<tr>
<td>(viii)</td>
<td>Heptachlor Epoxide</td>
</tr>
<tr>
<td>(ix)</td>
<td>Polychlorinated Biphenyl Compounds</td>
</tr>
</tbody>
</table>

(4330)
(B) In addition to the requirements contained in Subsection (A) of this Section, all Class I industrial users shall not discharge or cause to be discharged at any entry point into the public sewer system any wastewater which exceeds the daily average effluent limitation specified in paragraph 3 of this Subsection. A Class II industrial user also may be subject to one (1) or more of the daily average effluent limitations if the Utilities Manager determines in writing that such user is responsible for an industrial discharge which causes or has the reasonable potential to cause harm or damage to worker safety, public safety, or the environment. This written determination shall identify the daily average effluent limitations applicable to the user that are necessary to minimize the potential harm or damage to worker safety, public safety, and the environment. (2809/Reso. 6567)

1. The daily average effluent limitation shall be the maximum allowable concentration permitted in a discharge as measured, where feasible, in a composite sample obtained by flow proportional sampling techniques. If the Utilities Manager determines that flow-proportional composite sampling is not feasible, the utilities Manager may allow or conduct composite sampling by time-proportional techniques or by the compositing or averaging of one (1) or more grab samples. (2809/Reso. 6567, 4330)

2. Sampling for the daily average effluent limitation shall be conducted using the sample type specified in paragraph 3 of this Subsection. (2809/Reso. 6567)

3. The daily average effluent limitation for the following parameters, expressed in the total form as milligrams per liter (MG/L), shall be: (2809/Reso. 6567, 4330)

<table>
<thead>
<tr>
<th>SUBSTANCE</th>
<th>LIMITATION</th>
<th>SAMPLE TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Arsenic</td>
<td>0.13</td>
<td>Composite</td>
</tr>
<tr>
<td>(b) Cadmium</td>
<td>0.047</td>
<td>Composite</td>
</tr>
<tr>
<td>(c) Copper</td>
<td>1.5</td>
<td>Composite</td>
</tr>
<tr>
<td>(d) Cyanide</td>
<td>2.0</td>
<td>Grab</td>
</tr>
<tr>
<td>(e) Lead</td>
<td>0.41</td>
<td>Composite</td>
</tr>
<tr>
<td>(f) Mercury</td>
<td>0.0023</td>
<td>Composite</td>
</tr>
<tr>
<td>(g) Selenium</td>
<td>0.10</td>
<td>Composite</td>
</tr>
<tr>
<td>(h) Silver</td>
<td>1.2</td>
<td>Composite</td>
</tr>
<tr>
<td>(i) Zinc</td>
<td>3.5</td>
<td>Composite</td>
</tr>
</tbody>
</table>

(C) No person shall discharge or cause a discharge into a POTW that violates any limitation or prohibition specified or established by the Utilities Manager pursuant to Section 8-4-27(A) of the Mesa City Code. (4330)

(D) All affected individual users or class of users shall comply with any best management practice required by the Utilities Manager pursuant to Section 8-4-27(A) of the Mesa City Code. (4330)

(E) Mass limitations may be imposed on industrial users through industrial wastewater discharge permits where not prohibited by categorical pretreatment standards, and which are using flow equalization to meet applicable federal, state, or City pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. Equivalent mass limits may be established only if industrial users satisfy all conditions set forth in 40 CFR 403.6(c)(5)(i)(A) through (c)(5)(i)(E). In such cases, the
wastewater discharge permit will contain the mass allocation for each pollutant, any concentration-based
categorical standards, maximum flow allowed, and the appropriate monitoring and reporting requirements.
Where mass limits have been established, the reports required by Section 8-4-19 shall also indicate the mass
of limited pollutants in the user’s wastewater. These reports shall also contain the results of sampling and
analysis of the discharge, including production and mass of pollutants contained therein which are limited by
the applicable pretreatment standards and requirements. (5426)

8-4-16: INDUSTRIAL USERS IDENTIFIED AS CLASS I, II, OR III:

(A) All significant industrial users shall be Class I industrial users under this Chapter. (2809/Reso. 6567)

(B) A Class II industrial user shall be any industrial user that meets all of the following criteria: (2809/Reso.
6567)

1. Is not a significant industrial user; (2809/Reso. 6567)

2. Is determined in writing by the Utilities Manager to be responsible for an industrial discharge which causes or
has the reasonable potential to cause harm or damage to the POTW, worker safety, public safety, or the
environment; and (2809/Reso. 6567)

3. Has discharges which are any one (1) or more of the following: (2809/Reso. 6567)

   (a) Greater than the equivalent strength of twenty-five thousand (25,000) gallons per day of domestic waste as
   measured by B.O.D. and S.S. (2809/Reso. 6567)

   (b) Pollutants in groundwater subject to a remedial action plan that has been approved by an appropriate
   regulatory agency. (2809/Reso. 6567)

   (c) Any of the substances described in Section 8-4-15 of the Mesa City Code. (2809/Reso. 6567)

   (d) Either domestic wastewater or no discharge at all, but such industrial user does have significant quantities
   of pollutants which, if discharged, would be regulated by this Chapter. (2809/Reso. 6567)

(C) All industrial users that are not Class I or II under Subsections (A) and (B) of this Section shall be identified
as Class III industrial users. (2809/Reso. 6567)

8-4-17: GENERAL INDUSTRIAL USER REQUIREMENTS:

All Class I, II, and III industrial users shall, unless otherwise noted: (2809/Reso. 6567)

(A) Comply with the categorical standards, pretreatment requirements, and all other requirements imposed by this
Chapter upon POTW users. (2809/Reso. 6567)

(B) Comply with the orders of the Utilities Manager designed to implement the categorical standards,
pretreatment requirements, best management practices, and all other requirements imposed by this Chapter.
(2809/Reso. 6567,4330)

(C) If a new industrial user, file, prior to the discharge of wastewater to the POTW, a written notice with the
Utilities Manager which identifies all of the following: (2809/Reso. 6567)

   1. Name and address of the existing or prospective industrial users; (2809/Reso. 6567)
2. Business locations served or to be served by the POTW; (2809/Reso. 6567)

3. Nature, concentration, and amounts of any substance present at, or intended to be present at, such business locations which, if discharged to the POTW, could constitute an industrial discharge; and (2809/Reso. 6567)

4. Nature and concentration of all pollutants currently discharged to the POTW from such business locations. (2809/Reso. 6567)

(D) Assist the Utilities Manager in updating the industrial user survey which contains the information requested in Subsection (C) of this Section. The Utilities Manager may request additional information to determine compliance. (2809/Reso. 6567)

(E) Carry out and maintain an adequate record of all self-inspection and self-monitoring activities necessary for the industrial user to know at all times whether or not such user is introducing any industrial discharge to the POTW. (2809/Reso. 6567)

(F) Assist the Utilities Manager to determine the exact nature, concentration, and volume of any pollutant intended for discharge to the POTW. Therefore, upon request, any industrial user shall promptly do any one (1) or more of the following: (2809/Reso. 6567)

1. Allow the examination and copying of all relevant records or documents available to the user. (2809/Reso. 6567)

2. 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. (2809/Reso. 6567)

3. Install and maintain at the user’s expense convenient and adequate monitoring and/or sampling points needed by the Utilities Manager for monitoring and/or sampling purposes. (2809/Reso. 6567)

4. Allow the taking and removal of samples from any wastewater discharged or intended for discharge to the POTW. (2809/Reso. 6567)

5. Provide the Utilities Manager with any other information, including chemical analyses of wastewater and architectural or engineering design data, drawings, etc., which is reasonably needed by the Utilities Manager for the purpose of determining such user’s compliance with the requirements of this Chapter. (2809/Reso. 6567)

(G) Refrain from any discharges until the Utilities Manager determines if the industrial user would cause an industrial discharge. Once this determination is made, the Utilities Manager will classify the user as a Class I, II, or III industrial user consistent with Section 8-4-16 of the Mesa City Code. The Utilities Manager shall maintain and amend as necessary a list of the Class I, II, and III industrial users. (2809/Reso. 6567)
(H) Comply with the demand of the Utilities Manager to immediately halt any actual or threatened discharge to the POTW when the Utilities Manager has given notice that such actual or threatened discharge either:
(2809/Reso. 6567)

1. Presents or may present an imminent or substantial endangerment to the health or welfare of any person or to the environment; or (2809/Reso. 6567)

2. Will cause interference with POTW operations. (2809/Reso. 6567)

(I) Immediately give notice to the Utilities Manager of any problem-causing discharge to the POTW. A problem-causing discharge may not have caused an actual limit violation but had a characteristic of the narrative prohibitions of Section 8-4-15 of the Mesa City Code. The discharge also may be an accidental discharge, upset, slug load, limit violation of any categorical standard, pretreatment requirement, or permit condition imposed by this Chapter. Such notification will not relieve the industrial user 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. The notice shall be followed within ten (10) working days with a written report that shall include all of the following: (2809/Reso. 6567)

1. Location of the discharge; (2809/Reso. 6567)

2. Known or estimated nature, concentration, and volume of the discharged pollutants; (2809/Reso. 6567)

3. Type of assistance desired from the City; (2809/Reso. 6567)

4. Corrective action undertaken, being undertaken, and/or to be undertaken by the industrial user. Any industrial user causing such a discharge also shall initiate all appropriate corrective action required by the Utilities Manager needed to accomplish all of the following: (2809/Reso. 6567)

   (a) Prevent injury to human health or safety or to the environment, the POTW, and/or any other property; (2809/Reso. 6567)

   (b) Promptly repair all or part of any injury or damage caused by such discharge; and (2809/Reso. 6567)

   (c) Ensure that a discharge does not occur again. (2809/Reso. 6567)

(J) Pay all sewer fees charged by the City for the POTW services provided by the Utilities Manager pursuant to the requirements of this Chapter. Such service fees will apply equally to all industrial 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 wastewater discharged to the POTW by each user. (2809/Reso. 6567)

(K) Reimburse the City for all expenses reasonably incurred by the City in insuring such industrial user’s compliance with the applicable requirements of this Chapter. A schedule of such costs will be determined by the Utilities Manager. Expenses include the costs related to all of the following: (2809/Reso. 6567)
1. Issuing permits; (2809/Reso. 6567)

2. Conducting inspection, surveillance, and monitoring activities; (2809/Reso. 6567)

3. Obtaining laboratory analysis of wastewater samples; (2809/Reso. 6567)

4. Taking enforcement actions against industrial users not in compliance with the requirements of this Chapter; and (2809/Reso. 6567)

5. 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. (2809/Reso. 6567)

(L) If a significant industrial user, comply with the requirements of Section 8-4-19(G)2 of the Mesa City Code when a limit violation is detected during self-monitoring. (2809/Reso. 6567)

(M) Notify the Utilities Manager, the E.P.A. Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261, the E.P.A. hazardous waste number, and the type of discharge (continuous, batch, or other). (2809/Reso. 6567)

1. If the industrial user discharges more than one hundred kilograms (100kg) of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the industrial user: (2809/Reso. 6567)

(a) An identification of the hazardous constituents contained in the wastes; (2809/Reso. 6567)

(b) An estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month; and (2809/Reso. 6567)

(c) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. (2809/Reso. 6567)

2. Industrial users shall provide the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. (2809/Reso. 6567)

3. Any notification under this Subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted under 40 C.F.R. §403.12(j).

4. The notification requirement in this Subsection does not apply to pollutants already reported under the self-monitoring requirements of 40 C.F.R. §403.12(b), (d), and (e). (2809/Reso. 6567)
5. Dischargers are exempt from the requirements of this Subsection during a calendar month in which they discharge no more than fifteen kilograms (15 kg) of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§261.30(d) and 261.33(e). Discharge of more than fifteen kilograms (15 kg) of nonacute hazardous wastes in a calendar month or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification. (2809/Reso. 6567)

6. In the case of new regulations promulgated by the E.P.A. under Section 3001 of the Resource Conservation and Recovery Act identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the Utilities Manager of the discharge of such substance within ninety (90) days from the effective date of such regulations. (2809/Reso. 6567)

7. In the case of any notification made under this Subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment. (2809/Reso. 6567)

(N) If a significant industrial user, sign applications for permits, correspondence, and required reports following the requirements in Section 8-4-19(H) of the Mesa City Code. (2809/Reso. 6567)

(O) Promptly notify the Utilities Manager in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 C.F.R. §403.12(p). (2809/Reso. 6567)

(P) For purposes of record keeping: (2809/Reso. 6567)

1. Maintain records of all information resulting from any monitoring activities required by this Section. Such records shall include all of the following information for all samples: (2809/Reso. 6567)

   (a) The date, exact place, method, and time of sampling and the names of the individuals taking the samples; (2809/Reso. 6567)

   (b) The dates that analyses were performed; (2809/Reso. 6567)

   (c) Who performed the analyses; (2809/Reso. 6567)

   (d) The analytical techniques/methods used; and (2809/Reso. 6567)

   (e) The results of such analyses. (2809/Reso. 6567)

2. Retain for a minimum of three (3) years all records of monitoring activities and results, whether or not such monitoring activities are required by this Section, and shall make such records available for inspection and copying by the Utilities Manager. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or when requested by the Utilities Manager. (2809/Reso. 6567)
Q) In order that officers, agents, and employees of permittees shall make available to their employees copies of this Chapter together with such other wastewater 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 who to call in case of an accidental discharge in excess of the limits authorized by the permit. (2809/Reso. 6567)

R) If a significant industrial user, submit a compliance schedule that contains the information required in Section 8-4-19(F) of the Mesa City Code if found to be out of compliance by the Utilities Manager. (2809/Reso. 6567)

S) Provide protection from accidental discharge of prohibited materials or other wastewater regulated by this Chapter. (2809/Reso. 6567)

T) Label any possible connection or entry point for a hazardous and/or prohibited substance to the plumbing or drainage system to warn operating personnel against discharge of such substance in violation of this Chapter. (2809/Reso. 6567)

U) Submit and maintain reports subject to all of the following: (2809/Reso. 6567)

   1. The provisions of 18 U.S.C. §1001 relating to fraud and false statements; (2809/Reso. 6567)

   2. The provisions of C.W.A. §309(c)4 governing false statements, representation, or certification; and (2809/Reso. 6567)

   3. The provisions of C.W.A. §309(c)6 regarding responsible officers. (2809/Reso. 6567)

V) Implement methods at the industrial user's expense to reduce or control the concentration of pollutants through the use of best management practices or measures used to reduce the amount of pollution entering surface water, air, land, or groundwater. Each industrial user shall keep written records of the methods used, and such records shall be kept on-site for a minimum of three (3) years. (2809/Reso. 6567)

8-4-18: CLASS I AND II INDUSTRIAL USER PERMIT REQUIREMENTS:
Class I and II industrial users shall do all of the following: (2809/Reso. 6567)

A) Obtain an Industrial Wastewater Discharge Permit from the Utilities Manager. Any application for a permit or an amended permit shall contain the information in the application form or such other information as may be requested by the Utilities Manager. The Utilities Manager shall issue an Industrial Wastewater Discharge Permit within sixty (60) days after determining that an application for such permit is complete. Such a permit: (2809/Reso. 6567)

   1. Will be categorized as Class I or Class II; (2809/Reso. 6567)
2. Will be for a period of time not to exceed five (5) years. A permit may be terminated by revocation by the Utilities Manager under Section 8-4-28 of the Mesa City Code or upon voluntary surrender of the permit by the permittee at an earlier date; (2809/Reso. 6567)

3. Is nontransferable by the permittee; (2809/Reso. 6567)

4. May be amended as deemed appropriate by the Utilities Manager; (2809/Reso. 6567)

5. Will specifically identify all applicable discharge prohibitions and limitations and monitoring and reporting requirements which the Utilities Manager will enforce; (2809/Reso. 6567)

6. For all Class I industrial users, shall include a provision requiring all pretreatment necessary to comply with the categorical standards and pretreatment requirements, and best management practices imposed by this Chapter; (2809/Reso. 6567,4330)

7. May contain requirements for installation and maintenance of inspection and sampling facilities; (2809/Reso. 6567)

8. May require implementation of best management practices to reduce or eliminate the amount of pollutants discharged to the POTW. (2809/Reso. 6567,4330)

9. May contain other conditions and requirements as deemed reasonably necessary by the Utilities Manager to meet the following concerns: (2809/Reso. 6567)
   (a) Prevent pass-through or interference; (2809/Reso. 6567)
   (b) Protect the quality of the water body receiving the POTW's effluent; (2809/Reso. 6567)
   (c) Protect worker health and safety; (2809/Reso. 6567)
   (d) Facilitate sludge management and disposal; (2809/Reso. 6567)
   (e) Protect against damage to the POTW; and (2809/Reso. 6567)
   (f) Ensure user compliance with this Chapter. (2809/Reso. 6567)

10. May be appealed by the applicant by filing a petition for review with the Utilities Manager within twenty (20) days of receipt of the permit. Such petition shall identify the permit provisions objected to, specify in detail the reasons for objection, and present the alternative condition, if any, sought to be placed in the permit. During the appeal process, the provisions of the permit that are not objected to shall be in effect, and the provisions that are objected to shall be stayed pending a final decision by the Utilities Manager. If the Utilities Manager fails to act within thirty (30) days of receipt of the petition for review, the petition shall be deemed to be denied. (2809/Reso. 6567)
(B) Comply fully with all requirements and conditions of any Industrial Wastewater Discharge Permit. Once a permit is issued, no Class I or II industrial user shall do any of the following: (2809/Reso. 6567)

1. Make any new or increased industrial discharge; (2809/Reso. 6567)

2. Make any change in the nature of its industrial discharge if such change will cause any new or increased industrial discharge; (2809/Reso. 6567)

3. Fail to give notice to the Utilities Manager not less than ninety (90) days prior to any facility expansion, production increase, or process modifications which results or may result in new or increased discharges or a change in the nature of the discharge; or (2809/Reso. 6567)

4. Fail to give advance notice to the Utilities Manager of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. (2809/Reso. 6567)

8-4-19: **SIGNIFICANT INDUSTRIAL USER REPORTING REQUIREMENTS:**

(A) Significant industrial users not subject to categorical standards shall submit to the Utilities Manager at least once every six (6) months (on dates specified by the Utilities Manager) a description of the nature, concentration, and flow of the pollutants required to be reported to the Utilities Manager. These reports shall be based on sampling and analysis performed in the period covered by the report. This sampling and analysis may be performed by the Utilities Manager in lieu of such significant industrial user. Where the Utilities Manager collects all the information required for the report, such significant industrial user will not be required to submit the report. (2809/Reso. 6567)

(B) Within one hundred eighty (180) days after the effective date of a categorical standard or one hundred eighty (180) days after the final administrative decision made upon a category determination submission under 40 C.F.R. §403.6(a)(4), whichever is later, existing industrial users subject to such a categorical standard and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Utilities Manager a report which contains all of the following information: (2809/Reso. 6567)

1. The name and address of the facility, including the name of the owner and operator; (2809/Reso. 6567)

2. A list of any environmental control permits held by or for the facility; (2809/Reso. 6567)

3. A brief description of the nature, average rate of production, and standard industrial classification of the operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes; (2809/Reso. 6567)

4. The measured average daily and maximum daily flow, in gallons per day (verifiable estimates of these flows where justified by cost of feasibility considerations may be allowed by the Utilities Manager) from the POTW from both of the following: (2809/Reso. 6567)

   (a) Regulated process streams and (2809/Reso. 6567)

   (b) Other streams as necessary to allow use of the combined wastestream formula of 40 C.F.R. §403.6(e), as described in subparagraph 5(e) of this Subsection; (2809/Reso. 6567)
5. A measurement of pollutants conducted as follows: (2809/Reso. 6567)

(a) The user shall identify the categorical standards applicable to each regulated process. (2809/Reso. 6567)

(b) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the categorical standard or the Utilities Manager) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. (2809/Reso. 6567)

(c) A minimum of four (4) grab samples shall be used for pH, cyanide, total phenol, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four-(24-) hour composite samples shall be obtained through flow-proportional composite sampling techniques where feasible. The Utilities Manager may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. (2809/Reso. 6567)

(d) The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this paragraph. (2809/Reso. 6567)

(e) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 C.F.R. §403.6(e) in order to evaluate compliance with the categorical standards. Where an alternate concentration or mass limit has been calculated in accordance with §403.6(e), this adjusted limit, along with supporting data, shall be submitted to the Utilities Manager. (2809/Reso. 6567)

(f) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 for the pollutant in question, or where the approval authority determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Utilities Manager or other parties approved by the approval authority. (2809/Reso. 6567)

(g) The baseline report shall indicate the time, date, and place of sampling and methods of analysis and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW. (2809/Reso. 6567)

6. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether categorical standards are being met, and if not, whether additional operations and maintenance (O & M) and/or additional pretreatment is required for the industrial user to meet the categorical standards and pretreatment requirements; and (2809/Reso. 6567)
7. If additional pretreatment and/or O & M will be required to meet the categorical standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable categorical standard. (2809/Reso. 6567)

(C) At least ninety (90) days prior to commencement of a discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the Utilities Manager a report which contains the information listed in paragraphs 1-5 of Subsection (B) of this Section. New sources also shall be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in paragraphs 4 and 5 of Subsection (B) of this Section. (2809/Reso. 6567)

(D) Within ninety (90) days following the date for final compliance with applicable categorical standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any industrial user subject to categorical standards shall submit to the Utilities Manager a report containing the information described in paragraphs 4-6 of Subsection (B) of this Section. (2809/Reso. 6567)

(E) Any industrial user subject to a categorical standard after the compliance date of such standard or in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Utilities Manager during the months of June and December, unless required more frequently in the categorical standard or by the Utilities Manager or approval authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph 4 of Subsection (B) of this Section, except that the Utilities Manager may require more detailed reporting of flows. (2809/Reso. 6567)

(F) The compliance schedule for meeting categorical standards required by paragraph 7 of Subsection (B) of this Section shall be as follows: (2809/Reso. 6567)

1. The compliance schedule shall contain increments of progress, not to exceed nine (9) months, in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical standards. “Major events” include activities such as hiring an engineer, completing preliminary plans, completing final plans, executing a contract for major components, commencing construction, and completing construction. (2809/Reso. 6567)

2. Not later than fourteen (14) days following each date in the compliance schedule and the final date for compliance, the industrial user shall submit a progress report to the Utilities Manager, including whether or not it complied with the increment of progress to be met on such date, and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. (2809/Reso. 6567)

(G) Monitoring and analysis to demonstrate continued compliance shall be conducted as follows: (2809/Reso. 6567)
1. The reports required in Subsections (B), (C), (D), and (E) of this Section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Utilities Manager, of pollutants contained therein which are limited by the applicable categorical standards. This sampling and analysis may be performed by the Utilities Manager in lieu of the industrial user. Where the Utilities Manager performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under 40 C.F.R. §§403.12(b)6 and 403.12(d). In addition, where the Utilities Manager collects all the information required for the report, including flow data, the industrial user will not be required to submit the report. (2809/Reso. 6567)

2. If sampling performed by an industrial user indicates a violation, the user shall notify the Utilities Manager within twenty four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Utilities Manager within thirty (30) days after becoming aware of the violation. However, the industrial user is not required to resample if either:

(a) The Utilities Manager performs sampling of the industrial user at a frequency of at least once per month or

(b) The Utilities Manager performs sampling of the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling. (2809/Reso. 6567)

3. The reports required in Subsection (E) of this Section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Utilities Manager shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable categorical standards. (2809/Reso. 6567)

4. All analyses shall be performed in accordance with procedures established by the approval authority pursuant to C.W.A. §304(h) and contained in 40 C.F.R. Part 136 or with any other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 C.F.R. Part 136 does not include sampling or analytical techniques for the pollutants in question or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the Utilities Manager or other parties approved by the administrator. (2809/Reso. 6567)

5. If an industrial user subject to the reporting requirements in Subsection (E) of this Section monitors any pollutant more frequently than required by the Utilities Manager using the procedures prescribed in paragraph 4 of this Subsection, the results of this monitoring shall be included in the report. (2809/Reso. 6567)

(H) The reports required by Subsections (B), (C), (D), and (E) of this Section shall both:

1. Include the certification statement set forth as follows: (2809/Reso. 6567)

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.” (2809/Reso. 6567)
2. Be signed as follows: (2809/Reso. 6567)

(a) By a responsible corporate officer, if the industrial user submitting the reports required by Subsections (B), (C), (D), and (E) of this Section is a corporation. For purposes of this paragraph, a “responsible corporate officer” means either: (2809/Reso. 6567)

   (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision making functions for the corporation or (2809/Reso. 6567)

   (ii) The manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25 million) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (2809/Reso. 6567)

(b) By a general partner or proprietor if the industrial user submitting the reports required by Subsections (B), (C), (D), and (E) of this Section is a partnership or sole proprietorship. (2809/Reso. 6567)

(c) By a duly authorized representative of the individual designated in subparagraph (a) or (b) of this paragraph if all of the following criteria are met: (2809/Reso. 6567)

   (i) The authorization is made in writing by the individual described in subparagraph (a) or (b); (2809/Reso. 6567)

   (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (2809/Reso. 6567)

   (iii) The written authorization is submitted to the Utilities Manager. (2809/Reso. 6567)

(d) If an authorization under subparagraph (c) of this paragraph is no longer accurate because a different individual or position has responsibility for either the overall operation of the facility or environmental matters for the company, a new authorization satisfying the requirements of subparagraph (c) of this paragraph shall be submitted to the Utilities Manager prior to or together with any reports to be signed by an authorized representative. (2809/Reso. 6567)

8-4-20: MORE STRINGENT FEDERAL REQUIREMENTS TO CONTROL:

Upon the effective date of any categorical standards for a particular industrial subcategory, the federal standard shall immediately supersede these limitations if it is more stringent than limitations imposed under this Chapter. (2809/Reso. 6567)
8-4-21: PRETREATMENT; MAINTENANCE OF FACILITIES AND BYPASS:

(A) Where pretreatment facilities are provided for wastewater, the facilities shall be maintained continuously in satisfactory and effective operation by the owner at the owner’s expense. The owner shall keep written records of all cleaning, repair, calibration, and maintenance required under this Subsection. The owner shall keep such records at the facility for a minimum of three (3) years. (2809/Reso. 6567)

(B) All bypasses are prohibited except in the following circumstances: (2809/Reso. 6567)

1. The bypass is unavoidable to prevent loss of life, personal injury, or substantial property damage; (2809/Reso. 6567)

2. No feasible alternatives to the bypass exist; or (2809/Reso. 6567)

3. The purpose of the bypass is maintenance which is essential to assure efficient operation and the bypass will not cause the exceedance of an effluent limitation contained in an NPDES Permit. (2809/Reso. 6567)

(C) If a permittee has prior knowledge of the need for a bypass, the permittee shall submit written notice of such fact to the Utilities Manager at least ten (10) days before the date of the bypass. If an unanticipated bypass occurs, the permittee shall notify the Utilities Manager within twenty-four (24) hours of receiving knowledge of the bypass and shall submit within five (5) days a written report to the Utilities Manager specifying all of the following information: (2809/Reso. 6567)

1. A description of the bypass, including its cause and duration; (2809/Reso. 6567)

2. Whether the bypass has been corrected, and if not, specific plans, including time frames, to correct it; and (2809/Reso. 6567)

3. The steps being taken or to be taken to reduce, eliminate, and prevent a reoccurrence of the bypass. (2809/Reso. 6567)

8-4-22: INTERCEPTORS:

(A) Interceptors such as grease, oil, or sand shall be provided for laundries, restaurants, service stations, auto repair shops, carwashes, and other facilities when the Utilities Manager determines that they are necessary for the proper handling of liquid wastes containing grease or oil in excessive amounts or any flammable wastes, sand, and other harmful ingredients. (2809/Reso. 6567,4330)

(B) All interceptors shall be of a type and capacity approved by the Utilities Manager and shall be located as to be readily and easily accessible for cleaning and inspection. (2809/Reso. 6567)

(C) Interceptors such as grease, oil, or sand 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. When bolted covers are required, they shall be gastight and watertight. (2809/Reso. 6567,4330)
(D) Where installed, interceptors such as grease, oil, or sand shall be maintained by the owner, at the owner’s expense, in continuously efficient operation at all times. The owner shall keep written records and documentation of all cleaning, repair, calibration, and maintenance required to demonstrate compliance with this Section. Records shall be kept at the facility for a minimum of three (3) years and shall be made available to the Utilities Manager upon his request. (2809/Reso. 6567,4330)

8-4-23: CONTROL MANHOLES:
When required by the Utilities Manager, the owner of any property served by a building sewer carrying any liquid or free-flowing wastewater, excluding uncontaminated water but including cooling water, resulting from any industrial or manufacturing process or from the development, recovery, or processing of natural resources, with or without S.S., shall install a suitable control manhole in the building sewer to facilitate observation, measurement, and sampling of the wastes. Such manhole shall be accessible, safely located, and constructed in accordance with plans approved by the Utilities Manager. The manhole shall be installed by the owner at the owner’s expense. (2809/Reso. 6567)

8-4-24: RIGHT OF ENTRY FOR INSPECTION:

(A) Any authorized employee of the Utilities Department shall have free access, upon presentation of credentials and at all reasonable hours, to all commercial or industrial premises connected to the City sewer system service area for the purpose of assessing applicability and/or compliance with the requirements of this Chapter. For purposes of this Section, “free access” shall be the ability of City personnel to enter POTW user facilities under safe and nonhazardous conditions with a minimum of delay to inspect any and all parts of the user’s facility. (2809/Reso. 6567)

(B) Any POTW user or potential user shall allow all actions, including inspection, monitoring, and copying of records, reasonably needed by the Utilities Manager to perform the duties required or needed under this Chapter. (2809/Reso. 6567)

(C) Servicemen, industrial wastewater inspectors, sanitary engineers, or other employees of the Utilities Department whose duty it may be to enter upon commercial or industrial premises to make inspections and collect samples or measure the quantity of wastewater discharged to the City sewer shall be provided with credentials to identify them as authorized representatives for the Utilities Department. (2809/Reso. 6567)

(D) No person except an authorized employee of the Utilities Department shall have or exhibit any credentials of the Utilities Department. It shall be the duty of each employee of the Utilities Department upon resignation or dismissal to deliver and surrender at the office of the Utilities Manager all credentials of the Utilities Department in the employee’s possession. (2809/Reso. 6567)

8-4-25: DETERMINATION OF WASTEWATER QUALITY:

(A) Testing by direct sampling, utilizing recognized field techniques, equipment, and procedures, will be used for all industrial users. Wastewater characteristics shall be determined by the Utilities Manager on the basis of monitored wastewater discharged, a certified statement from the user, or on the best available data as to the characteristics of such discharges. (2809/Reso. 6567)
(B) If it is determined through testing that a significant variation exists between the user’s certified data and the discharge characteristics monitored by the Utilities Manager, 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 Utilities Department of changes in loading and giving specific dates of changes. (2809/Reso. 6567)

(C) Where sampling and gauging of a specific user is not practical for physical, economic, safety, or other reasons, the Utilities Manager may designate values for concentrations of the wastewater discharged to the POTW for all users in the same standard industrial classification or subclassification. (2809/Reso. 6567)

8-4-26: CONFIDENTIAL INFORMATION:
Information and data on a POTW user obtained from inspections, reports, questionnaires, permit applications, permits, and monitoring programs shall be available to the public or other governmental agencies 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. However, all information shall be made available upon written request by governmental agencies for uses related to this Chapter, the NPDES Permit, State Disposal System Permit, and/or the pretreatment programs, including judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. To claim this trade secret protection, the user must specify at the time of submitting reports or information that part he desires to protect. (2809/Reso. 6567)

8-4-27: AUTHORITY OF THE UTILITIES MANAGER TO REGULATE AND ENFORCE POTW USER COMPLIANCE:
The Utilities Manager is authorized to regulate and enforce POTW user compliance with the requirements of this Chapter. In carrying out this responsibility, the Utilities Manager has authority to: (2809/Reso. 6567)

(A) Consistent with applicable state and federal requirements, such as the pretreatment standards: (2809/Reso. 6567)

1. Regulate the volume and flow rate of discharge to the POTW; (2809/Reso. 6567)

2. Establish permissible limits of concentration for various specific substances, materials, waters, or wastes that can be accepted into the POTW; (2809/Reso. 6567)

3. Specify those pollutants, materials, waters, or wastes that are prohibited from entering the POTW. All prohibitions so established shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the date of filing; (2809/Reso. 6567,4330)

4. Establish limitations for individual users or class of users for various pollutants, materials, waters, or wastes that can be accepted into the POTW. All limitations so established shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the date of filing; (2809/Reso. 6567,4330)
5. Identify those pollutants, materials, waters, or wastes that shall be controlled with best management practices. Pollutants, materials, waters, or wastes to be controlled with best management practices that have been identified by the Utilities Manager shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the filing; (4330)

6. Require individual users or class of users to implement best management practices for any pollutant, materials, water, or waste. (4330)

7. Regulate the admission into the public sewers of any wastewater having one (1) or more of the following characteristics: (2809/Reso. 6567,4330)

(a) A five- (5-) day biochemical oxygen demand greater than three hundred (300) milligrams per litre by weight; (2809/Reso. 6567)

(b) More than three hundred fifty (350) milligrams per litre by weight S.S.; or (2809/Reso. 6567)

(c) An average daily flow of greater than twenty-five thousand (25,000) gallons. (2809/Reso. 6567)

(B) Issue an Industrial Wastewater Discharge Permit pursuant to Section 8-4-18 of the Mesa City Code. (2809/Reso. 6567)

(C) Incorporate the pertinent requirements of this Chapter into every City contract with any POTW user located outside of the municipal jurisdiction of the City. Such contracts may also provide for liquidated damages and, if applicable, specific performance as remedies for breach of contract. (2809/Reso. 6567)

(D) Receive and analyze all self-monitoring reports and notices submitted by industrial users. (2809/Reso. 6567)

(E) Randomly sample and analyze effluent for industrial users at least once a year and conduct those surveillance and inspection activities needed to identify, independently of any information supplied by such users, occasional or continuing noncompliance with any categorical standard or pretreatment requirement. (2809/Reso. 6567)

(F) Investigate instances of noncompliance with any categorical standard or pretreatment requirement when notice of any actual or probable noncompliance has been received by the Utilities Manager. (2809/Reso. 6567)

(G) Notify POTW users of noncompliance with categorical standards or pretreatment requirements discovered by the Utilities Manager. Such notice shall also contain a demand for any appropriate corrective action which is necessary to meet the applicable requirements of this Chapter. The appropriate level of action shall be based on detailed written procedures developed by the Department. (2809/Reso. 6567)

1. Any POTW user will be allowed an opportunity to respond to an order of the Utilities Manager before any enforcement action against such user is initiated unless the discharge is a threat to the public health, safety, or welfare, in which case the Utilities Manager may initiate enforcement action without giving notice. (2809/Reso. 6567)
2. A timely and satisfactory response to an order may result in the issuance of a negotiated settlement agreement signed jointly by the user and the Utilities Manager indicating a mutually agreeable resolution of the noncompliance action. If such a settlement agreement is reached, the Utilities Manager shall provide notice in the largest daily newspaper published in the City of the agreement and a thirty- (30-) day public comment period on the agreement. If no public comments are received on the settlement agreement, the agreement shall become final and effective thirty-one (31) days after the notice publication date. Any public comments received by the Utilities Manager shall be responded to in writing and mailed to the commenting party and the affected POTW user. A determination by the Utilities Manager that no changes are necessary to the settlement agreement shall result in the agreement becoming final and effective upon the issuance of the Utilities Manager’s written response. If the Utilities Manager determines that public comment warrants any modification to the settlement agreement, then an attempt shall be made to renegotiate the agreement. If a modified settlement agreement is reached, the Utilities Manager shall determine whether the modification significantly alters the substance of the initial settlement agreement. The modified settlement agreement shall become final and effective if the Utilities Manager determines that no significant alteration occurred. The Utilities Manager shall repeat the public notice process described in this paragraph for a modified settlement agreement that has been significantly altered. (2809/Reso. 6567)

(H) Comply with the public participation requirements of 40 C.F.R. Part 25 in connection with the City’s enforcement of any categorical standards. (2809/Reso. 6567)

(I) Both: (2809/Reso. 6567)

1. Determine which actual or threatened discharge to the POTW will cause interference with the POTW or may present an imminent or substantial endangerment to the health or welfare of any person and/or to the environment and (2809/Reso. 6567)

2. 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 Chapter. (2809/Reso. 6567)

(J) Annually publish in the largest daily newspaper published in the City public notice of all industrial users who at least once during the preceding twelve- (12-) month period were in significant noncompliance with any categorical standard or pretreatment requirement imposed by this Chapter. The notification also shall summarize any enforcement actions taken against such users during the same twelve- (12-) month period. (2809/Reso. 6567)

(K) Notify industrial users of applicable categorical standards and any applicable requirements under C.W.A. §§204(b) and 405 and Subtitles C and D of the Resource Conservation and Recovery Act. (2809/Reso. 6567)

(L) Keep on file one (1) copy of all federal statutes and regulations cited by this Chapter in order to allow required users adequate opportunity to be informed of the applicable federal requirements herein incorporated by reference. (2809/Reso. 6567)

(M) Evaluate at least once every two (2) years whether each significant industrial user needs a plan to control slug loads. The results of such activities shall be available to the approval authority upon request. If the Utilities Manager decides that a slug control plan is needed, the plan shall contain all of the following elements: (2809/Reso. 6567)
1. Description of discharge practices, including nonroutine batch discharges; (2809/Reso. 6567)

2. Description of stored chemicals; (2809/Reso. 6567)

3. Procedures for immediately notifying the Utilities Manager of slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. §403.5(b), with procedures for follow-up written notification within five (5) days; and (2809/Reso. 6567)

4. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of material, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. (2809/Reso. 6567)

(N) Require both: (2809/Reso. 6567)

1. The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment requirements and (2809/Reso. 6567)

2. The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment requirements, including the reports required in 40 C.F.R. §403.12. (2809/Reso. 6567)

(O) If the Utilities Manager determines that it will not harm the POTW, approve the discharge of storm water, surface water, groundwater, roof runoff, subsurface drainage, single-pass cooling water, or condensate that may constitute inflow. (2809/Reso. 6567)

8-4-28: VIOLATIONS; RESTRICTION OF SEWER SERVICE:

(A) Failure to comply with any of the requirements of this Chapter may result in the following actions: (2809/Reso. 6567)

1. The Utilities Manager may restrict or otherwise limit allowable discharges. (2809/Reso. 6567)

2. The Utilities Manager may suspend or revoke any Industrial Wastewater Discharge Permit issued to a permittee. (2809/Reso. 6567)

3. The Utilities Manager may discontinue water and/or sewer service to the premises, and such service shall not be restored until such violations have been discontinued or eliminated and all outstanding charges paid. (2809/Reso. 6567)

(a) Before discontinuing water and/or sewer service as provided herein, the Utilities Manager shall give written notice to the person of the discontinuance and an opportunity to appear before the Utilities Manager on any disputed matter relative to the discontinuance of sewer service. (2809/Reso. 6567)
(b) However, the Utilities Manager may abate any actual or threatened discharge which would violate any categorical standard or pretreatment requirement imposed by this Chapter by promptly plugging or disconnecting the sewer service. (2809/Reso. 6567)

(c) The discontinuance of sewer service shall be accomplished by physically cutting and blocking the building connection. A charge of seven hundred fifty dollars ($750.00) shall be paid to the Utilities Department for reconnecting the sewer service. (2809/Reso. 6567)

(B) Upon notice of a final determination by the Utilities Manager of an assessment owing or order to correct a violation under this Chapter, the responsible party shall tender the fee assessed and correct the violation within ten (10) days of the date ordered. In the event the violation is not corrected or the assessment is not tendered, it is hereby declared to be, and is, a public nuisance which may be abated by injunctive relief in the Superior Court or by other order of a court of competent jurisdiction. Such action shall be in addition to any other remedy authorized by this Chapter. (2809/Reso. 6567)

8-4-29: VIOLATIONS; ADMINISTRATIVE PENALTIES:

(A) Any person who violates any provision of this Chapter or any order enforcing the provisions of this Chapter may be assessed an administrative penalty by the City Manager in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day that a violation continues shall constitute a separate violation. (2809/Reso. 6567)

(B) In determining the amount of an administrative penalty, the City Manager shall consider all of the following: (2809/Reso. 6567)

1. The seriousness of the violation; (2809/Reso. 6567)

2. The economic benefit, if any, resulting from the violation; (2809/Reso. 6567)

3. Any history of such violation; (2809/Reso. 6567)

4. Any good faith efforts to comply with the applicable requirements; (2809/Reso. 6567)

5. The economic impact of the penalty on the violator; and (2809/Reso. 6567)

6. Such other factors as justice may require. (2809/Reso. 6567)

(C) The Utilities Manager shall provide written notice and an opportunity to be heard to any person assessed an administrative penalty under this Section. Within fifteen (15) days of receipt of the notice, such person shall pay the penalty or file a written request for a hearing with the City Manager. If a hearing is held, the City Manager shall issue a written decision, and such decision shall be final. (2809/Reso. 6567)

(D) The assessment of administrative penalties under this Section shall not limit the availability or imposition of other penalties, remedies, or sanctions under the law or this Chapter. (2809/Reso. 6567)
**8-4-30: VIOLATIONS; CIVIL AND CRIMINAL ACTIONS:**

The City Manager may request that the City Attorney commence criminal and/or civil action against any POTW user violating any requirement of this Chapter, including an action pursuant to A.R.S. §49-391 to enforce the collection of administrative penalties assessed under Section 8-4-29 of the Mesa City Code. (2809/Reso. 6567)

**8-4-31: ENFORCEMENT OF CHAPTER:**

(A) The requirements of this Chapter are made for the benefit of the POTW users, for the protection of the POTW, and to protect the quality of effluent. Their enforcement shall in no case be willfully ignored by any City official or employee. (2809/Reso. 6567)

(B) Upon written request from any person for an exemption from a requirement contained in this Chapter, the Utilities Manager may determine whether the requirement would cause a gross injustice to a particular POTW user and whether it is in the public interest to grant the exemption. The Utilities Manager shall explain in writing to the person seeking the exemption the ultimate determination granting or denying the request. Under no circumstances may an exemption be sought or granted from requirements imposed by applicable state and federal laws. (2809/Reso. 6567)
CHAPTER 5

STORM WATER POLLUTION CONTROL (5062, 5144)

SECTION:

8-5-1: DEFINITIONS
8-5-2: RELEASES AND CONNECTIONS (5062)
8-5-3: REDUCTION OF POLLUTANTS IN STORM WATER (5144)
8-5-4: AUTHORITY TO INSPECT (5062)
8-5-5: COMMENCEMENT OF AN ACTION (5062)
8-5-6: REMEDIES NOT EXCLUSIVE (5062)
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8-5-10: (RESERVED)
8-5-11: HABITUAL OFFENDER (5062)
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8-5-15: RECORDING AN ABATEMENT VIOLATION (5062)
8-5-16: EMERGENCY ABATEMENT (5062)
8-5-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE (5062)

8-5-1: DEFINITIONS:

The following terms as used in this Chapter shall mean: (2774, 5062/Reso. 6528)

A.A.C. (ARIZONA ADMINISTRATIVE CODE): Official compilation of rules that govern state agencies, boards and commissions. (5062)


AZPDES STORM WATER PERMIT: A permit issued by any agency of the State of Arizona having appropriate authority over the Arizona Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (5062)

BEST MANAGEMENT PRACTICES: Schedules of activities, prohibitions of practices, structural and nonstructural controls, operational and maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States to the maximum extent practicable. (5062)

CITY: City of Mesa, Arizona. (2774/Reso. 6528)

CITY MANAGER: The City Manager appointed in accordance with Article III of the Mesa City Charter. (2774, 5062/Reso. 6528)
CITY STORM SEWER SYSTEM: Those facilities not part of a publicly owned treatment works within the City by which storm water may be conveyed to waters of the United States, including all roads, streets, catch basins, curbs, gutters, ditches, channels, storm drains, retention or detention basins, and drywells that are owned and operated by the City. (2774, 5062/Reso. 6528)

CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5062)

C.F.R. (CODE OF FEDERAL REGULATIONS): Codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States. (2774, 5062/Reso. 6528)

C.W.A. (CLEAN WATER ACT): The Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 86 STAT. 816; 33 United States Code Sections 1251 through 1376), as amended [A.R.S. § 49-201(6)]. (2774, 5062/Reso. 6528)

DISCHARGE OF A POLLUTANT: Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. (5062)

HAZARD: A condition that presents a risk to the public health or the environment. (5062)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing harm to the public health or the environment. (5062)

NOTICE TO ABATE: A notice issued to a responsible party concerning a violation of this Chapter of the Mesa City Code. (5062)

NPDES STORM WATER PERMIT: A permit issued by any agency of the United States having appropriate authority over the National Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (2774, 5062/Reso. 6528)

PERSON: Any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity [A.R.S. § 49-201(27)]. (2774, 5062/Reso. 6528)

PROPERTY: Any building, facility, lot, parcel, real estate, or land or portion of land, whether improved or unimproved, and including adjacent sidewalks and parking strips. (2774, 5062/Reso. 6528)

POINT SOURCE: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged to waters of the United States. Point source does not include return flows from irrigated agriculture. (5062)
POLLUTANT: Any fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances [A.R.S. § 49-201(29)]. (5062)

POTW (PUBLICLY OWNED TREATMENT WORKS): A treatment works owned by this state or a municipality of this state as defined in Section 502(4) of the Clean Water Act [A.R.S. § 49-255(5)]. (5062)

RELEASE: Any direct or indirect spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing of a pollutant to the City storm sewer system. (2774, 5062/Reso. 6528)

RESPONSIBLE PARTY: A person who knows or has reason to know of the existence of any violation of this Chapter on that person’s property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5062)

STORM WATER: Storm water runoff, snow melt runoff, and surface runoff and drainage [A.A.C R18-9-A901(36)]. (2774, 5062/Reso. 6528)

WATERS OF THE UNITED STATES: All waters as defined in 40 C.F.R. 122.2. (5062)

8-5-2: RELEASES AND CONNECTIONS: (5062)

(A) Unless expressly permitted or exempted by this Chapter, no person shall release, directly or indirectly, to the City storm sewer system. (2774, 5062/Reso. 6528)

(B) The release of pollutants to the City storm sewer system authorized by any AZPDES or NPDES Storm Water Permit or other AZPDES or NPDES permit which is issued to the person who causes the release is permitted under this Chapter. (2774, 5062/Reso. 6528)

(C) Unless identified by the City Manager or designee under Subsection (D) of this Section, the following are exempt from the prohibition set forth in Subsection (A) of this Section: (2774, 5062/Reso. 6528)

1. Releases composed entirely of storm water. (2774, 5062/Reso. 6528)

2. Releases caused by a person from any of the following activities: (2774, 5062/Reso. 6528)

   (a) Water line flushing and other potable water sources; (2774, 5062/Reso. 6528)

   (b) Lawn watering and landscape irrigation; (2774, 5062/Reso. 6528)

   (c) Irrigation water; (2774/Reso. 6528)

   (d) Diverted stream flows; (2774, 5062/Reso. 6528)
(e) Rising groundwaters; (2774, 5062/Reso. 6528)

(f) Uncontaminated groundwater infiltration to separate storm sewers; (2774, 5062/Reso. 6528)

(g) Uncontaminated pumped groundwater; (2774, 5062/Reso. 6528)

(h) Foundation and footing drains; (2774/Reso. 6528)

(i) Water from crawl space pumps; (2774/Reso. 6528)

(j) Air conditioning condensation; (2774, 5062/Reso. 6528)

(k) Springs; (2774, 5062/Reso. 6528)

(l) Individual residential car washing; (2774/Reso. 6528)

(m) Flows from riparian habitats and wetlands; (2774, 5062/Reso. 6528)

(n) Flows resulting from fire fighting activities; or (2774, 5062/Reso. 6528)

(o) Street wash water; (5062)

(D) No person shall cause a release, directly or indirectly, to the City storm sewer system which is exempted under Subsection (C) of this Section if the City Manager or designee identifies and provides written notice to the person that the release from such person has the potential to result in a discharge of pollutants to waters of the United States. (2774, 5062/Reso. 6528)

(E) No person shall release any pollutant, directly or indirectly, to the City storm sewer system where such release would result in or contribute to a violation of any AZPDES or NPDES Storm Water Permit issued to the City, either separately considered or when combined with other releases. Liability for any such release shall be the responsibility of the person causing or responsible for the release, and the person shall defend, indemnify, and hold harmless the City in all administrative or judicial enforcement actions relating to such release. (2774, 5062/Reso. 6528)

(F) No person shall establish, use, maintain, or continue any direct or indirect connection to the City's storm sewer system which has the potential to result in a violation of this Section. This prohibition is retroactive and shall apply to connections made in the past, regardless of whether they were made under a permit or other authorization or whether they were permissible under the law or practices applicable or prevailing at the time of the connection. (2774/Reso. 6528)
8-5-3: REDUCTION OF POLLUTANTS IN STORM WATER:

(A) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in the release of pollutants to the City storm sewer system, either directly or indirectly, shall undertake appropriate best management practices to minimize the release of such pollutants to the maximum extent practicable. (2774, 5062, 5144/Reso. 6528)

(B) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept, except in appropriate containers or in lawfully established dumping grounds, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations into or upon any component of the City storm sewer system or upon any public property. Additionally, no person shall do the same upon any private property in such a manner that could reasonably result in the release of pollutants to the City storm sewer system. (2774, 5062/Reso. 6528)

(C) Persons owning or operating a parking lot, storage or loading area, or similar property which is exposed to rainfall shall maintain those properties in a manner so that any release from such properties does not cause or contribute to a violation of Section 8-5-2. (2774, 5062/Reso. 6528)

(D) Any person performing construction activities shall undertake appropriate best management practices to minimize the release of pollutants and sediment to the maximum extent practicable. Such best management practices shall include the requirements imposed by both of the following: (2774, 5062/Reso. 6528)

1. This Chapter; and (2774, 5062/Reso. 6528)

2. For construction operations at City projects or occurring in the City of Mesa public right-of-way that are required to comply with and AZPDES or NPDES Storm Water Permit, that certain document known as the Drainage Design Manual for Maricopa County, Erosion Control dated November 28, 2012, a public record of the City of Mesa together with the following appendices thereto: (2774, 5062, 5144/Reso. 6528)

   Appendix A Construction General Permit (5144)
   Appendix B Forms (5144)
   Appendix C Links and References (5144)
   Appendix D Glossary (5144)
   Appendix E Bibliography (5144)

   Are hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said document: (5144)

   (a) Section 5 Best Management Practices; EC-2: Mulching
       Emulsified asphalt is not permitted as a mulching option on City properties or for City projects. (5144)
(b) Section 5 Best Management Practices; EC-3 Protection of Trees and Vegetation in Construction Areas
Where plans provide for the preservation of trees and other vegetation, these areas shall be delineated (i.e. staked, flagged, or fenced) to prevent damage from construction equipment and other forms of access. (5144)

(c) Section 5 Best Management Practices; EC-5 Stabilized Construction Entrance
Course aggregate pad dimensions must be a minimum of thirty feet in width, three inches in depth, and fifty feet in length or the length of the longest haul truck, whichever is greater. Instead of a course aggregate pad, construction site entrance stabilization may also include a paved surface one hundred feet in length and twenty feet in width or a grizzly or rumble grate consisting of raised dividers a minimum of three inches tall, six inches apart, and twenty feet in length. (5144)

(d) Section 5 Best Management Practices; SPC-2 Sand Bag Barrier
Sand bags may not be used for the purposes of inlet protection. Where sand bags are used for other purposes, they shall be delineated (i.e. staked and flagged) to keep construction equipment from damaging these structures. Sand bags must be inspected on at least a weekly basis to ensure they have not ruptured and the sand has become a stormwater pollutant. (5144)

(e) Section 5 Best Management Practices; SPC-5 Silt Fence
For projects greater than five acres requirements regarding perimeter control of the construction activity as provided in any applicable stormwater permit shall be met through the use of silt fences excepting those areas of high flow, construction site entrances, areas where perimeter control are impracticable (i.e. projects in the public right-of-way); and areas where all stormwater flows are directed to an on-site temporary sediment basin or sediment trap. (5144)

(f) Section 5 Best Management Practices; SPC-6 Re-Vegetation
Where plans provide for re-vegetation, installation of such vegetation shall take place as soon as practicable and these areas shall be delineated (i.e. staked, flagged, or fenced) to prevent damage from construction equipment and other forms of access. (5144)

(g) Section 5 Best Management Practices; SPC-7 Storm Drain Inlet Protection
To prevent flooding issues, storm drain inlet protection should only be used when sufficient construction site perimeter control is not possible (e.g. utility installations in public roadways or other public right-of-way areas). City of Mesa personnel may remove any storm drain inlet protection device where flood conditions may exist. It is the responsibility of the operator in charge of day-to-day operations to replace or re-install these devices after the threat of flooding has subsided. (5144)

Course gravel and cinder block configurations and sand bags are not to be used to protect storm drains. When installing any storm drain inlet protection that is installed above grade traffic control devices must be placed at the end of both sides of the installation to prevent damage from public and construction traffic, all traffic control devices must be installed in accordance with temporary traffic control requirements as provided in Title 10, Chapter 10 of the Mesa City Code. (5144)

(E) Persons having the potential to cause a release of pollutants to the City storm sewer system and who are required to submit a notice of intent to comply with an AZPDES or NPDES Storm Water Permit shall provide a copy of any approval or statement of authorization from the permitting agency to the City Manager or designee. Where a waiver is available, a copy of that waiver must then be provided in lieu of the approval or statement of authorization. The City will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until the approval or statement of authorization from the permitting agency has been submitted to the City. (2774, 5062, 5144/Reso. 6528)
8-5-4: AUTHORITY TO INSPECT: (5062)

(A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. (5062)

(B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5062)

8-5-5: COMMENCEMENT OF AN ACTION: (5062)

(A) The City Manager or designee is authorized to commence and enforcement action under this Chapter by issuing a notice of abatement under this Chapter or a citation for civil sanctions under this Chapter, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter. (5062)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5062)

8-5-6: REMEDIES NOT EXCLUSIVE: (5062)

Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (5062)

8-5-7: DEFENDANTS AND RESPONSIBLE PARTIES: (5062)

Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter, is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (5062)

8-5-8: CIVIL VIOLATIONS AND CITATION: (5062)

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5062)

(B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-5-9 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5062)
The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, through an attorney or by e-mail with the clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. (5062)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by e-mail and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-5-9; or, (5062)

2. If the responsible party appears in person, through an attorney or by e-mail and denies the allegations contained in the citation, the clerk of the Civil Hearing Office shall set the matter for hearing. (5062)

All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona rules of civil procedure for special actions. (5062)

Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5062)

8-5-9: CIVIL PENALTIES: (5062)

Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5062)
(B) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-5-9(A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5062)

1. Written and notarized confirmation from the City inspector that the violation has been successfully abated, and (5062)

2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5062)

If either item has not been received by the Civil Hearing Officer 7 calendar days before, then the compliance hearing shall take place as previously scheduled. (5062)

(C) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5062)

(D) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5062)

8-5-10: (RESERVED)

8-5-11: HABITUAL OFFENDER: (5062)

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a Class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (5062)

(B) Upon conviction of a violation of this Section, the court may impose a sentence authorized by the laws of the State of Arizona for a Class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all sections of this Chapter within 90 days of sentencing. (5062)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (5062)
8-5-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY: (5062)
A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (5062)

8-5-13: ABATEMENT: (5062)

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a notice to abate any violation of this Chapter. (5062)

(B) The notice to abate shall set forth the following information: (5062)

1. The responsible party has 30 calendar days from service of the notice to abate or correct the violation. (5062)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map, and parcel number. (5062)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5062)

4. Reinspection date and time. (5062)

5. Name, business address, and business phone number of the City inspector who issued the notice to abate. (5062)

6. A warning stating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the responsible party for the cost of such abatement, and record a lien on the property for the assessment. (5062)

7. Hearing procedures. (5062)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5062)

(C) If the responsible party or other person served a notice to abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served pursuant to the Arizona Rules of Civil Procedure. That statement shall further set forth the following: (5062)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5062)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay. (5062)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5062)

4. Appeal procedures. (5062)
(D) The notice to abate and the statement of abatement costs shall be served to the responsible party pursuant to the Arizona Rules of Civil Procedure. (5062)

8-5-14: REQUEST FOR ABATEMENT HEARING: (5062)
The responsible party receiving a notice to abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development and Sustainability Department within 15 calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development and Sustainability Department, then the notice of abatement or statement of costs is final and binding. (5062)

8-5-15: RECORDING AN ABATEMENT VIOLATION: (5062)
The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (5062)

8-5-16: EMERGENCY ABATEMENT: (5062)

(A) If a situation presents an imminent hazard to life or public safety, the City may issue a notice to abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City’s right under this Section to correct or abet the emergency itself. (5062)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-5-13(C). The responsible party may appeal the City’s emergency abatement action under this Section or the City’s statement of costs for an emergency abatement in the same manner as provided for in Section 8-5-14. (5062)

8-5-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE: (5062)
Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Section 8-5-2 or Section 8-5-3 of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (5062)
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CHAPTER 6

PUBLIC NUISANCES, PROPERTY MAINTENANCE, NEIGHBORHOOD PRESERVATION AND ANIMAL REGULATIONS

ARTICLE I

PURPOSE, APPLICABILITY, DEFINITIONS, AND PROHIBITIONS

SECTION:

8-6-1: PURPOSE AND APPLICABILITY
8-6-2: DEFINITIONS
8-6-3: PUBLIC NUISANCES PROHIBITED

8-6-1: PURPOSE AND APPLICABILITY:

(A) The purpose of this Chapter is to promote the health, safety and welfare of the citizens of Mesa, Arizona by:

1. Setting minimum standards necessary for the maintenance of improved lots and parcels, buildings, fences or walls, structures, and vacant or unimproved properties in order to safeguard against potential hazards, and reduce occurrences of blight and other influences considered to cause deteriorating conditions, unattractive neighborhoods, and potential loss of property value.

2. Setting minimum standards for the proper location, control, and care required for the keeping of large animals and livestock within the City's corporate limits.

3. Providing standards for inspecting the interiors of properties being rented and occupied, based on criteria consistent with and specified by the Arizona Revised Statutes.

(B) This Chapter shall apply to all land within the City of Mesa without regard to the use or occupancy or the date of acquisition, alteration, or improvement of such land.

(C) The Director of Development and Sustainability or Designee shall interpret this Chapter to the public, City departments, and other branches of government subject to the general and specific policies established by the City Council.

(D) Appeals of the interpretations of this Chapter shall be filed within 30 days of the date of the decision and shall be reviewed by the Board of Adjustment except when the requirement references the Building or Fire Codes or Regulations.
8-6-2: DEFINITIONS:
The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning: (5124)

ABANDONED OR INOPERABLE VEHICLE: A vehicle physically incapable of its intended operation as evidenced by:

A. A condition of being partially or wholly dismantled, discarded, wrecked, on blocks or similar devices, stripped, or scrapped; or (5124)
B. The presence of a deflated tire or tires or from which a wheel or tire has been removed; or (5124)
C. Being inoperable due to mechanical failure or mechanical disassembly or other reasons which may be evidenced by the lack of a valid license plate lawfully affixed to the vehicle, or by the presence of an expired license plate affixed to the vehicle. (5124)

ACCESSIBLE: Capable of being removed or exposed without damaging the building structure or finish or not permanently closed in by the structure or finish of the building. (5124)

ACCESSIBLE, READILY (READILY ACCESSIBLE): Capable of being reached quickly for inspections without requiring inspectors to climb over or remove obstacles or to use portable ladders or similar tools. (5124)

AUTHORIZED PRIVATE RECEPTACLE: A litter storage and collection receptacle as required and authorized in this Code. (5124)

BLIGHT: Unsightly conditions including the accumulation of litter or debris; buildings or structures exhibiting holes, breaks, rot, crumbling, cracking, peeling or rusting materials; general damage to the integrity of the construction of a building or structure; uncontrolled growth of landscaping exhibited by lack of maintenance, untended damage to plant and landscape materials, the continued presence of dead or decaying plants; and any similar conditions of disrepair and deterioration regardless of the condition of other properties in the vicinity or neighborhood. (5124)

BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy. (5124)

BUILDING, ENCLOSED: A building with a perimeter composed of rigid walls and a roof. (5124)

BUILDING REGULATIONS: Includes all construction codes in force at the time a building was constructed, altered, remodeled, repaired or enlarged. Including Building Code, Plumbing Code, Mechanical Code, Electrical Code, Residential Construction Code, Energy Conservation Code, Fuel Gas Code, Fire Code with reference to Title 7 for fire and existing building construction codes (such as, but not limited to, those set forth in Title IV, Mesa City Code) and includes any property maintenance codes, neighborhood preservation codes, anti-blight codes (such as, but not limited to, those set forth in this title) or other similar codes, however denominated. (5124)

CITY INSPECTOR: A City of Mesa staff member authorized by the Director of the Development and Sustainability Department to conduct inspections, investigate complaints and file civil actions with the Mesa Civil Hearing Office on matters related to enforcement of the Mesa City Code, and as provided by the Mesa City Code. (5124)

CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5124)
**COMMERICAL VEHICLE:** Any vehicle having a Gross Vehicle Weight Rating (GVWR) exceeding 13,000 pounds and is intended to be used primarily for commercial purposes in the conduct of a business, rather than for private family or individual use. (5124)

**DETERIORATION OR DISREPAIR:** A decline of the general condition or appearance of a building, structure, or parts thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, damage, neglect, or lack of maintenance. (5124)

**DRIVEWAY, LEGAL:** That area that aligns with the City designated and approved driveway depression in the curb of the public or private street. Where a roll curb or no curb exists and there is no driveway clearly designated, the legal driveway is the area that aligns with the observed designated access to parking for the structure such as a carport or garage. On properties with roll curbs or no curb and with no clearly designated parking area for the structure, the legal driveway shall be as observed and commonly used by the owner of the property, as may be designated by private recorded easements or other methods of ingress and egress, and shall at no time violate the provisions of this Code. (5124)

**EUTROPHIC:** Waters rich in phosphates, nitrates, and organic nutrients that promote a proliferation of plant life, especially algae. (5124)

**FENCE, SCREEN WALL, AND/OR RETAINING WALL:** Freestanding, self-supporting structures constructed of durable wood, chain link, metal, masonry, or other standard fencing materials designed to provide privacy, security, screening, or bank retention between grade separations. (5124)

**GARAGE SALE:** The occasional and/or temporary sale of used or second hand tangible personal property from a residential location. This activity may also be known as a yard sale, carport sale, estate sale or similar type of quasi-commercial indoor or outdoor activity that takes place on residential premises. It shall be considered a commercial use when the garage sale activity takes place on a continuous basis, and/or the activity includes the sale of first hand merchandise manufactured off-premises. (5124)

**GARBAGE:** An accumulation of spoiled, decaying or discarded animal or vegetable material resulting from the handling, preparation, cooking, or consumption of food for humans or animals, as well as other organic waste material subject to rapid decomposition. (5124)

**GRAFFITI:** An inscription or drawing carved or drawn on a stationary structure or object so as to be discernible from the public right-of-way and which degrades the beauty and appearance of property. (5124)

**GRASS:** Barnyard grass, Bermuda grass, bluegrass, brome grasses, crab grass, foxtail, Johnson grass, ragweed, rye grass, St. Augustine, wild oats, or hybrids thereof. (5124)

**HAZARD:** A condition that presents a risk to the public safety, health or the environment. (5124)

**IMMINENT HAZARD:** A condition that presents an immediate likelihood for causing harm to the public safety, health, or the environment. (5124)

**IMPROVED DUSTPROOF PARKING SURFACE:** Concrete, asphalt, "chip seal," crushed rock or aggregate that is a minimum of 3 inches thick. All crushed rock or aggregate must be contained by a permanent border. (5124)

**IMPROVED PROPERTY:** Land on which buildings or other structures are located. (5124)

**INCONGRUOUS MATERIALS, COLORS, AND FINISHES:** Exterior surfaces that are not matching, and are inconsistent, incompatible, and discordant with the adjacent exterior surfaces. (5124)
INFESTATION: The presence of biological vectors, including insects, rodents, or other pests identified as carriers of pathogenic bacteria, virus, fungus or similar infectious biological hazards. (5124)

JUNK: Items that are of little or no economic value as the items may exist in their present condition, other than value as salvage, and that are not confined within an industrial area in compliance with the Mesa Zoning Ordinance, such as an accumulation of the following materials: discarded or scrapped furniture; glass, metal, paper, or machinery parts; inoperable machinery or appliances; building material wastes; litter; or discarded or empty containers. Junk shall also include all types of solid waste described in Chapter 3 of Title 8 of the Mesa City Code. (5124)

LAND: All lots, or parcels within the official boundaries of City of Mesa, whether improved or unimproved. (5124)

LANDSCAPED YARD, IMPROVED: Area with planted, configured and maintained landscaping material, such as trees, shrubs, turf, rock, gravel or stone, vegetative ground cover, natural desert landscape, artificial turf, mulch, decorative natural and structural features (walls, fences, hedges, trellises, fountains, sculptures), and bedding material, that serve an aesthetic or functional purpose. (5124)

LIVESTOCK: Domestic animals, such as cattle or horses, raised for home use or for profit. (5124)

NOTICE TO ABATE: A notice issued to a responsible party concerning a violation of the Mesa City Code. (5124)

OCCUPANT: The person occupying or having custody of a structure or premises as a lessee or otherwise. (5124)

OWNER: The person, corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust shown on the lawfully recorded title to the property. (5124, 5274)

PERSON: A human being, enterprise, corporation, association, partnership, firm, limited liability company, limited partnership, trust or real estate investment trust. (5124, 5274)

PLANT GROWTH: Vegetation, whether living or dead, such as grass, weeds, vines, bushes, cactus, or trees. (5124)

POLLUTED: A condition that exists in water and is characterized by bacterial growth, algae, insect infestation, the remains of litter, debris, garbage, or any other foreign matter which, because of its nature or location, constitutes an unhealthy, unsafe, or unsightly condition. (5124)

PUBLIC PLACE: Any street, sidewalk, boulevard, alley, right-of-way, or other public way and any public park, square, space, ground, or building. (5124)

RESIDENTIAL RENTAL PROPERTY: Property that is used solely as leased or rented property for residential purposes. If the property is a space rental mobile home park or a recreational vehicle park, "residential rental property" includes the rental space that is leased or rented by the owner of that rental space but does not include the mobile home or recreational vehicle that serves as the actual dwelling if the dwelling is owned and occupied by the tenant of the rental space and not by the owner of the rental space. The term also includes any property defined as a residential rental dwelling unit by state law. (5124)

RESPONSIBLE PARTY: A person who knows or has reason to know of the existence of any violation of this Chapter on that person's property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5124)
SERVICE: Methods of delivering official notice to a responsible party of an alleged civil violation of the Mesa City Code, as specified by the latest edition of the Arizona Rules of Civil Procedure and/or the Mesa City Code. (5124)

SLUM PROPERTY: Residential rental property that has deteriorated or is in a state of disrepair and that manifests 1 or more of the following conditions that are a danger to the health or safety of the public: (5124)

(A) Structurally unsound exterior surfaces, roof, walls, doors, floors, stairwells, porches, or railings. (5124)

(B) Lack of potable water, adequate sanitation facilities, adequate water, or waste pipe connections. (5124)

(C) Hazardous electrical systems or gas connections. (5124)

(D) Lack of safe, rapid egress. (5124)

(E) Accumulation of human or animal waste, medical or biological waste, hazardous, gaseous or combustible materials, dangerous or corrosive liquids, flammable or explosive materials, or drug paraphernalia. (5124)

(F) Any other condition recognized as a basis for slum property designation by the Arizona Revised Statutes. (5124)

STORED: Parking, leaving, locating, keeping, maintaining, depositing, remaining, or being physically present on private property. (5124)

STREET OR HIGHWAY: The entire width between the boundary lines of every way publicly owned or maintained space when any part thereof is open to the use of the public for purposes of vehicular traffic. (5124)

UTILITY TRAILER: A vehicle without motive power designed for carrying property and for being drawn by a motor vehicle. (5124)

VEHICLE: Every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (5124)

WATERCRAFT: Any craft or vehicle specifically designed for use on water, such as a boat, canoe, jet ski, pontoon, or similar-type vehicle. (5124)

WEEDS: Bull thistle, cocklebur, foxtail, horseweed, lambs quarters, London rocket, mallow, milkweed, pigweed, mustards, prickly lettuce, ragweed, Russian thistle, shepardspurse, sowthistle, white horsetail, willow weed, and those types of plant growth defined as noxious weeds in A.R.S. §3-201 regardless of whether a particular property owner or occupant who is the subject of enforcement action under this Code regards the growth as desirable. (5124)

YARD: An open space on the perimeter of the same lot or parcel of land that is unoccupied and unobstructed from the ground upward, except by structures or other items otherwise permitted as encroachments, as may be specified by Title 11. Yards may be described as front, side or rear based on the definitions found in this Chapter and Chapter 87 of Title 11, and shall not include courtyards or other open space found principally towards the lot interior. (5124)
YARD, FRONT: A yard extending across the full width of the lot or parcel of land between the most forward plane of the building fronting the street and the street. On single residence corner lots the front yard shall be the narrower frontage of the lot or the frontage with the primary entrance. For any other corner lots, all land between the portion of the building closest to the street, and the street shall be considered a front yard for the purposes of this Chapter of the City Code. (5124)

YARD, SIDE: A yard extending from the front plane of the building to the rear plane of the building, and then extending away from the building to the closest side property line. (5124)

8-6-3: PUBLIC NUISANCES PROHIBITED:
The following acts, omissions, conditions, and things in or upon any land or structure in the City constitute public nuisances, the existence of which are hereby prohibited and declared to be unlawful: (5124)

(A) The responsible party of any property shall not cause or allow any abandoned, inoperable or unregistered vehicle, or parts of a vehicle thereof, to be parked or stored outside or under a carport or other roof area not enclosed by walls, doors or windows of any building on any lot for longer than 10 days, unless in complete conformance with the following terms: (5124)

1. When an unregistered vehicle is operable and visible from the right-of-way, it shall be placed under a carport or other roof area of any building; (5124)

2. In the RS-6 and RS-7 zoning districts, a maximum of 3 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

3. In the RS-9, RS-15 and RS-35 zoning districts, a maximum of 5 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

4. In the RS-43 and RS-90 zoning districts, a maximum of 7 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

5. Vehicles stored on the premises of a business enterprise operated in a lawful place and manner in accordance with the provisions of the Mesa City Code where the storage of the vehicle is necessary to the operation of the business enterprise. (5124)

(B) The responsible party of any property shall not cause or allow the deposit, storage, or maintenance of any garbage or junk, or an accumulation of materials such as: vehicle parts, appliances, indoor furniture, boxes, crates, packing cases, mattresses, bedding, lumber, scrap iron, tin, and other metals, unless stored safely in compliance with all applicable ordinances and regulations, and within a lawful, enclosed building or structure, or screened by a lawful fence or within a trash receptacle in such a manner as to not be visible from beyond the lot boundaries, except as authorized for collection under Title 8, Chapter 3 of this Code. (5124)

(C) The responsible party of any property or place of business within the city shall keep the sidewalk or public places fronting or bordering such property or place of business free of garbage, junk, obstructions, and weeds or grass; provided, however, this Section shall not prohibit the temporary storage of such matters in authorized receptacles for collection consistent with Chapter 3 of Title 8 of the Mesa City Code. (5124)

(D) The responsible party of any property shall not allow or permit trees, shrubs, or plants on land adjacent to sidewalks or public places fronting or bordering their property to grow in a manner that impedes, obstructs, or interferes with the passage on any street, sidewalk, alley or other passageway within the city or that limits the visibility of any traffic control device or signal. Vegetation must be trimmed a minimum of 8 feet over the sidewalk and 14 feet over the street or alley. (5124)
(E) The responsible party of any property within the city shall not allow plant material to remain on a property that is dead, diseased, dying or so dry as to be readily flammable or combustible that may constitute a fire hazard or other threat to the public health or safety. (5124)

(F) The responsible party of any property shall not deposit, sweep, or permit the drainage of any garbage, junk, liquid, obstruction, or other material which is offensive to sight or smell or impedes passage or is detrimental to public health, into any public right of way, public place in the city, public utility easement (PUE) or public utility and facilities easement (PUFE). (5124)

(G) The responsible party of any property shall not permit:

1. Any swimming pool or other body of water on the property to stagnate and therefore become eutrophic, polluted, or offensive to the senses and unsafe, or (5124)

2. The ponding of water to become stagnant so as to cause a hazardous or unhealthy condition, facilitate the breeding of insects, or oversaturate the soil in a manner that may cause damage to foundation walls. (5124)

3. Revision, blockage or disruption of storm water drainage patterns otherwise designed to flow into an on-site retention basin or storm water drain, such that storm water may be diverted to neighboring sites, and/or may cause local flooding to occur. (5124)

(H) The responsible party of any property, building or structure within the city shall not permit graffiti on the building, structure, trailer, dumpster or any other object located on the property to remain, and shall be required to eradicate graffiti should it occur. (5124)

(I) The responsible party of any property shall not:

1. Erect or maintain, or allow anyone to erect or maintain, any electric fence; (5124)

2. Attach or allow anyone to attach to any fence such items as glass, nails, metal objects, or other materials in such a manner that is likely to injure any person who comes in contact with such object; or (5124)

3. Erect or maintain, nor allow anyone to erect or maintain, barbed wire or razor wire; (5124)

   a. Exception: no more than 3 strands of barbed wire or 1 coil of razor wire may be used when such wire is a minimum of 6 feet and 2 inches above the ground and such wire is placed at the top of an otherwise lawful fence enclosing a municipal, institutional, commercial or industrial building, structure or property. (5124)

   b. Exception: barbed wire fencing may be primarily used for agricultural or livestock purposes only when a property is larger than 1 acre. This exception does not extend to the use of razor wire or similar products. (5124)

   c. Where allowed, barbed wire or razor wire shall only extend up from the top of the fence either parallel to the fence alignment or towards the interior of the enclosed space, and not outwards beyond the property or enclosed space. (5124)
(J) It shall be unlawful for any responsible party of any property to allow on vacant or undeveloped property, as may be evidenced by a lack of an improved dust-proof surface, the lack of a residence or an office or other enclosed building, or the lack of lawfully installed electric or water related utility improvements on the property, (5124)

1. To store a vehicle or boat, or (5124)

2. To display any vehicle or boat for sale, rent, or lease or, (5124)

3. To allow or permit such storage or displays of vehicles or boats to occur. (5124)

(K) The responsible party of any property shall maintain, repair, replace or complete improvements to the exposed exterior surfaces of all buildings or structures including but not limited to exterior windows, doors, canopies, metal awnings, roofs, exhaust ducts, chimneys, painted surfaces, window screening, fences, screen walls, retaining walls, foundations, cooling devices, outdoor stairs, porches, and railings as visible from any rights-of-way so that such exterior surfaces do not exhibit deterioration or disrepair, damage or blight. The responsible party shall not allow the maintenance, repair, replacement, completion or use of materials, colors, or finishes that are incongruous with the predominant materials, colors, or finishes of such exposed exterior surface unless such incongruous materials, colors, or finishes are less than 20 contiguous square feet, or less than 10 percent of the area of any exposed individual plane surface unbroken by corners or angles. This Section is not intended to regulate signs as defined by Section 11-41-5 of the Mesa City Code, art, murals, architectural styles or color patterns and schemes as permitted or authorized in other titles of this Code. (5124)

(L) No person or responsible party shall allow or permit any person to park any commercial vehicle on any undeveloped private property or property without an improved dustproof surface except when such parking is necessarily required while actually carrying out a lawful commercial purpose. The vehicle owner, the vehicle operator, and any responsible party for the land shall be jointly and severally liable for violation of this paragraph. (5124)

(M) No person shall attach or cause to be attached any sign to any public utility structure, traffic control device, streetlight standard, or similar structure in the public right-of-way or erect any portable/temporary sign in the public right-of-way excepting those signs erected by a public utility, government agency or as otherwise permitted by the City Code. (5124)

(N) The responsible party of vacant, abandoned, partially destroyed or partially constructed buildings shall secure such building against unauthorized entry at all times. (5124)

(O) The responsible party of a parcel of land within the City shall not allow thereon weeds or grass which occupy more than 10 percent or 50 square feet, in total area of a developed parcel to attain a predominant height in excess of 9 inches, or more than 10 percent of the area of an undeveloped parcel to attain a predominant height in excess of 12 inches. This provision shall not apply to: (5124)

1. Single residence rear yards not visible from the adjacent right-of-way; or (5124)

2. Parcels of land in which livestock graze; or (5124)

3. Parcels of land used to raise feed crops. (5124)

(P) No responsible party shall permit or cause the escape or flow of water into or upon a public street or alley from any source in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition to such traffic, to cause damage to the public streets or alleys, or to cause a condition which constitutes a public nuisance or a threat to the public health and safety. (5124)
(Q) It shall be unlawful for any person to place or allow to be placed any rubbish, trash, filth or debris upon any private or public property not owned or under their control. (5124)

(R) No person shall offer to sell, or plant any male mulberry tree (morus alba) or olive tree (olea europea) in the City unless it is one of the nonpollinating varieties of such trees. The City shall maintain a current list of nonpollinating varieties, which shall be available for public review and shall be based on industry standard for nonpollinating varieties, applicable horticultural and scientific research and data, review and evaluation by qualified experts, and other appropriate information. (5124)

(S) No responsible party shall maintain or display any sign regulated under the Mesa City Code, Title 11 Article 5, that is damaged or deteriorated to a condition constituting a visual blight. Visual blight shall include conditions detectable from beyond the lot boundaries such as chipping, peeling, fading, or rusting surfaces; the presence of cracks, holes, buckles, warps, or splinters in any sign component; and defective bulbs, fluorescent tubes, or neon or other inert gas light segments. (5124)

(T) It shall be unlawful to park any motor vehicle within the front or side yard of a single-residence use unless such parking is on an improved, dustproof parking surface. Such parking within the front yard of a single-residence use shall be on or contiguous to a legal driveway and such parking shall not exceed a maximum of 50 percent of the front yard area. (5124)

(U) It shall be unlawful to store any watercraft, utility trailer, or any nonvehicle-mounted camper shell or truck camper in the front yard or in front of the front plane of the nearest adjacent enclosed building on the same lot or parcel as such watercraft, utility trailer or nonvehicle-mounted camper. All watercraft trailers, utility trailers, nonvehicle-mounted campers and truck campers visible to the public rights-of-ways must be operable, have inflated tires and be kept free of weeds and debris. (See Figure 8-6-3.A) (5124)

Figure 8-6-3.A Watercraft, Utility Trailer or Non-Vehicle Camper Shell or Truck Camper Storage (5124)
(V) The responsible party of improved property within the City shall maintain all buildings, additions, appendages, accessory structures or other structures and exposed exterior surfaces such as, but not limited to, exterior windows, doors, canopies, metal awnings, roofs, exhaust ducts, chimneys, painted surfaces, window screening, fences, screen walls, retaining walls, foundations, cooling devices, outdoor stairs, porches and railings, in a structurally sound condition that does not constitute a hazard and is impervious to moisture and weather elements. (5124)

(W) The responsible party of any property shall maintain:

1. All improved landscaped yards visible from the adjacent rights of way so as not to exhibit deterioration, disrepair, or blight constituting more than 20 contiguous square feet, or more than 10 percent of the area and (5124)

2. All improved ground surfaces, such as but not limited to, private streets, drives, paving, concrete and asphalt so as not to exhibit deterioration, disrepair, or blight constituting an accumulation of pot holes, large surface cracks, or peeling, chipping away or disintegrating surface material. (5124)

(X) No responsible party shall permit the conducting of garage sales from any property in excess of 4 events per calendar year with no more than 3 consecutive days for any given event. (5124)

The provisions of this Section may be applied cumulatively or separately for purposes of enforcement. (5124)

**ARTICLE II**

**INSPECTIONS**

**SECTION:**

8-6-4: **AUTHORITY TO INSPECT:**

(A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. The City may also conduct inspections of individual residential rental property in accordance with state law. (5124)

(B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5124)
ARTICLE III

ENFORCEMENT

SECTION:

8-6-5: COMMENCEMENT OF AN ACTION
8-6-6: REMEDIES NOT EXCLUSIVE
8-6-7: DEFENDANTS AND RESPONSIBLE PARTIES
8-6-8: CIVIL VIOLATIONS AND CITATION
8-6-9: CIVIL PENALTIES
8-6-10: (RESERVED)
8-6-11: HABITUAL OFFENDER
8-6-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY
8-6-13: ABATEMENT
8-6-14: REQUEST FOR ABATEMENT HEARING
8-6-15: RECORDING AN ABATEMENT VIOLATION
8-6-16: EMERGENCY ABATEMENT
8-6-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE
8-6-18: SLUM PROPERTY
8-6-19: INDIVIDUAL RESIDENTIAL RENTAL INSPECTION
8-6-20: (RESERVED)

8-6-5: COMMENCEMENT OF AN ACTION:

(A) The City Manager or designee is authorized to commence an enforcement action under this Chapter by issuing a notice of abatement under this Article or a citation for civil sanctions under this Article, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Article. (5124,5480)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5124,5480)

8-6-6: REMEDIES NOT EXCLUSIVE:

Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (5124,5480)

8-6-7: DEFENDANTS AND RESPONSIBLE PARTIES:

Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (5124,5480)
8-6-8: CIVIL VIOLATIONS AND CITATION:

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5124,5480)

(B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-6-9 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served in accordance with Section 8-6-8 (H). However, in a violation involving Section 8-6-3(L) of the Mesa City Code, a citation may be served upon the owner or owners of the vehicle, the registered owner or owners of the vehicle, or the operator or person who parked or placed the vehicle where the violation occurred by attaching a copy of the citation to the vehicle. (5124,5480)

(C) The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, or through an attorney or by email to the designated clerk of the Civil Hearing Office and admit or deny the allegations contained in the citation. (5124,5480)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by email and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-6-9; or (5124,5480)

2. If the responsible party appears in person, through an attorney or by email and denies the allegations contained in the citation, the matter shall be set for a hearing. (5124,5480)

(D) If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or appear at the time set for hearing, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5124,5480)

(E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5124,5480)

(F) Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5124,5480)

(G) Any civil judgment issued pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the judgment with the Maricopa County Recorder. Any judgment issued pursuant to this Article may be collected as any other civil judgment. (5124,5480)

(H) Citations issued under this chapter shall be served in compliance with A.R.S. §9-500.21 as follows: (5480)
1. First, by personal service as described in the procedures set forth Arizona Rules of Civil Procedure, Rule 4.1 by: (5480)
   a. A Code Compliance Officer; or
   b. A City of Mesa sworn police officer; or
   c. The City Manager or designee.

2. If the citation cannot be personally served, the citation shall be served as follows: (5480)
   a. By certified or registered mail, return receipt requested; or
   b. By publication, in the same manner prescribed by the Arizona Rules of Civil Procedure.
   Before the date of the first publication, the citation shall be mailed, by certified or registered mail, return receipt requested, or by any other mail or delivery service that allows the sender to track the progress and confirm the delivery of the citation.

8-6-9: CIVIL PENALTIES:

(A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development Services (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5124,5480)

(B) Under unusual or extraordinary circumstances, and for good cause, the Civil Hearing Officer shall have the discretion to reduce or eliminate any portion of the civil sanctions specified in this section, and/or to make any other judgments or orders deemed by the Civil Hearing Officer to be in the best interests of the City of Mesa, which will result in the furtherance of these regulations and effectuate the abatement or cessation of any violation of this Chapter. (5124,5480)

(C) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-6-9 (A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City Inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5124,5480)

1. A written and notarized confirmation from the City Inspector that the violation has been successfully abated; and (5124,5480)

2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5124,5480)

If either item has not been received by the designated Clerk of the Civil Hearing Office seven (7) calendar days before, then the compliance hearing shall take place as previously scheduled. (5124,5480)

(D) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5124,5480)

(E) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by
this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5124,5480)

8-6-10: (RESERVED):

8-6-11: HABITUAL OFFENDER:

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a class 1 criminal misdemeanor complaint in the Mesa City Court (Court) against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (5124,5480)

(B) Upon conviction of a violation of this Section, the Court may impose a sentence authorized by the laws of the State of Arizona for a class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The Court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all Sections of this Chapter within 90 days of sentencing. (5124,5480)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (5124,5480)

8-6-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:

A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person's full name, residence address, and date of birth. (5124,5480)

8-6-13: ABATEMENT:

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a Notice to Abate any violation of this Chapter in accordance with Section 8-6-8(H). (5124,5480)

(B) The Notice to Abate shall set forth the following information, (except in the case of an imminent hazard):

1. The responsible party has 30 calendar days from the service of the Notice to Abate or correct the violation. (5124,5480)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map, and parcel number. (5124,5480)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5124,5480)

4. Reinspection date and time. (5124,5480)
5. Name, business address, and business phone number of the City inspector who issued the Notice to Abate. (5124,5480)

6. A statement indicating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the owner for the cost of such abatement, and record a lien on the property for the assessment. (5124,5480)

7. Hearing procedures. (5124,5480)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5124,5480)

(C) If the responsible party served a Notice to Abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served in accordance with 8-6-8(H) to the responsible party upon which the Notice to Abate or order was served. That statement shall further set forth the following: (5124,5480)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5124,5480)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay the assessment. (5124,5480)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5124,5480)

4. Appeal procedures. (5124,5480)

(D) The Notice to Abate and the statement of abatement costs shall be served in accordance with 8-6-8(H) to the responsible party. Service is deemed effective and complete on the date it is received by the responsible party. (5124,5480)

8-6-14: REQUEST FOR ABATEMENT HEARING:
The responsible party receiving a Notice to Abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development Services Department within 15 calendar days of service of the Notice to Abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development Services Department, then the Notice of Abatement or statement of costs is final and binding. (5124,5480)

8-6-15: RECORDING AN ABATEMENT VIOLATION:
The Notice to Abate and statement of costs shall run with the land. The City, at its sole option, may record a Notice to Abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of Notice to Abate shall be filed with the Maricopa County Recorder. (5124,5480)
8-6-16: EMERGENCY ABATEMENT:

(A) If a situation presents an imminent hazard, the City may issue a Notice to Abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City's right under this Section to correct or abate the emergency itself. (5124,5480)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-6-13(C). The responsible party may appeal the City's emergency abatement action under this Section or the City's statement of costs for an emergency abatement in the same manner as provided for in Section 8-6-14. (5124,5480)

8-6-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE:

Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Article I of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (5124,5480)

8-6-18: SLUM PROPERTY

(A) Slum property designation: (5124,5480)

1. The City Manager, or designee, is authorized to designate residential rental property as a slum property consistent with and pursuant to the provisions of Title 33, Chapter 17, Article 1, Arizona Revised Statutes. (5124,5480)

2. Notice of slum property designation shall be provided to all owners and lien holders of the affected property. Such notice shall inform of the designation, the reason or reasons for the designation, and the procedure to appeal the designation. The effective date and manner of service shall be as described in Section 8-6-8 (H). (5124,5480)

3. The City may record the notice of slum property designation with the County Recorder. A recorded notice shall run with the land. Failure to record a notice shall not affect the validity of the notice as to persons who receive the notice. (5124,5480)

(B) Assessment and liens: (5124,5480)

1. The City Manager, or designee, is authorized to impose civil penalties, assessments and liens pursuant to the provisions of Title 33, Chapter 17, Article 1, Arizona Revised Statutes. (5124,5480)

2. Notice of a civil penalty, assessment or lien shall be provided to all owners and lien holders of the affected property. Such notice shall inform of the amount of the assessment or lien, the reason for the assessment or lien, and the procedure to appeal the assessment or lien. The effective date and manner of service shall be as described in Section 8-6-8 (H). (5124,5480)
3. The City may record an assessment or lien with the County Recorder or the Department of Transportation, if the lien is for a rental mobile home or a recreational vehicle not owned by a landlord. A recorded assessment shall run with the land. Failure to record an assessment or lien shall not affect the validity of the assessment or lien as to persons who have notice thereof. The City shall release the assessment or lien upon receipt of payment. (5124,5480)

4. In the event that it is necessary to enforce an assessment or lien by sale, the sale shall be made from a judgment of foreclosure and order of sale. The City shall have the right to enforce an assessment or lien in the Superior Court, at any time after recording, but failure to enforce an assessment or lien shall not affect its validity. The recorded assessment or lien shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording. Prior assessments or liens for the purposes provided for in this ordinance shall not be a bar to subsequent assessments or liens, and any number of liens or assessments on the same property may be enforced in the same action. (5124,5480)

(C) Appeals: (5124)

1. Appeals from designations as a slum property or assessments by the City Manager or designee as set forth in 8-6-18(A) and (B) shall be submitted to the office of the Zoning Administrator in the manner set forth in Section 11-77-4 of the Mesa City Code. Said appeals shall be in writing and shall contain:

(a) A heading in the words: "Before the Zoning Administrator..." (5124,5480)

(b) A caption reading: "Appeal of...", giving the names of all appellants participating in the appeal. (5124,5480)

(c) A brief statement setting forth the legal interest of each of the appellants in the building or land involved in the notice and order. (5124,5480)

(d) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant. (5124,5480)

(e) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside. (5124,5480)

(f) The signatures of all parties named as appellants and their official mailing addresses. (5124,5480)

(g) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal. (5124,5480)

2. All applications shall be accompanied by a fee in accordance with the Development Services Fee Schedule. (5124,5480)

3. The appeal shall be filed within 30 calendar days from the date of the service of such order or action of the designation of a slum. (5124,5480)

4. Appeals to decisions of the Zoning Administrator may be filed with the Board of Adjustment in accordance with Section 11-77-4 of the Mesa City Code. (5124,5480)
8-6-19: INDIVIDUAL RESIDENTIAL RENTAL INSPECTION

(A) The City may conduct interior inspections of individual residential rental property if an exterior inspection of the property reveals or if the property is found to have any of the following: (5124)

1. Conditions that materially affect the health and safety of the occupants (as defined in Section B). (5124)

2. A significant level of crime associated with the property. (5124)

3. A documented history of violations of building regulations. (5124)

4. The responsible party repeatedly fails to comply with code enforcement requirements imposed by the City. (5124)

5. There is probable cause that the property is not in compliance with building regulations. (5124)

6. A complaint is received from, or consent for the inspection is given by, the responsible party. (5124)

(B) For the purposes of this Article, a condition that materially affects the health and safety of the occupants of a residential rental property includes any of the following conditions: (5124)

1. Inadequate sanitation, ventilation or space requirements, including the following: (5124)

   (a) Lack of adequate water closets, lavatories, bathtubs or showers. (5124)

   (b) Lack of a required kitchen sink or a kitchen sink that complies with building regulations. (5124)

   (c) Lack of hot and cold running water to plumbing fixtures. (5124)

   (d) Lack of adequate heating and cooling. (5124)

   (e) Lack of or improper operation of required ventilating equipment or broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers. (5124)

   (f) Lack of minimum amounts of natural light and ventilation as required by building regulations. (5124)

   (g) Inadequate room and space dimensions as required by building regulations. (5124)

   (h) Lack of required adequate electricity and lighting as required by building regulations. (5124)

   (i) Infestation of insects, vermin or rodents. (5124)

   (j) Lack of connection to a sewage disposal system as required by building regulations. (5124)

   (k) Lack of adequate garbage and rubbish storage and removal facilities. (5124)
2. Structural hazards, including the following: (5124)
   (a) Significantly deteriorated or inadequate foundations or foundation areas that are not provided with adequate drainage. (5124)
   (b) Flooring or floor supports of insufficient size to carry imposed loads with safety. (5124)
   (c) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration. (5124)
   (d) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that significantly sag, split or buckle due to defective material or deterioration. (5124)
   (e) Fireplaces or chimneys that list, bulge or settle due to defective material or deterioration or that are of insufficient size or strength to carry imposed loads with safety. (5124)

3. Hazardous wiring that does not conform with building regulations or that has not been maintained in good condition, or both, and that is not being used in a safe manner. (5124)

4. Hazardous plumbing that does not conform with building regulations or that has not been maintained in good condition, or both, and that is not free of cross-connections and backflow between fixtures. (5124)

5. Hazardous mechanical equipment including vents that do not conform with building regulations or that have not been maintained in good and safe condition, or both, and that are not working properly. (5124)

6. Faulty weather protection that may include: (5124)
   (a) Significantly deteriorated, crumbling or loose plaster. (5124)
   (b) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors. (5124)
   (c) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering. (5124)
   (d) Broken, rotted, split or buckled exterior wall coverings or roof coverings. (5124)

7. Fire hazards or inadequate fire protection, including: (5124)
   (a) Any building or portion of a building or any device, apparatus, equipment, combustible waste or vegetation that is not in compliance with building and fire codes and regulations and that is in such a condition as to cause a fire or explosion or to provide a ready fuel to augment the spread and intensity of a fire or explosion arising from any cause. (5124)
   (b) Any building or portion of a building that is not provided with fire-resistive construction or fire extinguishing systems or equipment required by building and fire codes and regulations, except those buildings or portions of buildings that conformed with all applicable building and fire codes and regulations in effect at the time of construction and that have fire-resistive integrity and fire extinguishing systems or equipment that has been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy. (5124)
   (c) Lack of adequate fire detection systems as required by building and fire codes and regulations. (5124)
8. Faulty materials or construction that is not specifically allowed or approved by building and fire codes and regulations or that has not been adequately maintained in good and safe condition. (5124)

9. Hazardous or unsanitary premises, including those premises on which an accumulation of weeds, vegetation, refuse, dead organic matter, debris, garbage, offal, rodent harborage, stagnant water, combustible materials and similar materials or conditions that constitute fire, health or safety hazards. (5124)

10. Inadequate maintenance, including any building or portion of a building that is determined to be an unsafe building in accordance with building and fire codes and regulations. (5124)

11. Unhealthy conditions, including any condition defined in building regulations that results in the failure to maintain minimum standards of sanitation, health or safety or that renders air, food or drink that is detrimental to health. (5124)

12. Inadequate exit facilities, including: (5124)

   (a) All buildings or portions of a building that are not provided with exit facilities as required by building and fire codes and regulations; or (5124)

   (b) Exit facilities that have not been adequately maintained; or (5124)

   (c) Exit facilities that have not increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy. (5124)

13. Improper occupancy, including all buildings or portions of a building that are occupied for living, sleeping, cooking or dining purposes and that were not designed and permitted to be used for such occupancies, or that are occupied in excess of the maximum occupancy load allowed by any applicable provision of building, fire and zoning codes and regulations or state law. (5124)

(C) Before entry into the interior of a residential rental property, the City shall obtain consent of the owner, managing agent, or occupant or obtain a warrant for entry. (5124)

(D) Interior inspections performed under this Section shall be limited to items that can be easily viewed and shall not include hidden hazards, not accessible or readily accessible, that may be in the interior of the construction of the dwelling unit (e.g., inside of walls or ceilings or under floors). (5124)

(E) No owner shall allow or permit a condition that materially affects the health and safety of the occupants of a residential rental property. (5274)

(F) This section does not limit the authority of the City to:

   1. Perform an exterior inspection of any property in the City at any time. (5124)

   2. Upon receipt of a complaint or consent from the owner or occupant perform an interior inspection of any property in the City’s jurisdiction. (5124)

   3. Perform interior, exterior or construction job site inspections of new construction before issuance of a Certificate of Occupancy. (5124)

   4. Perform interior or exterior inspections of illegal construction that occurred without a required building permit. (5124)

   5. Perform an interior inspection of any property during an emergency or natural disaster. (5124)

   6. Perform any other inspection authorized by other provisions of the Mesa City Code. (5124)
ARTICLE IV

LIVESTOCK AND LARGE ANIMAL REGULATIONS

SECTION:

8-6-21: FOWL, RODENT, AND LIVESTOCK RESTRICTIONS
8-6-22: PREMISES TO BE SANITARY; INSPECTION OF PREMISES
8-6-23: SANITARY REGULATIONS FOR THE KEEPING OF FOWL AND RODENTS
8-6-24: SANITARY REGULATIONS FOR THE KEEPING OF LIVESTOCK
8-6-25: CONDITIONS UNDER WHICH FLIES BREED PROHIBITED
8-6-26: OFFENSIVE OR NOXIOUS GASES OR ODORS PROHIBITED
8-6-27: OBSTRUCTING OFFICERS
8-6-28: UNSANITARY PREMISES UNLAWFUL
8-6-29: NUISANCES; ABATEMENT
8-6-30: FECAL MATTER
8-6-31: NONHUMAN PRIMATES
8-6-32: LIVESTOCK LICENSE
8-6-33 DEFINITIONS
8-6-34: VIOLATIONS AND CITATIONS
8-6-35: CIVIL PENALTIES

8-6-21: FOWL, RODENT, AND LIVESTOCK RESTRICTIONS

It shall be a violation of this article for any person to keep fowl, rodents, or livestock within the city, other than listed in this chapter and permission is hereby given to any such person to keep and maintain the same, but only in the manner and upon the conditions set forth in this chapter. Such permission may be withdrawn by a court of competent jurisdiction in the event a person is charged as a habitual offender in accordance with 8-6-11 and found guilty of any offense listed in Article IV of this Title. Except for Sections 8-6-25 through 8-6-30, this chapter does not apply to the keeping and maintenance of domestic dogs and cats. (4845, 4968)

(A) Except as specified in Section 11-3-2, 11-3-3, and 11-4-3 of this Code, no more than a total of ten (10) rodents or fowl or a combination of rodents and fowl shall be kept upon the first one-half (1/2) acre or less; for each additional ten (10) head of rodents or fowl, an additional one-half (1/2) acre of land is required. For areas larger than two and one-half (2-1/2) acres, the number of such rodents and fowl shall not be limited. (4845)

(B) Except as specified in Sections 11-3-2, 11-3-3, and 11-4-3 of this Code, it shall be a violation of this article to keep livestock or any similar large animal regulated by this chapter within the City on any property less than thirty-five thousand (35,000) square feet. (4845, 4968)

(C) The maximum number of livestock and similar large animals allowed on a property at any one time shall be based on a calculation of animal points as specified below: (4968)

1. Animal points shall be assessed based upon the entire area of land held by the owner as a parcel or as abutting and contiguous parcels, and by the relative location of the parcels within the Lehi Sub-Area Plan as adopted by Resolution 8655 on January 23, 2006. (4968)
(a) Parcels located within the corporate limits of Mesa, but outside of the Lehi Sub-Area and without a livestock license, as described in Section 8-6-32, shall be assessed animal points based upon Table 8.6-A, below: (4968)

<table>
<thead>
<tr>
<th>PROPERTY SIZE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>35,000 SQ. FT. – 43,560 SQ. FT.</td>
<td>TWO (2) ANIMAL POINTS</td>
</tr>
<tr>
<td>FOR EVERY ADDITIONAL</td>
<td></td>
</tr>
<tr>
<td>10,890 SQ. FT. (1/4 ACRE)</td>
<td>ONE (1) ADDITIONAL</td>
</tr>
<tr>
<td></td>
<td>ANIMAL POINT</td>
</tr>
</tbody>
</table>

(4968)

(b) Parcels located within the Lehi Sub-Area and owners outside of the Lehi Sub-Area with an approved livestock license pursuant to Section 8-6-32, shall be assessed animal points based upon Table 8.6-B.

<table>
<thead>
<tr>
<th>PROPERTY SIZE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>35,000 SQ. FT. – 43,560 SQ. FT.</td>
<td>FOUR (4) ANIMAL POINTS</td>
</tr>
<tr>
<td>FOR EVERY ADDITIONAL</td>
<td></td>
</tr>
<tr>
<td>5,445 SQ. FT. (1/8 ACRE)</td>
<td>ONE (1) ADDITIONAL</td>
</tr>
<tr>
<td></td>
<td>ANIMAL POINT</td>
</tr>
</tbody>
</table>

(4968)

2. Animal points shall be assigned to the animals present on a property, as set forth below in Table 8.6-C:

<table>
<thead>
<tr>
<th>ANIMAL TYPE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FULL-SIZED EQUINES (HORSES OR SIMILAR)</td>
<td>ONE (1) ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>FULL-SIZED BOVINES (CATTLE, OXEN, BISON OR SIMILAR)</td>
<td>ONE (1) ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>SHEEP</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>GOATS</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>MINIATURE EQUINES OR BOVINES (MINIATURE HORSES OR CATTLE OR SIMILAR)</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>LARGE FLIGHTLESS BIRDS (OSTRICHES, RHEAS, EMUS OR SIMILAR)</td>
<td>THREE-QUARTERS (0.75) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>CAMELIDS (LLAMAS, ALPACAS OR SIMILAR)</td>
<td>THREE-QUARTERS (0.75) OF ANIMAL POINT PER HEAD</td>
</tr>
</tbody>
</table>

(4968)

3. Unless the owner obtains a Special Use Permit issued by the City pursuant to Title 11 of the Mesa City Code, it shall be a violation of this article for any owner to have present on the owner’s property any combination of listed animals that, in the aggregate, have a total sum of animal points assigned under paragraph (C)(2) that exceeds the total sum of animal points assessed for the owner’s property under paragraphs (C)(1) or (C)(2), as may be applicable. (4968)
(D) Paragraphs (A), (B) and (C) of this Section shall not apply to any lot or parcel which is reduced in size as a result of an acquisition by gift, purchase, or condemnation of a portion of the lot or parcel for right-of-way by a governmental entity, provided the size of the parcel was in excess of 35,000 square feet prior to the size reduction or the parcel is not reduced by more than twenty percent (20%) of the size that existed prior to the right-of-way acquisition. (4845, 4968)

(E) Exceptions shall be allowed to paragraphs (B) and (C) regarding animals raised by students participating in an affiliated State of Arizona sponsored or nationally chartered agricultural education program, such as FFA or 4-H. The maximum number of exceptions permitted for parcels of less than one-acre (43,560 square feet) is one. The maximum number of exceptions permitted for parcels greater than one acre is four. (4968)

(F) An exception to paragraphs (B) and (C) shall permit infant animal(s) of less than one (1) year in age to remain with its mother. In the event an infant is separated from its mother, this exception no longer applies. (4968)

(G) It shall be a violation of this article to keep any animal regulated by this chapter in an enclosure within a distance of less than forty feet (40') from another person’s lawfully erected permanent residence, dining, or sleeping quarters that was constructed before the construction of such animal enclosure. (4845, 4968)

(H) It shall be a violation of this article for any animal regulated by this chapter to be cooped, stabled, or confined in any building within seventy-five feet (75') from another person’s lawfully erected permanent residence, dining, or sleeping quarters that was constructed before the construction of such animal enclosure. (4845, 4968)

(I) All animals regulated by this Chapter shall be kept in suitable enclosures and shall not be permitted to run at large. (4845, 4968)

(J) The provisions of this Section shall not apply to registered homing (racing) pigeons, fancy pigeons, or show pigeons. (4845, 4968)

(K) It shall be a violation of this article for any swine (pigs, hogs or similar) to be kept within the corporate limits of the City, except as follows: (4845, 4968)

1. Swine kept by a student that is participating in an affiliated State of Arizona sponsored or nationally chartered agricultural education program, such as FFA or 4-H. No more than one (1) swine may be kept per participating student. (4968)

2. Vietnamese Pot-belly Pigs or similar miniature varieties of swine that, at full maturity, stand less than twenty-one (21) inches at the withers and weigh less than two-hundred (200) pounds may be kept on any lot as a personal pet such as a cat or dog, provided no more than two (2) such pigs are kept on one (1) parcel of land. (4968)

(L) Miniature equines, miniature bovines, miniature sheep, and miniature goats, which at full maturity meet the national miniature animal standards, may be kept on any lot as person pets such as a cat or dog, provided no more than two (2) such miniature equine, miniature bovines, miniature sheep, or miniature goats, or combination thereof, are kept on one (1) parcel of land. The maximum number of miniature equines, miniature bovines, miniature sheep or miniature goats that may be kept on lots in excess of 35,000 square feet shall be based on paragraphs (B) and (C) of this section. (4968)

(M) Apiaries shall be limited to locations within agricultural and/or rural areas of the City, zoned AG or R1-43. (4845, 4968)
8-6-22: PREMISES TO BE SANITARY; INSPECTION OF PREMISES

The premises upon which fowl, rodents, cattle, horses, mules, sheep, or goats are kept shall always be sanitary and subject to inspection and regulations by the City Manager or designee. (4845, 4968)

8-6-23: SANITARY REGULATIONS FOR THE KEEPING OF FOWL AND RODENTS

(A) The droppings of chickens or other fowl or rodents must be removed from the enclosure as frequently as necessary to prevent the breeding of flies, but in no case less than a minimum of twice weekly. (4845, 4968)

(B) Adequate fly-tight containers approved by the City Manager or designee for the storage of fowl or rodent excreta must be provided and shall always be kept sanitary in a manner to prevent the breeding of flies. (4845, 4968)

(C) Water and feed troughs must be provided, and shall always be kept sanitary to prevent the breeding of flies, mosquitoes or other vectors. (4845, 4968)

(D) Feeding vegetable or meat waste or garbage shall be exclusively in containers that shall be kept sanitary in a manner to prevent the breeding of flies, mosquitoes or other vectors, and on an impervious platform. (4845, 4968)

8-6-24: SANITARY REGULATIONS FOR THE KEEPING OF LIVESTOCK

(A) Manure shall be removed from stalls, paddocks, arenas, corrals and other livestock keeping areas on a regular basis, and at a minimum of no less than once a week. Manure run-off which discharges onto adjacent property, onto city streets or into flood control channels is prohibited, and allowing such to occur, intentionally or negligently, shall be in violation of this article. (4845, 4968)

(B) Adequate containers approved by the City Manager or designee must be provided for the storage of manure in a manner to prevent the breeding of flies and shall be kept sanitary unless it is completely removed from the premises at least twice weekly. All such containers shall be equipped with working lids to minimize water accumulating within the container. (4845, 4968)

(C) Mound storage of animal droppings or manure will be permitted only on an impervious slab with adequate provisions to prevent the breeding of flies or migration of the fly larvae (maggots) into the surrounding soil. Each installation of the latter type must be approved by the City Manager or designee. (4845, 4968)

(D) Drinking troughs or tanks must be maintained in a manner to prevent the breeding of flies, mosquitoes or other vectors, and shall be provided with adequate overflow drainage to prevent saturation of the surrounding soil. (4845, 4968)

(E) Feeding shall require adequate containers or feed troughs of size, kind, and number to eliminate scatter and unsanitary surroundings. Such containers shall always be kept sanitary. It is a violation of this article to feed at random upon the surface of the ground. (4845, 4968)

(F) Spillage and leftovers from animal feedings, including grains, hay, and vegetable foods, etc., must be either removed or otherwise disposed of in such manner as to prevent fly propagation or the creation of odors. (4845)
8-6-25: CONDITIONS UNDER WHICH FLIES BREED PROHIBITED
No owner, tenant, or occupant of any premises within the City shall suffer, permit, or have upon such premises any cesspool, vault, pit, or like place; animal manure; garbage; trash; litter; rags; or any other thing in which flies may breed or multiply, unless the same shall be protected as to prevent the attraction, breeding, and multiplying of flies. (4845)

8-6-26: OFFENSIVE OR NOXIOUS GASES OR ODORS PROHIBITED
Every owner, tenant, or occupant of any premises within the City in or upon which are kept any animals governed by the requirements of this chapter shall at all times keep and maintain such premises so covered, enclosed, protected, cleaned, drained, and disinfected that no offensive or noxious gases or odors may or shall arise therefrom, and any such premises which are not at all times kept and maintained so covered, closed, protected, cleaned, drained, and disinfected as to prevent any and all offensive noxious gases and odors arising therefrom or which are allowed or suffered to become a breeding place for flies and insects or to become offensive or noxious to the residents in the immediate neighborhood are hereby declared to be nuisances and subject to summary abatement. (4845, 4968)

8-6-27: OBSTRUCTING OFFICERS
It shall be a violation of this article for any person to resist, delay, or obstruct any public officer in the discharge or attempt to discharge of any duty of his office. (4845, 4968)

8-6-28: UNSANITARY PREMISES UNLAWFUL
It shall be a violation of this article for any person to permit any premises, building, yard, pasture, enclosure, or place owned, leased, or occupied by him to become unsanitary or to permit the same to become offensive to sight or smell. (4845, 4968)

8-6-29: NUISANCES; ABATEMENT
The causing of, producing, bringing about, making, leaving, or permitting of any condition or conditions implicitly or expressly prohibited by or forbidden or declared a violation of this article by this Chapter shall constitute a nuisance, and such nuisance may be abated as provided for by the laws of the City at the cost and expense of any person chargeable therewith. The costs of abating any such nuisance may be recovered by civil action in a court of competent jurisdiction. (4845, 4968)

8-6-30: FECAL MATTER
Any person owning, possessing, harboring, or having the care, charge, control, or custody of any dog, or other animal governed by this Chapter, shall immediately remove and thereafter dispose of any fecal matter deposited by the dog, or other animal governed by this Chapter, on public or private property unless the owner of the property has given prior approval to use said property for this purpose. This Section shall not apply to disabled individuals who, due to their disability, are unable to comply. (4845, 4968)

8-6-31: NONHUMAN PRIMATES
It shall be a violation of this article for any person to possess, keep, harbor, control, or maintain a nonhuman primate within the corporate limits except in the manner and upon the conditions herein set forth: (4968)

(A) Any person possessing, keeping, harboring, controlling, or maintaining a nonhuman primate must comply with all federal and state laws and the rules of the Arizona Administrative Code - Title 12, Chapter 4 entitled Wildlife Rules. (4845)

(B) Three is the maximum number of nonhuman primates allowed per residence. (4845)
(C) If a nonhuman primate is kept outside of the owner’s residence, the following restrictions apply:

1. All nonhuman primates must be kept in an enclosure which has a secured top, sides, and bottom. (4845)

2. The enclosure must be kept securely locked with a device that cannot be opened by the nonhuman primate. (4845)

3. All enclosures, coops, stalls, hutches, or structures used to house any nonhuman primate must be at least seventy-five feet (75') from any neighbor’s residence. (4845)

(D) All nonhuman primates shall be contained within the confines of the owner’s private property with the following exceptions:

1. When in transport to or from a licensed veterinarian;

2. Transport into or out of Arizona for lawful purposes. (4845)

(E) Anytime a nonhuman primate is removed from the owner’s residence or lawful enclosure, it must be securely restrained by a leash, chain, rope, or cord of not more than six feet (6') in length and of sufficient strength to control the primate; or the primate must be securely contained in an animal carrier of sufficient size and strength. (4845)

(F) The owner shall be responsible for compliance with all other City Code sections pertaining to unsanitary premises, breeding of flies, noise, et cetera, found elsewhere within the City Code. (4845)

8-6-32: LIVESTOCK LICENSE

(A) Any person desiring to obtain a livestock license shall apply to the licensing office. On a form established by the City Manager or designee, the application shall include, but not limited to, the following: (4968)

1. Full legal name and current residence address of the applicant; (4968)

2. The address for which the livestock license shall apply and its lot size; (4968)

3. Documentation that the land referenced in (2) above is owned by the applicant (such documentation may be satisfied by a copy of the deed, a property tax bill, or other document showing legal ownership); (4968)

4. A list of other properties within the city limits owned by applicant and for which a livestock license is currently issued or had been issued within the previous five (5) years; and (4968)

5. An acknowledgement that, as the owner, the applicant shall remain in compliance with all applicable livestock ordinances and Code sections, that the owner understands that the City may inspect the property for which the license pertains, and that the license is revocable as permitted under this section. (4968)

6. An acknowledgement that the owner agrees to manage and maintain the animal(s) in a humane and healthful manner that is consistent with the recommended practices adopted for the animal by the FFA or similar nationally recognized organization related to the care and management of animals. (4968)
(B) Each application shall be accompanied by the fee required in accordance with the current Schedule of Fees and Charges, as adopted by resolution by the City Council. The license shall be issued if no citation for an applicable livestock ordinance has been issued in connection with the licensed property within the last twelve (12) months. The licensing office is authorized to obtain necessary information to update the original license application and to determine whether the license should be issued. (4968)

(C) Within twelve (12) months of the issue date for the previously effective license, all licensees under this Chapter wishing to remain licensed shall apply for renewal of the license on a form established by the City Manager or designee. The renewal form must be submitted with the applicable renewal license fee. The licensing office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. The license shall be renewed if the original applicant (or an inter vivos trust of the applicant) continues to be the legal owner of the licensed property; and no citation for an applicable livestock ordinance has been issued in connection with the licensed property within the previous twelve (12) months. (4968)

(D) The licensee shall apply for renewal of their license within thirty (30) calendar days of the renewal deadline. Failure to renew the license within forty five (45) calendar days of the renewal deadline shall cause the license to become null and void. Licensees who fail to apply to renew their license yet who wish to keep animal counts assessed under Table 8.6-B as opposed to Table 8.6-A for their properties must file a new application for license. (4968)

(E) All fees under this Section are nonrefundable and are not prorated. (4968)

(F) No livestock license shall be issued or renewed if the applicant(s) have been prosecuted as a habitual offender in accordance with Article III of this Title and found guilty of any offense listed in Article IV of this Title within the previous thirty-six (36) months. (4968)

(G) All license applicants and all licensees under this Section shall permit representatives of the City Manager or designees or any city, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, welfare, or structural safety inspect the licensed property to ensure compliance with the applicable law. (4968)

(H) Livestock licenses are not transferable to other persons or entities. Upon the sale or transfer of the licensed property, the license shall become null and void. A new application may be made by any subsequent owner, if desired. (4968)

(I) It shall be the duty and responsibility of the City Manager or designee to administer the provisions of this Chapter. Pursuant to this duty, the City Manager or designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. Any party aggrieved by a decision of the City Manager or designee under this Section shall appeal within ten (10) calendar days after being sent by registered or certified mail notice of such decision. As to such mailed notice, the City Manager or designee shall send the notice to the applicant’s address as shown by the license application. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the licensing office. The licensing office or designee shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. (4968)
A livestock license or application may be denied, revoked, suspended, or denied renewal upon any one or more of the following grounds: (4968)

1. The licensee has violated any of the provisions of this Chapter and such violation has remained uncured or was not cured within thirty (30) calendar days; (4968)

2. The licensee is not the owner of the property to be licensed; (4968)

3. The licensee has had a prior livestock license revoked or renewal denied due to failure to timely cure a violation of this Chapter or due to the frequency of citations; or (4968)

4. The licensee has demonstrated a failure to cure, in a timely manner, prior violations of this Chapter under the application of the animal points assessed under Table 8.6-A, or has had frequent violations that do not justify raising the animal count under Table 8.6-B for the applicant. (4968)

The licensee may not apply for a livestock license within twelve (12) months from the denial, suspension or revocation of any such license. (4968)

DEFINITIONS:

As used in Article IV, unless the context otherwise indicates, the following terms shall have the meanings herein ascribed to them: (4968)

ANIMAL: Any mammal, bird, reptile or amphibian. (4968)

AT LARGE: On or off premises of owner and not under control of owner or other persons acting for the owner. (4968)

ENCLOSURE: Any fencing, corral, or barrier of sufficient strength and height to prevent an animal from escaping its primary confines. (4968)

ENFORCEMENT AGENT: That person or persons designated by the City who is responsible for the enforcement of this Chapter and any regulations promulgated thereunder. (4968)

Fecal Matter: Solid animal droppings including excreta, feces and manure. (4968)

FOUL: Any domesticated bird including but not limited to chickens, ducks, geese, guineas, peacocks, pheasants, and turkeys. (4968)

IMPOUND: The act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound or appropriate facility in accordance with the provisions of this Chapter. (4968)

LARGE ANIMAL: Terrestrial animals commonly considered too large to be kept indoors within a human household. The term includes domestic and working animals, but does not include small animals such as dogs, cats, rodents, birds, or fish kept as pets. (4968)
LIVESTOCK: Domestic animals, such as bovines including cattle, oxen, bison, etc., camelids including llamas, alpacas, etc., equines including horses, donkeys, burros, mules, ponies, etc., goats, sheep, swine, or ratites including ostriches, rheas, emus cassowaries, kiwis, etc., raised for home use or for profit. (4968)

NONHUMAN PRIMATE: Any mammal of the order primate not including man; including all monkeys and apes. (4968)

OWNER: Any person or legal entity having a possessory property right in an animal or land or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them. (4968)

PERSON: Any corporation, company, partnership, firm, association, organization, joint venture, business trust, proprietor, agent, or society as well as a natural person. (4968)

PIGEON: Any domesticated bird of the family Columbidae including fancy, show, and homing (racing) pigeons. (4968)

POUND: Any establishment authorized for the confinement, maintenance, safekeeping, and control of dogs and other animals that come into custody of the enforcement agency in the performance of official duties. (4968)

RODENT: Any herbivorous mammal including rabbits, hares or lagomorphs. (4968)

VECTOR: Any insect or other organism that can transmit a pathogenic fungus, virus, bacterium, etc. (4968)

VETERINARIAN: Unless otherwise indicated, veterinarian means licensed to practice in this state or any veterinarian employed in this state by a governmental agency. (4968)

8-6-34: VIOLATIONS AND CITATIONS:
Any violations and/or citations issued under this article shall be in accordance with and pursuant to Article III of this Title. (4968)

8-6-35: CIVIL PENALTIES:
The penalty for a violation or violations of this Article shall be in accordance with and pursuant to Article III of this Title. (4968)
CHAPTER 7

HEALTH OFFICER

(Repealed by 1628)

CHAPTER 8

SWEEPING OF REFUSE ON SIDEWALKS OR STREETS
(185)

(Repealed by 2568)

CHAPTER 9

ACCUMULATIONS OF LITTER PROHIBITED
(592,610,627,1768,2143)

(Repealed by 2568)
CHAPTER 1

RIGHT-OF-WAY MANAGEMENT
(298,327,1487,3078,4570,5369)

SECTION:

9-1-1: DEFINITION OF TERMS
9-1-2: RIGHT-OF-WAY PERMITS
9-1-3: NOTIFICATION
9-1-4: PLAN REVIEW AND INSPECTION CHARGES
9-1-5: RELOCATION, JOINT LOCATION
9-1-6: PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS (5369)
9-1-7: AUTHORITY TO INSPECT (5369)
9-1-8: STOP WORK ORDERS (5369)
9-1-9: UNAUTHORIZED WORK (5369)
9-1-10: APPEALS (5369)
9-1-11: PENALTIES (5369)

9-1-1: DEFINITION OF TERMS:

CITY ENGINEER: The director of the City’s Engineering Department and his or her designee. (5369)

DEVELOPMENT AND SUSTAINABILITY DIRECTOR: The director of the City’s Development and Sustainability Department and his or her designee. (5369)

EASEMENT, PUBLIC: An area of land over which the City of Mesa coordinates the locations of public or private improvements, underground or overhead, furnished for the use of the public; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, etc. owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. (3078, 3309)

ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public or private improvements within the right-of-way or public easements, prepared by a person, firm, company, corporation, public entity, or board in compliance with the code and rules of the Arizona State Board of Technical Registration, unless exempted thereunder; and conforming with (i) the public or private improvement standards of design and construction developed by the City Engineer; or (ii) standards developed by the person, firm, company, corporation, public entity, or board that the City Engineer accepts as substantially equivalent to the City Engineer’s standards in protecting the public health, safety, and welfare; or (iii) in the case of a political subdivision of the State of Arizona, standards of design and construction developed and approved by such political subdivision and filed with the City Engineer. (3309, 3766, 5369)

MESA PROJECTS: Public improvement projects for which the City of Mesa is the general contracting agency. (3309)

NEW PAVEMENT: Paving material applied in or near the right-of-way to construct a new street, highway, alley, road or bikeway where no such material previously existed. (5369)

PAVEMENT RECONSTRUCTION: Rebuilding a portion of the street by removing all the pavement material and re-paving. (5369)
PAVEMENT RENOVATION: A major rehabilitation of street pavement, which includes mill and overlay, cold in place recycle, hot in place recycle, fractured aggregate surface treatment, cape seal, and stress absorbing membrane interlayer or other similar roadway improvement that physically modifies the surface of the roadway. (5369)

PAVEMENT RESTORATION FEE: The fee required by the City when a permittee cuts into, excavates, opens, bores, trenches, potholes, damages, or disturbs pavement in the right-of-way. (5369)

PERMIT CHARGES: Fees assessed at the time of issuance of a right-of-way permit that are intended to cover costs incurred by the City for permit processing, plan review services, materials testing and inspections. Refer to latest schedule of fees and charges. (4570, 5369)

PERMITTEE: The governmental entity, person, or business entity that has received a right-of-way permit pursuant to this section or engaged in construction or maintenance in the right-of-way. (5369)

RIGHT-OF-WAY: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public right-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state, or municipal regulations. (3078, 3309, 4570, 5369)

RIGHT-OF-WAY IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, installation, and construction of public or private improvements within the right-of-way or within easements; formulated by the City Engineer, the County Health Department, the Maricopa Association of Governments, and other City departments. (3309, 3766, 5369)

RIGHT-OF-WAY PERMIT: An official document issued by the City authorizing performance of a specified activity or work within the right-of-way and public easements of the City of Mesa by a person, contractor, company, firm, or corporation duly qualified under the statutes and rules of the Arizona Registrar of Contractors, unless exempted thereunder. A Right-of-Way Permit may also authorize specified activity or work involving City utilities or facilities outside the corporate limits when issued in conjunction with the appropriate permit required for specified activity or work within another jurisdiction. (3078, 3309, 3766, 5369)

STREET MAINTENANCE: Application of slurry and fog seals to street pavement. (5369)

9-1-2: RIGHT-OF-WAY PERMITS:

(A) It shall be unlawful for any person, firm, company, corporation, business entity, public entity or board to grade, pave, fill, or level any street or alley within the right-of-way or public easements of the City of Mesa or to construct, alter, or repair therein any pavement, sidewalk, crosswalk, curb, driveway, gutters, landscaping, sewers, water mains, or other structures or to make therein any excavation or in any manner disturb or obstruct the same or perform any other activity or work without first obtaining a Right-of-Way Permit. (298, 1487, 3078, 3309, 3766, 5369)

(B) A person, firm, company, corporation, business entity, public entity or board seeking a Right-of-Way permit shall apply for said permit by submitting an application and engineering plans to the Development and Sustainability Director. The City Engineer shall review the application and plans, and approve the issuance of a Right-of-Way permit if the application and plans meet the requirements of this Chapter and the right-of-way improvement standards. (3309, 3766, 5369)
(C) All construction and maintenance activities in the right-of-way and public easements shall be subject to the inspection of the City Engineer. (5369)

(D) All improvements, construction and maintenance activities in the right-of-way and public easements shall be in accordance with the terms and conditions of a Right-of-Way Permit and in compliance with right-of-way improvement standards. (5369)

(E) While work is being done in the right-of-way and public easements, permittee shall provide to the City, upon demand, proof of the Right-of-Way Permit that authorizes the work, including a description of the work and construction limits. (5369)

(F) A Right-of-Way Permit may be revoked by the City Engineer under any of the following circumstances: (5369)

1. When the right-of-way or a public easement, or any portion thereof, occupied and used by the permittee is needed in connection with the construction of a Mesa project, upon reasonable notice from the City Engineer, unless a City license, franchise or agreement provides otherwise. (5369)

2. If the permittee does not comply with the terms and conditions of the Right-of-Way Permit or performs work that is not in compliance with right-of-way improvement standards. (5369)

3. If the City Engineer finds that a delay in completion of work authorized by a Right-of-Way Permit is due to lack of diligence on the part of the permittee, the City may revoke the permit and restore the right-of-way or the area of the public easement to its former condition unless such restoration, relocation, or removal is completed by the permittee. The City will give the permittee fifteen (15) days’ written notice before restoring the right-of-way or public easement area. However, if the City Engineer determines that the circumstances warrant an extension, the City may extend this time period. The permittee shall reimburse the City for all documented costs and expenses incurred by the City in connection with locating and removing the work, and restoring the right-of-way or the public easement area. (5369)

(G) Permittee shall participate as a member of the Arizona Location Service, as set forth in A.R.S. § 40-360.21, ET SEQ. A copy of each permittee’s agreement or proof of participation shall be submitted to the City Engineer. (5369)

(H) Permittee shall prepare and maintain accurate record drawings of its facilities in the right-of-way and in public easements, and shall furnish such record drawings to the City upon request, subject to all applicable statutes for the protection from disclosure of critical utility infrastructure information. If accurate record drawings of a permittee’s facilities are not provided to the City, and the City incurs costs or expenses locating the permittee’s facilities in connection with the construction of a Mesa project, the permittee shall reimburse the City for documented costs associated with locating and potholing permittee’s facilities. (5369)

9-1-3: NOTIFICATION:
Right-of-Way Permits shall require that the person, firm, company, corporation, public entity, or board to whom the same is issued shall give the Engineering Department twenty-four (24) hours' notice of the commencement of such activity or work authorized by said Right-of-Way Permit and shall carry on such activity or work to the satisfaction and subject to the approval of the City Engineer. The permittee shall diligently prosecute the same to completion, shall leave the right-of-way or public easements in a good and safe condition, and shall at all times keep signal lights, barricades, or other safety devices functioning properly to prevent injury to persons and property, and such person, firm, company, corporation, public entity, or board shall comply with such additional reasonable provisions and conditions as may be prescribed by the City Engineer. (298, 3078, 3309, 3766, 5369)
9-1-4: PLAN REVIEW AND INSPECTION CHARGES: (3309, 4570, 5369)

A Right-of-Way Permit shall not be issued under the provisions of this Chapter until the applicant has paid all applicable fees and charges as established in the most recent City of Mesa Schedule of Fees and Charges. The Development and Sustainability Director and the City Engineer are authorized to enter into agreements with the United States, the State of Arizona, political subdivisions of the State of Arizona, and agencies thereof, establishing offsets or credits for fees or charges applied by both agencies. (298, 1487, 3078, 3241, 3309, 3766, 4570, 5369)

9-1-5: RELOCATION, JOINT LOCATION: (3309, 5369)

(A) If a public or private improvement has been installed in a public easement in accordance with the requirements of this Chapter and the City of Mesa subsequently requires relocation of said public or private improvement to accommodate a Mesa project, the City shall reimburse the owner of the public or private improvement for documented relocation costs; unless an existing City license, franchise, or agreement provides otherwise. (298, 3078, 3309)

(B) As part of the coordination of public or private improvements and as a condition of obtaining a Right-of-Way Permit for activity or work within the Right-of-Way and all easements, the City may require joint location of all underground and overhead public or private improvements when said joint location is not otherwise prohibited by applicable safety or design standards. (3309, 5369)

9-1-6: PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS: (5369)

(A) Pavement Restoration Fees. A permittee shall pay a pavement restoration fee in connection with any Right-of-Way Permit to cut into, excavate, open, bore trench or disturb street pavement within a period of five (5) years after the City’s acceptance of street construction that includes new pavement, pavement renovation or pavement reconstruction at the location for which the Right-of-Way Permit is being sought. The amount of the pavement restoration fee shall be as established in the City’s fee schedule. The pavement restoration fee shall be paid before a Right-of-Way Permit is issued unless the permittee has a written agreement with the City that allows for payment of the pavement restoration fee after the pavement cut is made. The pavement restoration fee will be in addition to, and will be offset by, all license and franchise fees, expenses and taxes. (5369)

(B) Pavement Cut Restrictions. The City Engineer shall not approve a Right-of-Way Permit to cut into, excavate, open, bore, trench, or disturb street pavement for a period of two (2) years after the City’s acceptance of street construction that includes new pavement, pavement renovation, pavement reconstruction, or street maintenance at the location for which the permit is being sought. The City Engineer may authorize an exception to this pavement cut restriction under any one of the following conditions: (5369)

1. A verifiable emergency exists that endangers life or property; (5369)

2. There is an interruption of essential utility service; (5369)

3. Utility or other service for buildings is required where no other feasible means of providing such service exists; or (5369)

4. A pavement cut is required by city, county, state or federal regulation. (5369)

(C) Between one (1) year and two (2) years after acceptance, if the City Engineer determines, upon reviewing evidence submitted by the permittee, that the cost to mill and overlay/inlay is substantially less than the cost of alternate routing for permittee’s facilities the permittee may choose to cut the pavement and perform a mill and overlay/inlay as described in Subsection (E) below. (5369)
(D) If the City Engineer authorizes a pavement cut pursuant to an exception set forth in Subsection (B) the permittee shall: (5369)

1. Pay the pavement restoration fee established by the City Council in the City’s fee schedule; and (5369)

2. Repair the pavement, after making the permitted cut, to meet right-of-way improvement standards. (5369)

(E) If the City issues a street cut permit within one (1) year of construction, reconstruction or renovation of pavement, permittee shall renovate such street by mill and overlay/inlay, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet in both directions from the area of the cut(s) and for collector and residential streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the City Engineer/designee. Provided, however, for one pothole smaller than two (2) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply. (5369)

9-1-7: AUTHORITY TO INSPECT: (5369)
The City Engineer is hereby authorized and directed to conduct inspections and testing for violations of this Chapter. (5369)

9-1-8: STOP WORK ORDERS: (5369)
If the City Engineer determines that work in the right-of-way or a public easement is being conducted in a manner that is contrary to the provisions of this Chapter or presents a public health or safety threat, the City Engineer is authorized to issue a Stop Work Order. (5369)

(A) Issuance. The Stop Work Order shall be in writing and shall be given to the permittee, owner’s agent, or the person doing the work. Upon issuance of a Stop Work Order, the cited work shall immediately cease and the permittee shall make the work area safe. The Stop Work Order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. (5369)

(B) Unlawful Continuance. Any person who continues any work after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or a condition that threatens the public health or safety, shall be subject to penalties pursuant to this Chapter. (5369)

9-1-9: UNAUTHORIZED WORK: (5369)
Unauthorized work in the right-of-way or a public easement does not exempt a person from the requirements of this Chapter. Any person who commences work before obtaining the necessary Right-of-Way Permit shall be subject to a separate unauthorized construction fee as adopted in the City’s Schedule of Fees and Charges. (5369)

9-1-10: APPEALS: (5369)
Any decision made by any City official in connection with the enforcement of this Chapter may be appealed by submitting an appeal to the City Clerk within thirty (30) calendar days after the determination for which the appeal is being filed. All appeals must include a written Notice of Appeal that contains an explanation of why the appellant believes that the determination was in error. (5369)

The appeal will be heard by the City’s Right-of-Way Manager, who shall render a decision within three (3) business days of the submission of the appeal. The decision of the Right-of-Way Manager may then be appealed to the City Manager or his designee, who shall render a decision within five (5) business days of receiving the appeal. The determination of the City Manager, or his designee, may be appealed to the City Council committee that is designated by the City to hear such appeals. The determination of the City Council committee shall be final. (5369)
9-1-11: PENALTIES: (5369)

(A) Notice of Violation. The City Engineer is authorized to issue a Notice of Violation for unauthorized work, a violation of the provisions of this Chapter, or for the violation of a permit issued pursuant to the provisions of this Chapter. (5369)

(B) Penalty Clause. Any person, firm, or corporation violating any provision of this Chapter and any amendment to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the city jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570, 5369)

(C) Remedies not Exclusive. Penalties under this Chapter are in addition to any other penalties established by law, and this Chapter shall not be interpreted as limiting the remedies, actions, or abatement procedures that may be taken by the City. (5369)
CHAPTER 2

OBSTRUCTION OF STREETS

SECTION:

9-2-1: OBSTRUCTING PROHIBITED
9-2-2: EXCEPTIONS
9-2-3: ENCROACHMENTS
9-2-4: EXCEPTIONS TO ENCROACHMENTS

9-2-1: OBSTRUCTING PROHIBITED:
It shall be unlawful for any person to cause or permit any street, alley, or right-of-way within the City to become obstructed or encumbered by placing or leaving thereon any personal property of any kind or character or any trash or rubbish. (575)

9-2-2: EXCEPTIONS:
The provisions of Section 9-2-1 shall not prohibit the use of such streets, alleys, and rights-of-way for pedestrian or vehicular traffic or for necessary moving or conveying of personal property or trash or rubbish on, over, and across such streets, alleys, and rights-of-way or the encumbering or obstructing of same after having obtained a permit for the construction, alteration, or repair of any portion of such public street, alley, or right-of-way from the Development Services Manager. (575,4570)

9-2-3: ENCROACHMENTS:

(A) Prohibited Except Under Permit. It shall be unlawful for any person, firm or corporation to cause or to maintain any encumbrance or obstruction of public right-of-way by encroachment therein with any foundation, wall, fence, post, or other structure or any cohesive ground-surfacing material without having first obtained a written Right-of-Way Encroachment Permit to do so from the City Engineer. Such permit may be issued upon a finding by the City Engineer that the encroachment requested and specified by the applicant will not impair necessary public use or impair access to public facilities located therein and that such encroachment is not otherwise prohibited by the Mesa City Code. (1900)

(B) Terms of Permit. Encroachments into the public right-of-way for which a permit has been issued shall not exceed the terms, conditions, period of time, or extent specified by the permit, and the permit may be revoked at any time by the City Engineer. The City Engineer shall not issue such permit until the applicant shall have executed and delivered to the City an undertaking to hold the City harmless of and from any liability of any nature resulting from any such encumbrance or obstruction being located within the right-of-way and releasing the City from any liability for any obligation to maintain the encroachment or for any damage thereto. The applicant for a permit shall also agree in writing to remove same and restore the premises to the original condition without compensation and upon request by the City Engineer. (1900)
9-2-4: EXCEPTIONS TO ENCROACHMENTS:
The following encroachments are exempt from the terms of Section 9-2-3: (1900)

(A) Authorized traffic-control structures and signs. (1900)

(B) Vehicle driveway surfacing properly aligned with curb openings provided for the purpose. (1900)

(C) Pedestrian walkway surfacing less than five feet (5’) wide perpendicular to public right-of-way. (1900)

9-2-5: PENALTIES: (4570)
Any person, firm, or corporation violating any provision of this chapter and any amendment to it shall be guilty of a Class 1 Misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570)

CHAPTER 3
REPEALED BY MEMO 6-11-1986
CHAPTER 4
PARADE REGULATIONS

SECTIONS:

9-4-1: PERMIT REQUIRED
9-4-2: APPLICATION
9-4-3: PARADE ROUTE
9-4-4: STANDARDS FOR ISSUANCE
9-4-5: NOTICE OF REJECTION
9-4-6: APPEAL PROCEDURE
9-4-7: NOTICE TO OTHER OFFICIALS
9-4-8: CONTENTS OF PERMIT
9-4-9: DUTIES OF PERMITTEE
9-4-10: PUBLIC CONDUCT DURING PARADE
9-4-11: REVOCATION OF PERMIT

9-4-1: PERMIT REQUIRED:
No person shall engage in, participate in, aid, form, or start any parade utilizing any portion of any public street or public park within the City limits of the City unless a Parade Permit shall have been obtained from the Chief of Police. The word parade shall mean any organized procession, march, public walk, or promenade for display and shall include distance running and bicycle races and similar activities. (624,1420)

Exceptions. This Chapter shall not apply to: (624,1420)

(A) Funeral processions. (624,1420)

(B) Students going to and from school classes or participating in any educational activities, provided such conduct is under the immediate direction and supervision of the proper school authorities; and (624,1420)

(C) A governmental agency acting within the scope of its functions. (624,1420)

9-4-2: APPLICATION:
A person seeking issuance of a Parade Permit shall file an application with the Chief of Police on forms provided by him. (624,1420,1434)

(A) Filing Period. An application for a Parade Permit shall be filed with the Chief of Police not less than thirty (30) days before the date on which it is proposed to conduct the parade. (624,1420,1434)

(B) Contents. The application for a Parade Permit shall set forth the following information: (624,1420,1434)

1. The name, address, and telephone number of the person seeking to conduct such parade; (624,1420,1434)

2. If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization; (624,1420,1434)
3. The name, address, and telephone number of the person who will be the parade chairman and who will be responsible for its conduct; (624,1420,1434)

4. The date when the parade is to be conducted; (624,1420,1434)

5. The route to be traveled, the starting point, and the termination point; (624,1420,1434)

6. The approximate number of persons who, and animals and vehicles which, will constitute such parade, the type of animals, and the description of the vehicles; (624,1420,1434)

7. The hours when such parade will start and terminate; (624,1420,1434)

8. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed; (624,1420,1434)

9. The location by streets of any assembly areas for such parade; (624,1420,1434)

10. The time in which units of the parade will begin to assemble at any such assembly area or areas; (624,1420,1434)

11. The interval of space to be maintained between units of such parade; (624,1420,1434)

12. If the parade is designated to be held by and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the Chief of Police a communication in writing from the person proposing to hold the parade authorizing the applicant to apply for the permit on his behalf; (624,1420,1434)

13. Any additional information which the Chief of Police shall find reasonably necessary to a fair determination as to whether a permit should be issued; (624,1420,1434)

14. The applicant shall procure such public liability and property damage insurance as shall protect the applicant and the City from all claims for bodily injury, including accidental death, as well as for property damage arising from the holding of the parade. The coverage shall be in an amount of not less than one million dollars ($1,000,000.00) and the applicant shall attach a Certificate of Insurance naming the City as an additional insured to the application. (1420,1434)

15. The applicant shall execute a hold harmless form to be provided by the Mesa Police Department and attach the form to the application. The hold harmless form shall provide that the applicant agrees to indemnify the City and hold it harmless against any and all losses and liabilities for personal injury, death, or property damage arising out of, or as a consequence of, the parade and any and all expenses related to claims or lawsuits resulting from the above, including court costs and attorney fees, excepting for such losses, liabilities, claims, or lawsuits arising out of acts or omissions to act on the part of any officer, agent, or employee of the City. (1420,1434)

(C) Late Applications. The Chief of Police, where good cause is shown therefor, shall have the authority to consider and approve or disapprove any application hereunder which is filed less than thirty (30) days before the date such parade is proposed to be conducted. (624,1420,1434)
9-4-3: PARADE ROUTE:
All parades shall be held on routes designated by the Chief of Police. (624,1420)

9-4-4: STANDARDS FOR ISSUANCE:
The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that: (624)

(A) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route; (624)

(B) The conduct of the parade will not require the diversion of so great a number of the police officers of the City to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the City; (624)

(C) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the City other than that to be occupied by the proposed line of march and areas contiguous thereto; (624)

(D) The concentration of persons, animals, and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas; (624)

(E) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire; (624)

(F) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct, or to create a disturbance; (624)

(G) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route; (624)

(H) The parade is not to be held for the sole purpose of advertising any product, goods, or event and is not designed to be held purely for private profit. (624)

9-4-5: NOTICE OF REJECTION:
The Chief of Police shall act upon the application for a Parade Permit within five (5) days after the filing thereof. If the Chief of Police disapproves the application, he shall mail to the applicant within five (5) days after the date upon which the application was filed a notice of his action stating the reasons for his denial of the permit. (624)

9-4-6: APPEAL PROCEDURE:
Any person aggrieved shall have the right to appeal the denial of a parade permit to the Council. The appeal shall be taken within five (5) days after notice, and the Council shall act upon the appeal at its next regular meeting. (624,1420)

9-4-7: NOTICE TO OTHER OFFICIALS:
Immediately upon the issuance of a Parade Permit, the Chief of Police shall send a copy thereof to the following: (624,1420)
9-4-7

Mayor, City Manager (624,1420)

Fire Department (624,1420)

Traffic Engineering (1420)

Development Services Department (624,1420,3766)

City Clerk (1420)

Arizona Highway Department, if State highway is involved. (1420)

9-4-8: CONTENTS OF PERMIT:
Each Parade Permit shall state the following information: (624)

(A) Starting time; (624)

(B) Minimum speed; (624)

(C) Maximum speed; (624)

(D) Maximum interval of space to be maintained between the units in the parade; (624)

(E) The portions of the streets to be traversed that may be occupied by the parade; (624)

(F) The maximum length of the parade in miles or fraction thereof; (624)

(G) Such other information as the Chief of Police shall find necessary to the enforcement of this Chapter. (624)

9-4-9: DUTIES OF PERMITTEE:
A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. (624)

Possession of Permit. The Parade Chairman or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade. (624)

9-4-10: PUBLIC CONDUCT DURING PARADE:

(A) Interference. No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or parade assembly or with any person, vehicle, or animal participating or used in a parade. (624)

(B) Driving Through Parades. No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicle or parade is in motion and is conspicuously designated as a parade. (624)

(C) Parking on Parade Route. The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street, or part thereof, constituting a part of the route of a parade. The Chief of Police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattached any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this Chapter. (624)

9-4-11: REVOCATION OF PERMIT:
The Chief of Police shall have the authority to revoke a Parade Permit issued hereunder upon application of the standards for issuance as herein set forth. (624)
CHAPTER 5

PRIMARY VEHICULAR ALLEY ACCESS

SECTION:

9-5-1: ALLEY WIDTH
Alleys that are provided to serve multiple-residence, commercial, or industrial property shall be twenty-four feet (24') in width when such alley is to be used as primary vehicular access to such property. If existing alley dedication is less than twenty-four feet (24'), then additional property shall be dedicated to provide the full twenty-four-foot (24') alley width prior to usage thereof as primary vehicular access to such property. Such alleys shall be paved and improved in accordance with the applicable standards therefore established by the Engineering Department of the City. (708)

9-5-2: WHEN WALL OR FENCE REQUIRED:
Wherever a multiple-residential area abuts a single-family residential area, a solid wall or fence shall be required separating all multiple-residential parking areas from the single-family residential yards. A solid wall or fence shall be placed on the side of the alley opposite the parking area unless prior authorization is obtained from the City Engineer to place such solid wall or fence on the side of the alley adjacent to the parking area. (708,4570)

9-5-3: ENTRANCE INTO ALLEYS BY FORWARD MOTION ONLY; EXCEPTIONS:
All entrances into alleys which provide primary vehicular access to the property described in Section 9-5-1 hereof shall be by forward motion only, excepting under the following circumstances: (708)

(A) If a multiple-residence parking area has less than six (6) spaces, by special permit issued by the City Engineer, motor vehicles from these parking areas may be permitted to back into a public alley, provided that when required by the City Engineer, an approved guardrail shall be installed as a condition to granting such permit. (708)

(B) In a subdivision of multiple-residence lots backing up to each other and where a twenty-four-foot (24') improved alley is provided for primary vehicular access, motor vehicles from parking areas of six (6) or less cars may back directly into such alley without providing for the vehicles to enter the alley in a forward motion. (708)

(C) As authorized by adoption of modifications pursuant to Sections 9-6-7 and 9-8-4, and filed concurrently with an Application for Rezoning to PC District. (4771)

9-5-4: HARDSHIP CASES:
The minimum requirements hereinabove set forth in this Chapter may be waived or modified by the Development Services Manager upon recommendation by the City Engineer in any case where existing physical conditions would cause impossibility of performance, extreme hardship, or unreasonable expense. (708,4570)

9-5-5: PENALTIES: (4570)
Any person, firm, or corporation violating any provision of this chapter and any amendment to it shall be guilty of a Class 1 Misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570)
CHAPTER 6

SUBDIVISION REGULATIONS

SECTION:

9-6-1: PURPOSE AND APPLICATION
9-6-2: PLATTING PROCEDURES AND REQUIREMENTS
9-6-3: SUBDIVISION DESIGN PRINCIPLES AND STANDARDS
9-6-4: PUBLIC IMPROVEMENT REQUIREMENTS
9-6-5: DESERT UPLANDS DEVELOPMENT STANDARDS
9-6-6: LAND SPLITS
9-6-7: MODIFICATIONS
9-6-8: APPEALS
9-6-9: PENALTIES

9-6-1: PURPOSE AND APPLICATION:

(A) Purpose and Application. The purpose of these regulations is to provide for the orderly growth and harmonious development of the City of Mesa; to insure adequate traffic circulation through coordinated street systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for schools, recreation areas, and other public facilities; to promote the conveyance of land by accurate legal description; and to provide logical procedures for the achievement of this purpose. In its interpretation and application, the provisions of these regulations are intended to provide a common ground of understanding and equitable working relationship between public and private interests to the end that both independent and mutual objectives can be achieved in the subdivision of land. (2474/Reso. 6188)

(B) Adoption of Figures. All figures within these regulations are hereby adopted and fully incorporated herein as a part of these regulations. (2474/Reso. 6188)

(C) Definitions. (2474/Reso. 6188)

ALLEY: A public right-of-way used to provide secondary vehicular access to properties which abut it. (2474/Reso. 6188)

BERM: A mound of soil, either natural or man-made. (2474/Reso. 6188)

BLOCK: A piece or parcel of land or group of lots entirely surrounded by public streets, streams, railroads, parks, or a combination thereof. (2474/Reso. 6188)

BOARD: The Planning and Zoning Board of the City of Mesa. (2474/Reso. 6188)

BOARD OF ADJUSTMENT: The Zoning Board of Adjustment of the City of Mesa. (2474/Reso. 6188)
CHANNEL: The bed and banks of a natural or man-made stream which convey the constant or intermittent flow of the stream. (2474/Reso. 6188)

CHANNELIZATION: The consolidating, combining, and/or redirecting by improving the surface of a channel to permit water to move rapidly and/or directly. (2474/Reso. 6188)

COMMON OPEN SPACE: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development. It may include complementary structures and improvements. (2474/Reso. 6188)

CONCEPT PLAN: See Sketch Plan. (2474/Reso. 6188)

CONDITIONAL APPROVAL: An affirmative action by the Board or the Council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations. (2474/Reso. 6188)

CONVENTIONAL DEVELOPMENT: Development other than planned area development. (2474/Reso. 6188)

COUNCIL: The City Council of the City of Mesa. (2474/Reso. 6188)

DENSITY: A ratio expressing the number of dwelling units per acre (refer to City of Mesa Zoning Ordinance for densities permitted by zoning district). (2474/Reso. 6188)

DEPARTMENT: The Development Services Department of the City of Mesa. (2474/Reso. 6188,3766)

DESERT UPLANDS AREA: The area of Mesa, Arizona that is bounded by the Central Arizona Project Canal on the west, Meridian Road and Usery Mountain Regional Park on the east, University Drive on the south, and the Tonto National Forest boundary on the north and as depicted in Figure 36. (5376)

DESIGN REVIEW BOARD (DRB): The Design Review Board of the City of Mesa. (2474/Reso. 6188)

DESIGN STORM: The rainfall event of specific frequency and duration which produces the design flow. (2474/Reso. 6188)

DEVELOPMENT MASTER PLAN (DMP): A preliminary master plan for the development of a large or complicated land area, the platting and development of which is expected in progressive stages. (2474/Reso. 6188)

DEVELOPMENT REGULATION: Zoning, subdivision, site plan, official map, floodplain regulation, or other governmental regulation of the use and development of land. (2474/Reso. 6188)

DRAINAGE, LOCAL: Water which accumulates as a result of local storms and flows over land not included in a delineated floodplain. This shall include sheet flow and such flow as may be concentrated in local drainage systems with or without defined channels, excluding delineated floodplains. (2474/Reso. 6188)

DRAINAGE, ONE HUNDRED- (100-) YEAR STORM (PEAK DISCHARGE): Local drainage resulting from a storm which has a one-percent (1%) chance of occurring annually, based upon a "design storm" within a defined area. (2474/Reso. 6188)
DRAINAGE, ONE HUNDRED- (100-) YEAR, TWO- (2-) HOUR STORM (RETENTION/DETENTION):
A storm which has one hundred- (100-) year rainfall values shown on the most current precipitation maps for the area, prepared by the National Weather Service (U.S. Weather Bureau) for the Soil Conservation Service. Two- (2-) hour values are extrapolated from twenty-four- (24-) hour and six- (6-) hour values by using the rainfall depth-duration diagram given in Weather Bureau Technical Paper No. 40. (2474/Reso. 6188)

DRAINAGE, OFF-SITE: The storm surface waters emanating from lands outside the limits of the proposed subdivision and draining through the site of the proposed subdivision. (2474/Reso. 6188)

DRAINAGE, DIRECT ON-SITE RUNOFF: That portion of the rainfall which falls within the entire limits of the proposed subdivision and which flows across the land or enters streams promptly after the rainfall. (2474/Reso. 6188)

EASEMENT: A grant by the owner of any parcel of land to a public agency, a corporation, or persons for specific uses and purposes and so designated and recorded. (2474/Reso. 6188)

EASEMENT, AERIAL: A grant by a property owner for the use of a strip of land for the purpose of extending overhead utilities or other similar purposes. (2474/Reso. 6188)

EASEMENT, AVIGATION: A grant by a property owner of an easement for avigation purposes over and across the land in connection with flights of predetermined heights above the surface to an infinite height above the same, which easement shall hold the City, public, and airfield harmless from any damage caused by noise, vibration, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operators of aircraft taking off, landing, or operating above the predetermined minimum height not including the physical impact of aircraft or parts thereof. (2474/Reso. 6188)

EASEMENT, CONTROLLED VEHICULAR ACCESS: An easement limiting vehicular access to a site from a street to those controlled access points approved by the City Council or Traffic Engineer. (2474/Reso. 6188)

EASEMENT, DRAINAGE: An area designed and used for conveyance or retention of runoff in which nothing can be placed which will impede, divert, or cause the runoff to have an adverse effect on adjoining property. (2474/Reso. 6188)

EASEMENT, PUBLIC UTILITY (PUE): An easement for overhead and underground utility facilities provided for the use of the public, including water, storm drainage, sewage, electricity and communication, owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or Utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (4570)

EASEMENT, PUBLIC UTILITY AND FACILITIES (PUFE): An easement for the installation of facilities, underground or overhead, furnished for the use of the public, including electricity, gas, steam, communication, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, street lights, flood control, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by State or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (2474,4570/Reso. 6188)

EASEMENT, USE AND BENEFIT: A grant to an adjacent lot for ingress and egress for the purpose of repair, maintenance, drainage, and improvement of any of the abutting lot owner’s property which is contiguous to the easement area. No structure and/or other permanent improvement of any nature shall be placed, maintained, or permitted to remain on or within the easement area. (2474/Reso. 6188)
EASEMENT, VEHICULAR NON-ACCESS: An easement prohibiting vehicular access from a street or between inappropriate uses (i.e., zoning district boundaries). (4233)

ELECTRIC SERVICE AREA: The area of Mesa, Arizona that receives electric utility service from the City of Mesa, commonly referred to as the City of Mesa Electric Service Area. (5376)

ENCLOSED AREA OF DWELLING UNIT: That portion of the site encompassed by the dwelling unit and all attached roofed structures, including carport and patio ramadas. (2474/Reso. 6188)

ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public improvements, prepared by a civil engineer registered in the state of Arizona, in accordance with the approved preliminary plat and in compliance with standards of design and construction approved by the City Engineering Division. (2474,4570/Reso. 6188)

ENGINEERING PROCEDURE MANUAL: Requirements formulated by the City Engineer and available from the Engineering and Building Safety Divisions for the planning and design of public improvements. (2474,4570/Reso. 6188)

EXCEPTION: Any parcel of land within the boundaries of the subdivision which is not owned by the subdivider. (2474/Reso. 6188)

EXPOSED FILL: All of the face of a fill slope resulting from development, from the toe to the top of the fill, whether the surface treatment is retaining wall, rip-rap, natural vegetation, or other treatment. (2474/Reso. 6188)

FILL: The deposit of soil, rock, or other material placed by man. (2474/Reso. 6188)

FLOOD: A general and temporary overflow of water onto normally dry land areas. (2474/Reso. 6188)

FLOOD, REGULATORY: The one hundred- (100-) year flood as determined by criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOOD, FIFTY- (50-) YEAR: A flood that has a two-percent (2%) chance of occurring annually, based upon the criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOOD, ONE HUNDRED- (100-) YEAR: A flood that has a one-percent (1%) chance of occurring annually, based upon the criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOODPLAIN, DELINEATED: That area delineated and mapped as a floodplain, as approved by the Board and as shown on the National Flood Insurance Program, flood insurance rate maps, and floodway maps. (2474/Reso. 6188)

FLOODPLAIN, REGULATORY: That portion of the natural water course that would be inundated by the regulatory flood and in which land use is regulated by the Floodplain Regulations. (2474/Reso. 6188)

FULL CUTOFF STREETLIGHT FIXTURE: Streetlight fixtures, with either a HPS or LED light source, where no light is emitted by the fixture above an angle of 90 degrees above nadir (no light emitted above the horizontal). (5376)

GENERAL PLAN: A comprehensive plan, or parts thereof, providing for the future growth and improvement of the City of Mesa, including the general location and coordination of streets and highways, schools and recreation areas, public building sites, and other physical development, including general land use patterns. (2474/Reso. 6188)

GRADE: The vertical difference (in feet) between two (2) points on the ground divided by the length of horizontal distance (in feet) between the same two (2) points, multiplied by one hundred (100). (Example: 2’/100 = .02 x 100 = 2% grade.) (2474/Reso. 6188)
**GRADING:** Any excavating, filling, or combination thereof, including the conditions resulting from any excavation or fill, involving changes to the natural drainage pattern. (2474/Reso. 6188)

**GUNITE:** Concrete or mortar conveyed through a hose and pneumatically projected at a high velocity onto a surface. (2474/Reso. 6188)

**HPS:** High Pressure Sodium. (5376)

**IRRIGATION FACILITIES:** Includes canals, laterals, ditches, conduits, pipes, gates, pumps, and allied equipment necessary for the supply, delivery, and drainage of irrigation water and the construction, operation, and maintenance of such. (2474/Reso. 6188)

**LAND SPLIT:** The division of property, the boundaries of which have been fixed by a recorded plat into two (2) parcels, or the division of improved or unimproved land into two (2) or three (3) parcels of land for the purpose of sale or lease. (2474/Reso. 6188)

**LED:** Light Emitting Diode. (5376)

**LOT:** A piece or parcel of land separated from other pieces or parcels by description, as in a subdivision, or on a record survey map or by metes and bounds for purposes of sale, lease, or separate use. (2474/Reso. 6188)

**LOT, CORNER:** A lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five degrees (135°). The front property line of a corner lot shall be the shorter of the two (2) lines adjacent to the streets as originally platted or laid out. Where the lines are equal, the front line shall be that line which is obviously the front by reason of the prevailing customs of the other buildings in the block. If such front is not evident, then either may be considered the front of the lot, but not both. (2474/Reso. 6188)

**LOT, INTERIOR:** A lot having only one (1) side abutting on a street. (2474/Reso. 6188)

**LOT, KEY:** An interior lot, one (1) side of which is contiguous to the rear line of a corner lot. (2474/Reso. 6188)

**LOT, THROUGH:** A lot abutting two (2) parallel or approximately parallel streets. (2474/Reso. 6188)

**LOT, HILLSIDE:** Any lot or portion of a lot where the terrain has a natural slope of fifteen percent (15%) or greater. (2474/Reso. 6188)

**LOT LENGTH:** (2474/Reso. 6188)

(A) If the side property lines are parallel, the length of the lot shall be determined to be the average length of the two (2) sides. (2474/Reso. 6188)

(B) If the side property lines are not parallel, then a line bisecting the angle formed by the two (2) sides between the front and the rear lot lines shall be determined to be the lot length. (2474/Reso. 6188)

**LOT LINES:** Those lines, either straight or curved, that define the front, rear, and sides of a lot, parcel, or tract of land. (2474/Reso. 6188)

**LOT WIDTH:** The width of a lot shall be: (2474/Reso. 6188)
(A) If the side property lines are parallel, the distance between these side lines. (2474/Reso. 6188)

(B) If the side property lines are not parallel, the width of the lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the required front or rear building setback line, whichever is the lesser. The axis of a lot shall be a line generally perpendicular to the fronting street which divides the lot into two (2) equal parts. (2474/Reso. 6188)

**MAG:** Maricopa Association of Governments; voluntary association of local governments formed to address a variety of issues in Maricopa County, including air quality, transportation, and development standards, among others. (2474/Reso. 6188)

**MAXIMUM PILOT LUMEN LEVEL:** The illumination level required by Roadway Lighting ANSI/IES RP-8. (5376)

**MINIMUM PILOT LUMEN LEVEL:** A level not less than thirty-three (33) percent of the illumination levels required by Roadway Lighting ANSI/IES RP-8. (5376, 5473)

**MOBILE HOME SUBDIVISION:** A residential subdivision designed and approved in accordance with City regulations, together with certain accessory buildings and uses providing for the enjoyment and benefit of the residents of the subdivision, in which individual ownership of a lot is permitted for the placement of a mobile home for dwelling or sleeping purposes. (2474/Reso. 6188)

**NATURAL AREA OPEN SPACE (NAOS):** Within the Desert Uplands Area, that open space which consists of undisturbed natural area open space and revegetated open space. NAOS shall contain no more than thirty percent (30%) revegetated open space. NAOS shall be located within common tracts controlled by the homeowners' association, land trust, or similar entity created to preserve the NAOS; or may be located on-lot within designated easements. NAOS shall be identified on the subdivision plat and restricted as necessary to preclude future development. Trails or paths for nonmotorized use, such as hiking, equestrian, or mountain biking are permitted. (4233)

**NEIGHBORHOOD PLAN:** A sketch plan designed by the Department to guide the platting of remaining vacant parcels in a partially built-up neighborhood so as to make reasonable use of all land, coordinate street patterns, and achieve the best possible land use relationships. (2474/Reso. 6188)

**OPEN SPACE:** Any parcel or area of land or water unimproved or improved and set aside, dedicated, designated, or reserved for the public or private use and enjoyment of owners and occupants of land adjoining or neighboring such open space. (2474/Reso. 6188)

**OWNER:** The person or persons holding title by deed to land, holding title as vendees under land contract, or holding any other title of record. (2474/Reso. 6188)

**PARK:** An area dedicated to recreational use and generally characterized by its natural, historic, and landscape features. It is used for both passive and active forms of recreation and is designed to serve the residents and visitors of a neighborhood, community, or city. (2474/Reso. 6188)

**PARKWAY LANDSCAPING:** Landscaping located in the public right-of-way between the street paving and the right-of-way limit line. (2474/Reso. 6188)

**PEAK:** A point of maximum elevation on a major or minor hill as indicated by the USGS topographic maps. (2474/Reso. 6188)
PEDESTRIAN/BICYCLE WAY: A public way dedicated entirely through a block from street to street and/or providing access to a school, park, recreation area, shopping center, etc. (2474/Reso. 6188)

PERCENT SLOPE: See Grade. (2474/Reso. 6188)

PILOT STUDY AREAS: The Desert Uplands Area and the Electric Service Area. (5376)

PILOT STUDY PERIOD: from June 1, 2017 to December 31, 2019. (5376)

PLANNED AREA DEVELOPMENT: An area of a minimum contiguous size, as specified by ordinance, to be planned, developed, operated, and maintained as a single entity containing one (1) or more structures to accommodate commercial, office, or residential uses or combination thereof and appurtenant common areas and other uses incidental to the predominant uses. (2474/Reso. 6188)

PLAT: A map of a subdivision. (2474/Reso. 6188)

PLAT, PRELIMINARY: A preliminary map, including supporting data, indicating a proposed subdivision development, prepared in accordance with Section 9-6-2 of these regulations. (2474/Reso. 6188)

PLAT, FINAL: A final map of all or part of a subdivision providing substantial conformance to an approved preliminary plat, prepared by a registered land surveyor in accordance with Section 9-6-2 of these regulations. (2474/Reso. 6188)

PLAT, RECORDED: A final plat bearing all of the certificates of approval required by and duly recorded in the Maricopa County Recorder’s Office. (2474/Reso. 6188)

PRELIMINARY PLAT APPROVAL: Approval of the preliminary plat by the Board as evidenced in its meeting minutes; constitutes authorization to proceed with the technical review stage of land subdivision. (2474/Reso. 6188)

PRESUBMITTAL CONFERENCE: An initial meeting between subdividers and municipal representatives which affords subdividers the opportunity to present their proposals informally. (4233)

PUBLIC IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, and construction of certain public improvements in the City of Mesa, formulated by the City Engineer, the County Health Department, and other City departments. (2474/Reso. 6188)

PUBLIC OPEN SPACE: An open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, state or county agency, or other public body for recreational or conservational uses. (2474/Reso. 6188)

RETAINING WALL: A wall or terraced combination of walls used solely to retain more than eighteen inches (18") of earth, but not to support or to provide footing for a structure. (2474/Reso. 6188)

RETENTION BASIN: A water collection facility designed to collect storm water runoff and release it at a controlled rate after the storm. A retention basin and park may be joined to serve both recreational needs and as a water collection facility. (2474/Reso. 6188)
REVEGETATED OPEN SPACE: Within the Desert Uplands Area, open space disturbed either before or during development that has been revegetated in the following manner: revegetated with plants from the Preferred Desert Uplands Plant List; revegetated with plants that are the same species mix as the adjacent undisturbed area; and revegetated with plants that are at least equal in size and sufficient in number to be at least the same density as the adjacent undisturbed area. The developer should create provisions for maintaining healthy plants until they are established and shall replace any revegetated plants that die within one (1) year of planting. Subdivision improvements such as storm water retention and detention basins, drainage structures, and utility corridors, may be included in this category if revegetated in the approved manner. Excluded from the revegetated open space are those areas revegetated for the utility exception 9-6-5(H)1(e), driveway exception 9-6-5(H)1(d), and the work access areas 9-6-5(H)1(b). (4233)

REVERSE FRONTAGE: A lot having frontage on two (2) nonintersecting streets. The front of the lot shall be considered facing the interior street. (2474/Reso. 6188)

RIDGE: The defined topographical line connecting a series of major and minor hills, peaks, or mountains. (2474/Reso. 6188)

RIDGE LINE: A ground line located at the highest elevation of the ridge running parallel to the long axis of the ridge. (2474/Reso. 6188)

RIGHT-OF-WAY (ROW), PUBLIC: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public rights-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state or municipal regulations. (2474,4570/Reso. 6188)

RIGHT-OF-WAY IMPROVEMENTS: Construction in the public right-of-way or in public easements, including, but not limited to: streets, alleys, medians, bicycle lanes, curbs and gutters, stormwater facilities, water and sewer lines and services, fire hydrants, gas lines and services, sidewalks, driveways, streetlights, traffic control devices, street name signs, landscaping, underground and overhead utilities as required by the City Engineer. Right-of-way improvements do not include right-of-way land dedications. (4570)

SECRETARY OF THE BOARD: The Secretary of the Board is the Planning Director or his designated representative. (2474/Reso. 6188)

SKETCH PLAN: A preliminary presentation and attendant documentation of a proposed subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification. (2474/Reso. 6188)

SLOPE: See Grade. (2474/Reso. 6188)

STORM WATER DETENTION: Provision for storage of storm water runoff and the controlled release of such runoff during and after a flood or storm. (2474/Reso. 6188)
STORM WATER RETENTION: Provision for storage of storm water runoff during and after a flood or storm and the controlled release of such runoff after a flood or storm. (2474/Reso. 6188)

STREET: Any public street, avenue, boulevard, road, lane, parkway, place, viaduct, easement for access, or other way which is an existing state, county, or municipal roadway; or a street or way shown in a plat heretofore approved pursuant to law or approved by official action; or a street or way in a plat duly filed and recorded in the County Recorder’s Office. A street includes the land between the right-of-way lines, whether improved or unimproved, and may be comprised of pavement shoulders, curbs, gutter, sidewalks, parking areas, and landscape areas. (2474,4570/Reso. 6188)

STREET, ARTERIAL: A general term including section line and major streets and state or county highways providing a system for citywide through traffic movement. (2474/Reso. 6188)

STREET, COLLECTOR: Provides the traffic movement within neighborhoods of the City, between major streets and local streets, and for direct access to abutting property. (2474/Reso. 6188)

STREET, CUL-DE-SAC: A short local street permanently terminated in a vehicular turnaround; provides direct access to a limited number of adjacent properties. (2474/Reso. 6188)

STREET, FRONTAGE: A local street parallel and adjacent to an arterial route which intercepts minor residential streets and controls access to an arterial route. (2474/Reso. 6188)

STREET, HALF: Any street improved to a width of less than thirty-four feet (34’) or with concrete curb and sidewalk on only one side of said street. (2474/Reso. 6188)

STREET, LOCAL: Provides for direct access to residential, commercial, industrial, or other abutting land; primarily for local traffic movements with connections to collector and/or major streets. (2474/Reso. 6188)

STREETLIGHT LUMEN LEVEL: Standard lumen lighting levels of a streetlight required by Roadway Lighting ANSI/IES RP-8. (5376)

SUBDIVIDER: A subdivider shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust, or other legal entity that files the application and initiates proceedings for the subdivision of land in accordance with the provisions of this regulation; said subdivider need not be the owner of the property as defined by this ordinance. (2474/Reso. 6188)

SUBDIVISION: Subdivision or subdivided land means improved or unimproved land or lands divided or proposed to be divided for the purpose of financing or sale, whether immediate or future, into four (4) or more lots, tracts, or parcels of land; or if a new public street is involved, any such property which is divided into two (2) or more lots, tracts, or parcels of land; or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, townhouse, or similar project containing four (4) or more parcels in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon; however, plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided. (2474/Reso. 6188)

TECHNICAL REVIEW: The detailed review of proposed subdivision plats for compliance with City codes, ordinances, engineering development standards, or conditions of approval by the Board, City Council, or Design Review Board. Other utilities and public agencies are invited to review the plat as it relates to their conditions of service or need. (2474/Reso. 6188)
**TECHNICAL REVIEW COMMITTEE:** The selected group of technically qualified individuals made up of City staff and other public agency personnel responsible to insure compliance with ordinances, codes, regulations, etc. as they relate to the subdivision process. (2474/Reso. 6188)

**UNDISTURBED NATURAL AREA OPEN SPACE:** Within the Desert Uplands Area, that open space that is completely undisturbed from its original natural state by any residential development on the site. Any pre-existing damage within such areas, such as old jeep roads, off-road vehicle trails, or dumping sites, shall be restored with plants from the Preferred Desert Uplands Plant List that are the same species mix, that are at least equal in size, and that are sufficient in number to be the same density as the adjacent undisturbed area. Natural features, such as washes, significant rock outcroppings, and concentrations of native vegetation, shall be maintained in their natural state. Trails or paths for nonmotorized use, such as hiking, equestrian, or mountain biking, are permitted. Undisturbed natural areas shall constitute a minimum of seventy percent (70%) of the required natural area open space. This minimum applies to both common tract and on-lot natural area open space. (4233)

**USABLE LOT AREA:** That portion of a lot usable for or adaptable to the normal uses made of residential property, excluding any areas which may be covered by water, excessively steep, or included in certain types of easements. (2474/Reso. 6188)

**U.S.C.&G.S.:** United States Coast and Geodetic Survey. (2474/Reso. 6188)

**YARD:** A minimum required open area adjacent to a lot line to be free from any structure, except as specified in Chapter 13 of the City of Mesa Zoning Ordinance. (2474/Reso. 6188)

**YARD, FRONT:** A yard extending across the front of a lot, parcel, or tract. (2474/Reso. 6188)

**YARD, REAR:** A yard extending across the rear of a lot, parcel, or tract. (2474/Reso. 6188)

**YARD, SIDE:** Any yard that lies between a front and a rear yard. (2474/Reso. 6188)

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**9-6-2: PLATTING PROCEDURES AND REQUIREMENTS:**

(A) Outline of Procedures and Requirements. The preparation, submittal, review, and approval of all subdivision plats located inside the limits of the City of Mesa shall proceed through the following progressive stages: (2474/Reso. 6188)

- Stage I - Preapplication Conference (2474/Reso. 6188)
- Stage II - Preliminary Plat Approval (2474/Reso. 6188)
- Stage III - Subdivision Technical Review (2474/Reso. 6188)
- Stage IV - Final Plat (2474/Reso. 6188)

This procedure may be modified by the Planning Director based on unique circumstances. (2474/Reso. 6188)

(B) Stage I - Preapplication Conference. (2474/Reso. 6188)
1. Actions by the Subdivider. (2474,4570/Reso. 6188)

   (a) The subdivider shall meet with Development Services Department staff and submit five (5) copies of the proposed "sketch plan" with general information regarding land use, street and lot arrangement, tentative lot sizes, and such additional information as may be required by staff in order to complete the submittal. (2474,4570/Reso. 6188)

   (b) Tentative proposals shall be based on information from the Engineering Division or other appropriate agencies regarding water supply, sewage disposal, drainage, retention, and street improvements. Where methods may be considered unconventional or private, these may be indicated by notes. (2474,4570/Reso. 6188)

2. Actions by the Department. The Department shall discuss the proposal with the subdivider in general terms, advising the subdivider of the procedural steps, design and improvement standards, and general plat requirements. Depending on the scope of the proposed development, the Department shall distribute the five (5) "sketch plans" to the following agencies, requesting that the following investigations be made: (2474/Reso. 6188)

   (a) Mesa Development Services Department. To check the existing zoning of the tract and to make recommendations if a zoning change is necessary or desirable; to review the proposal and its relationship to adjacent land uses; to determine the need for the preparation and review of a Development Master Plan (DMP) prior to the subsequent consideration of a preliminary plat; and to advise the subdivider if a Development Master Plan is required as per Mesa's Zoning Ordinance. (2474/Reso. 6188,3766)

   (b) Mesa Community Services Department. To determine the degree of parks and other public open space requirements for the area; to then determine what space needs shall be reserved or set aside with any special requirements for such site; to determine how such space needs are to be acquired; and to request a meeting with the applicant to resolve potential acquisition. (2474,4570/Reso. 6188,3766)

   (c) Public School District. To determine the degree of need for school sites for the area; to determine site size and location; and to request a meeting with the applicant to resolve potential acquisition. (2474/Reso. 6188)

   (d) Mesa Engineering Division. To review relationship of property to major streets, utility systems, and any unusual characteristics such as topography, flooding, landscaping, etc. To determine street width and right-of-way requirements, driveway relationships, minimum curve requirements, and other traffic-control related characteristics. (2474/Reso. 6188)

3. Development Master Plan. The Department shall use the following guidelines in establishing the need for a Development Master Plan (DMP): Whether the tract is sufficiently large to comprise an entire neighborhood; whether the tract initially proposed for platting is only a portion of a larger landholding of the subdivider; or whether the tract is a part of a larger land area, the development of which is complicated by unusual topographic, utility, land use, land ownership, or other conditions. The entire land area considered in determining the need for a Development Master Plan need not be under the subdivider's control or ownership (see Figure 2). (2474/Reso. 6188)
(a) Preparation. The DMP shall be prepared to a degree of scale and accuracy commensurate with its purpose and shall include: (2474/Reso. 6188)

i. General street pattern with particular attention to collector streets and future circulation throughout the neighborhood and adjacent areas. (2474/Reso. 6188)

ii. General location and size of school sites, parks, or other public areas. (2474/Reso. 6188)

iii. Location and sizes of various proposed land uses. (2474/Reso. 6188)

iv. Methods proposed for sewage disposal, water supply, and storm drainage. (2474/Reso. 6188)

(b) Approval. Upon acceptance of the general design approach by the Department, the DMP is submitted to the Board and City Council for their consideration. If general approval is given, notice to that effect shall be recorded in the minutes of both bodies and a copy of said decision transmitted to the subdivider for his records. If development is to take place in several phases, the DMP shall be submitted as supporting data for each part. The DMP shall be kept up to date and amended by the subdivider to reflect the Board’s approvals or modifications as they occur. (2474/Reso. 6188)

(C) Stage II - Preliminary Plat Approval. The preliminary plat stage of land subdivision involves detailed subdivision planning, including the submittal, review, and approval of the preliminary plat. The subdivider shall provide the Department with all information essential to determine the character and general acceptability of the proposed development. (2474/Reso. 6188)

1. Zoning. The subdivision shall be designed to meet the specific requirements of the zoning district within which it is located. However, in the event that rezoning is deemed necessary, such as in the case of a PAD or a Specific Site Plan approval for office, commercial, or industrial developments, the rezoning or Specific Site Plan approval shall be initiated by the property owner or his authorized agent and heard and considered by the Board, the Design Review Board (DRB), if applicable, and City Council. In any event, any change in zoning or site plan approval required in relation to the preliminary plat shall have been approved by the Board prior to approval of the preliminary plat by the Board. However, the zoning request and the request for preliminary plat approval may be heard simultaneously. The Department shall not proceed with processing of the preliminary plat for technical review prior to Board action on the preliminary plat unless approved by the Planning Director. (2474/Reso. 6188)

2. Sanitary Sewerage and Water Supply. As a prerequisite of preliminary plat approval, the subdivider shall review tentative concepts with the County Health Department and the City Engineering Division for general approval of the preliminary design to be used. (2474/Reso. 6188)

3. Preliminary Plat Submission. (2474/Reso. 6188)

(a) Two (2) full-sized, twenty-four-inch by thirty-six-inch (24” x 36") blue or black line paper prints of the preliminary plat, one (1) eight and one-half-inch by eleven-inch (8.5” x 11”) transparency, and one (1) eight and one-half-inch by eleven-inch (8.5” x 11”) PMT shall be filed with the Department not less than twenty-four (24) days prior to the Board meeting at which the plat will be considered. (Note: The submittal requirements given herein pertain only to those plats of a conventional nature for which rezoning is not a condition of approval. Consult with the Department staff for complete submittal time requirements and procedures for those subdivisions involving rezoning, PADs, Specific Site Plans, and DMPs.) (2474/Reso. 6188)
(b) The submittal shall be checked by the Department for content. If incomplete, the subdivider will be notified and given the opportunity to comply within five (5) days. If compliance has not been met, the submittal is rejected. (2474/Reso. 6188)

(c) Filing Fee. The filing fee for plats not involving rezoning, site plan approval, site plan modification, and DMP approval. Refer to Chapter 18 of the Zoning Ordinance (Title 11 of the Mesa City Code) for fees involving these processes. (2474,4497,4570/Reso.6188,3818, 4294)

4. Preliminary Plat Approval. (2474/Reso. 6188)

(a) The Board shall consider the preliminary plat and the Department recommendations. If satisfied that all objectives and requirements of this Section have been met, the Board may approve the preliminary plat and the Secretary of the Board shall stamp a notation of approval on the copy retained in the permanent Board file. (2474/Reso. 6188)

(b) If the plat is generally acceptable but requires minor revision before proceeding with the technical review step, the Board may grant conditional approval, and the required revisions will be noted in the minutes of the meeting. At the direction of the Board, the plat may be given approval subject to the revisions in accordance with the stated conditions and reviewed by the Department. (2474/Reso. 6188)

(c) If the Board finds that the plat requires major revision or if a plat is rejected, the application for preliminary plat approval may be continued pending revision or resubmittal for the same tract or any part thereof and shall follow the aforementioned procedure. (2474/Reso. 6188)

5. Significance of Preliminary Approval. Preliminary approval constitutes authorization for the subdivider to proceed with submittal to the Technical Review Committee, prior to preparation of the final plat and the engineering plans and specifications for public improvements. Preliminary approval is based on the following terms: (2474/Reso. 6188)

(a) Subject to the Basic Approval. The basic conditions under which preliminary approval of the Preliminary Plat is granted will not be substantially changed prior to the expiration date. (2474/Reso. 6188)

(b) Twelve- (12-) Month Approval with Extensions. Approval is valid for a period of twelve (12) months from the date of Board approval. Requests can be made for one- (1-) year extensions up to a total of not more than three (3) years from the original date of approval. Extensions of the preliminary plat approval may be granted by the Board upon receipt of a letter from the subdivider prior to the expiration date. (2474/Reso. 6188)

(c) Not Authority to Record. Preliminary approval, in itself, does not assure final approval of the plat nor continuation of the existing zoning requirements for the tract or its environs, nor does it constitute authorization to record the plat. (2474/Reso. 6188)
1. Submittal Requirements. The following information is required as part of the technical review submittal and shall be shown graphically, by note or by letter, and may comprise several sheets showing various elements of the required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, adjusted to produce an overall drawing of twenty-four inches by thirty-six inches (24" x 36") and in conformance with requirements contained in the Engineering Procedure Manual. (2474/Reso. 6188)

(a) The applicant may use more than one (1) sheet if necessary, using one (1) of the standard engineering scales. In cases of multiple residence PADs, the scale shall be not less than one inch (1") = forty feet (40'), providing sufficient detail to illustrate the subdivider’s intent. (2474/Reso. 6188)

(b) Required copies of the approved site plan and elevations accompanying the submittal shall also comply with the maximum sheet size of twenty-four inches by thirty-six inches (24" x 36"). (2474/Reso. 6188)

2. Twenty (20) copies/sets of the approved preliminary plat are required. In cases of PADs (residential, office, commercial, or industrial) or whenever a DMP or site plan has been reviewed and approved by the Board, the Design Review Board (DRB) and City Council, twenty (20) copies of the approved site plan, typical floor plans, and elevations shall be submitted. (2474/Reso. 6188)

3. Identification and Descriptive Data. (2474/Reso. 6188)

(a) The proposed subdivision name shall be clearly indicated, including the location by section, township, and range with reference by dimension and bearing to a quarter section corner. The proposed subdivision name shall not duplicate any other recorded plat name within Maricopa County. The subdivision name should be carefully considered as it will become a part of the public record once a preliminary plat has been submitted. (2474/Reso. 6188)

(b) Subdivider/developer’s firm name, address, phone-number, and name of person to contact. (2474/Reso. 6188)

(c) Engineering, surveying, land planning, or architectural firm name, address, and phone-number and the name and title of person to contact. (2474/Reso. 6188)

(d) Scale, north arrow (pointing up or to the right), and date of preparation, including any subsequent revision dates. (2474/Reso. 6188)

(e) Location map with reference to main arterial streets. (2474/Reso. 6188)

4. Existing Conditions and Data. All subdivision submittals shall provide the following existing information by graphic representation or note: (2474/Reso. 6188)

(a) Topography by contours and spot elevations as related to U.S.C.&G.S. datum or approved equal. All datum shall be referenced to City datum. Contour intervals shall be shown on the same map as the subdivision layout and shall adequately reflect character and drainage patterns of the land. Spot elevations properly referenced to the above datum may suffice for sites of less than five (5) acres. (2474/Reso. 6188)
(b) Location of fences, existing structures, wells, wind machines, ditches (open or covered), washes, trees, and all other features or characteristics that could have a bearing on the review. (2474/Reso. 6188)

(c) Location, frequency, and extent of areas subject to flooding or storm runoff must be defined. (2474/Reso. 6188)

(d) Location, right-of-way, and names of all platted streets, railroads, and utility rights-of-way of public record which may exist around the perimeter of the site boundaries, through or across it. Show any permanent structures that are to remain, including water wells and municipal or private utility lines within or adjacent to the tract or subdivision. Show all driveways, streets, and median openings within three hundred twenty-five feet (325') of any proposed driveway or street intersection on the opposite side of the perimeter streets. (2474/Reso. 6188)

(e) Name, book, and page number of any recorded subdivision adjacent to or having common boundaries with this plat. (2474/Reso. 6188)

(f) Base zone of the subject and adjacent tract, the zoning case number (e.g., Z90-1), the Design Review Board case number, and any variances that may have been approved by the Board. (2474/Reso. 6188)

(g) Gross acreage of subject tract. Do not include previously dedicated rights-of-way in this figure. (2474/Reso. 6188)

(h) Boundaries and dimensions of the tract to be subdivided shall be fully dimensioned. (2474/Reso. 6188)

5. Proposed Conditions and Data. All subdivision submittals shall provide the following proposed information by graphic representation or note: (2474/Reso. 6188)

(a) Layout of proposed streets and alleys, giving widths, preliminary curve data, curve lengths, and proposed street names based on existing projected alignments wherever possible. (2474/Reso. 6188)

(b) Typical lot dimensions, dimensions of all corner lots, lots on curvilinear sections of streets, and all lots where the number of sides exceed four (4). Number each lot individually and give the total number of lots. Where plats will consist of a number of units/phases, utilizing the same subdivision name, the lot numbering shall be consecutive through the total number of lots in all units. (2474/Reso. 6188)

(c) Designation of all land to be dedicated or reserved for a park, retention basin, school, well site, substation, sewer lift station, reservoir, water pump station, or other public or private uses. (2474/Reso. 6188)

(d) If multiple uses are planned (multiple residential, commercial, industrial, office), such areas shall be clearly designated, together with existing zones and proposed zoning changes, if any. (2474/Reso. 6188)

(e) Building Setback Lines for a Typical Lot. Where there are lots with more than four (4) sides or whose shape may be considered atypical, show all setbacks. (2474/Reso. 6188)


(a) Show method of sewage disposal (a statement as to the type of facilities shall appear on the preliminary plat). Also show the preliminary sewer layout indicating line sizes with invert elevations, manhole locations, cleanouts, slopes, and depths. (2474/Reso. 6188)
(b) The preliminary layout of the water system shall be shown, indicating fire hydrants, valves, meter vaults, water line sizes, and locations. (2474/Reso. 6188)

7. Proposed Drainage and Grading Concepts. (2474/Reso. 6188)

(a) Preliminary calculations and layout of the proposed storm drainage system based on a one-hundred (100-) year storm of two (2) hours' duration. Design shall be such that water from streets, lots, and alleys shall be retained on-site until the peak of the storm passes. Two (2) sets of calculations shall be submitted at the time of technical review for analysis by the Building Safety Division and review by the Flood Control District. Calculations shall be typed on separate letter-sized sheets with any necessary maps attached. (2474,4570/Reso. 6188)

(b) The site cannot be cut or filled in excess of two feet (2') adjacent to any street, canal, or adjoining site, etc. unless otherwise approved. (2474/Reso. 6188)

8. Filing Fee. The subdivider shall, at the time of filing, pay to the Department a filing fee as prescribed in the most recent Mesa Schedule of Fees and Charges. The filing fee shall also cover filing of an amended or revised preliminary plat handled as the same case. If preliminary plat approval expires prior to application for final approval, the plat shall be resubmitted for preliminary plat approval as a new case and the subdivider shall be required to pay a new fee. (3911,4076,4294,4497,4570)

(E) Stage IV - Final Plat. This stage includes the final design of the subdivision, engineering of public improvements, and submittal by the subdivider of improvement plans to the City Engineer or the Building Safety Division for approval, including the submittal of the final plat for review and action by the City Council. (2474,4570/Reso. 6188)

1. Final Plat Preparation. The final plat shall be prepared in accordance with requirements set forth in this Section and shall conform to the approved preliminary plat. (2474/Reso. 6188)

2. Zoning. Zoning of the tract shall permit the proposed use. Any rezoning necessary shall have been adopted by the Council prior to filing of the final plat. (2474/Reso. 6188)

3. Prefinal Review. The subdivider shall file with the Development Services Department two (2) full-size twenty-four-inch by thirty-six-inch (24" x 36") blue or black line copies of the final plat for conventional subdivisions and three (3) copies for PADs and commercial, office, and industrial centers, together with a letter of transmittal, indicating "prefinal review requested." This review can take place anytime following the technical review stage. The Department, upon receipt of the prefinal plat submittal, shall review the plat for conformity to the approved preliminary plat, transferring the second copy to the Building Safety Division for their review and approval for conformance to requirements of the Subdivision Regulations, Technical Review Committee requirements, and the engineering plans. (2474,4570/Reso. 6188,3766)
(a) Discrepancies, errors, and omissions are noted on the prefinal copies and returned to the subdivider or his representative for correction. When corrections are minor, the Department shall give notification of the next City Council meeting date and its associated cutoff date. When corrections or discrepancies are of major importance or of a significant nature, the Department staff may require a second review prior to scheduling the plat for Council action. (2474/Reso. 6188)

(b) The subdivider shall make all required corrections prior to submitting for Council action. The submittal shall include one (1) eight and one-half-inch by eleven-inch (8.5" x 11") PMT of all sheets in the set and one (1) full-sized, twenty-four-inch by thirty-six-inch (24" x 36") set of blue or black line paper prints to the Department, along with a letter of transmittal requesting to be scheduled for Council approval. (2474/Reso. 6188)

(F) Information Required for Final Plat Submittal. (2474/Reso. 6188)

1. Method and Medium of Presentation. The final plat shall be drawn in ink on linen, polyester ("mylar"), or other approved material, measuring twenty-four inches by thirty-six inches (24" x 36") with a left-hand margin of two inches (2") and be drawn to an accurate engineering scale from an accurate survey. In no case shall the scale exceed two hundred feet (200') to the inch. (2474/Reso. 6188)

2. Identification Data Required. (2474/Reso. 6188)

(a) A title which includes the name of the subdivision and its location by number of section, township, range, and county. (2474/Reso. 6188)

(b) Name, address, and registration number of the seal of the registered land surveyor preparing the plat. (2474/Reso. 6188)

(c) Scale, north arrow, and date of plat preparation. (2474/Reso. 6188)

3. Survey Data Required. (2474/Reso. 6188)

(a) Boundaries of the tract to be subdivided shall be fully balanced and closed, showing all bearings, distances, and mathematical calculations, determined by an accurate survey in the field. The surveyor/engineer of record shall also provide a copy of the computer closure, properly stamped and signed showing registration number. All dimensions shall be expressed in feet and decimals thereof. (2474/Reso. 6188)

(b) Any excepted parcel(s) within the plat boundaries shall show all bearings and distances, determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof. (2474/Reso. 6188)

(c) Location and description of cardinal points to which all dimensions, angles, bearings, and similar data on the plat shall be referenced. Each of two (2) corners of the subdivision traverse shall be tied by course and distance to separate section or quarter section corners. (2474/Reso. 6188)

(d) Location of all physical encroachments upon the boundaries or the tract. (2474/Reso. 6188)
4. Descriptive Data Required. (2474/Reso. 6188)

(a) Name, right-of-way lines, courses, lengths, and width of all public streets, alleys, pedestrian ways, and utility easements; radii, points of tangency, curve lengths, and central angles of all curvilinear streets, alleys, and intersection corners. (2474/Reso. 6188)

(b) All drainageways, earth fissures, or other natural features shall be shown on the plat. The rights-of-way of all major drainageways shall be dedicated drainage easements or rights-of-way as determined by the Engineering Division. (2474,4570/Reso. 6188)

(c) All easements for right-of-way provided for public services or utilities and any limitations of the easements. The following notations shall be placed on all final plats: "Construction within easements, except by public agencies and utility companies, shall be limited to utilities and wood, wire, or removable section-type fencing." (2474/Reso. 6188)

(d) Location, dimensions, and square footage of all lots. (2474/Reso. 6188)

i. All residential lots shall be numbered by consecutive numbers throughout the plat. "Exceptions," "tracts," and "common open space" shall be so designated, lettered, or named and clearly dimensioned. Ownership and maintenance responsibility for common open space areas shall be indicated on the plat. (2474/Reso. 6188)

ii. Location, dimensions, bearings, radii, arcs, and central angles of all sites to be dedicated to the City with the use clearly indicated. (2474/Reso. 6188)

iii. Location of all adjoining subdivisions with date, book, and page number of recordation noted, or if unrecorded or unsubdivided, so noted. (2474/Reso. 6188)

iv. Any deed restrictions or restrictive covenants required or to be imposed upon the plat or any part or parts thereof pertaining to the intended use of the land shall be submitted as a part of the total recording submittal. (2474/Reso. 6188)

5. Dedication and Acknowledgment. (2474/Reso. 6188)

(a) Where rights-of-way are required to be dedicated under the provisions of Section 9-8-3(D), they shall be made prior to the issuance of a building permit or rights-of-way permit or pursuant to the recording of a subdivision plat. (3105)
(b) Dedication. Statement of dedication of all streets, alleys, drainage retention basins and drainage ways, pedestrian/bicycle ways, and easements for public use, including sanitation, fire, and other emergency-related vehicles, executed by the person holding title of record, by persons holding titles as vendees under land contract, by spouse of said parties, lienholders, and all other parties having an interest in the property. If lands dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall include a written location by section, township, and range of the tract. If the plat contains private streets, the public easement which shall be reserved shall include the right to install and maintain utilities in the private street, including refuse collections, fire, and other emergency services. (2474/Reso. 6188,3105)

(c) Acknowledgment of Dedication. Execution of dedication acknowledged and certified by a notary public. (2474/Reso. 6188,3105)

6. Required Certification. (2474/Reso. 6188)

(a) Certification by the registered land surveyor preparing the plat that the plat is correct and accurate and that the monuments described in it have either been set or located as described. All maps shall contain the seal of a registered land surveyor, as per Arizona Revised Statutes (ARS). (2474/Reso. 6188)

(b) Certification by the City Engineer of plat approval and that the plat lies within the domestic water service area of the City of Mesa, designated as having an assured water supply in accordance with Arizona Revised Statutes, and that all engineering conditions and requirements have been complied with. In cases of private water companies, the owner of the private water company shall sign the assured water supply statement. (2474/Reso. 6188)

(c) Certification by the City Clerk of the date the map was approved by the Council. When the certificate of approval by the Council has been transcribed on the plat, the Engineering Department shall retain the recording copy until the City Engineer certifies that the subdivision has an assured water supply; has been staked; that the engineering plans have been approved; that computer closure of the plat has been received; for residential subdivisions that the off-site letter of assurance or such other security as may be appropriate, along with the Engineer’s estimated cost of said improvements, has been received; and that any drainage or other restrictive covenants have been signed, notarized, and received from the subdivider. (2474,2890,4570)

(d) The City shall then cause the final plat to be recorded in the office of the County Recorder. (2474/Reso. 6188)

(e) Certificate of recordation by the County Recorder is caused to be placed on the recording copies and filed in the office of the County Recorder. (Copies with book and page number can be requested by the subdivider for the County’s standard fee.) (2474/Reso. 6188)

7. Applications for preliminary plats (Subdivision Technical Review) and final plats shall be made in the office of the Development Services Department on a form provided therefore and shall be accompanied by a fee as prescribed in the most recent Mesa Schedule of Fees and Charges. (2765,3766,4570)

The filing fee shall also cover filing of an amended or revised preliminary plat handled as the same case. If preliminary plat approval expires prior to application for final approval, the plat shall be resubmitted for preliminary plat approval as a new case and the subdivider shall be required to pay a new fee. (2765,3766)
9-6-3: SUBDIVISION DESIGN PRINCIPLES AND STANDARDS:

(A) Introduction. Every subdivision shall conform to the requirements and objectives of the General Plan, to the Zoning Ordinance, to other ordinances and regulations of the City, to the Arizona Revised Statutes, and to the Engineering Procedure Manual. (2474/Reso. 6188)

1. Where the tract to be subdivided contains all or any part of the site of a park, school, flood control facility, or other public area as shown on the General Plan or as recommended by the Board, such site should be dedicated to the City or reserved for acquisition by the City within a specified period of time. An agreement should be reached between the subdivider and the appropriate public agency regarding time, method, and cost of such acquisition. (2474/Reso. 6188)

2. Land which is subject to periodic flooding, land which cannot be properly drained, or other land which, in the opinion of the Board, is unsuitable for residential use shall not be subdivided; except that the Board may approve subdivision of such land upon receipt of evidence from the Maricopa County Flood Control District, Maricopa County Health Department and/or the City Engineer that the construction of specific improvements can be expected to render the land suitable; thereafter, construction upon such land shall be prohibited until the specified improvements have been planned and construction guaranteed. (2474,4570/Reso. 6188)

3. Subdivisions shall conform to the requirements of dedications as set forth in 9-8-3(F) rights-of-way dedication table of the Mesa City Code. (4570)

(B) Street Location and Arrangement. (2474/Reso. 6188)

1. Street layout shall provide for the continuation of such streets as the Department may designate. (2474/Reso. 6188)

2. Whenever a tract to be subdivided is located within an area for which a "neighborhood plan" has been approved, the boundaries of the subdivision shall be adjusted, where possible, to avoid the necessity for half-streets while maintaining substantial conformance to said plan. (2474/Reso. 6188)

3. Certain proposed streets, as designated by the Department, shall be extended to the tract boundary to provide future connection with adjoining unplatted lands. (2474/Reso. 6188)

4. Local streets shall be so arranged as to discourage their use by through traffic. (2474/Reso. 6188)

5. Where a proposed subdivision abuts or contains an existing or proposed arterial route, freeway, or expressway, the Board may require frontage streets or reverse frontage with nonaccess easements along the arterial route, freeway, or expressway or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high-volume traffic and to preserve the traffic function of the arterial route, freeway, or expressway. (2474/Reso. 6188)

6. Where a subdivision abuts or contains the right-of-way of a railroad, a limited access highway, or an irrigation canal or abuts a commercial or industrial land use, the subdivider may be required to locate a street approximately parallel to and on each side of such right-of-way at a distance suitable for appropriate use of the intervening land. Such distance shall be determined with due regard for approach grades, drainage, bridges, or future grade separations. (2474/Reso. 6188)
7. Streets shall be so arranged in relation to existing topography as to produce desirable lots of maximum utility, streets of reasonable gradient, and the facilitation of adequate drainage. (2474/Reso. 6188)

8. Alleys are not required in residential subdivisions, except that the Board may require that they be dedicated in certain situations to complete existing patterns or to serve as secondary access to adjacent properties. Alleys may be required in commercial and industrial subdivisions as approved by the Board. (2474/Reso. 6188)

9. Half-streets shall be avoided except where necessary to provide right-of-way required to complete a street pattern already begun. Where it is necessary to develop a half-street, additional right-of-way and street improvements may be required. Where there exists a platted half-street abutting the tract to be subdivided, the remaining half shall be platted within the tract. (2474/Reso. 6188)

10. Where private streets are approved, statements shall be contained on the plat and in both the deed restrictions and the homeowners’ association by-laws that those streets are declared private, subject to an easement authorizing use by emergency and public service vehicles, and remain the permanent responsibility of the homeowners' association. (2474/Reso. 6188)

(C) Street Design. (2474/Reso. 6188)

1. The design of streets and alleys shall conform to standards established by the City. (2474/Reso. 6188)

(a) Cul-de-sac streets shall terminate in a circular right-of-way, fifty feet (50') in radius, with an improved traffic turning circle forty-two feet (42') in radius (see Figure 3). The staff may approve an equally effective form of space where extreme or special conditions justify (see Figure 22). (2474/Reso. 6188)

(b) Maximum length of cul-de-sac streets: Four hundred feet (400') measured from the intersection of right-of-way lines to the extreme depth of the turning circle along the street centerline. Exceptions may be made by the Traffic Engineer and the City Engineer where topography, adjacent platting, or other unusual conditions justify (see Figure 3). No exception shall be made merely because the tract has restrictive boundary dimensions wherein provisions should be made for extension of the street pattern to the adjoining unplatted parcel and a temporary turnaround installed (see Figure 22). (2474/Reso. 6188)

(c) Alley intersection and sharp changes in alignment shall be avoided, but where necessary, corners shall be cut off twenty-five feet (25') on each side to permit safe vehicular movement, except a greater distance shall be provided where specified by the City Engineer (see Figure 11). Dead-end alleys are prohibited. (2474/Reso. 6188)

2. Grades. (2474/Reso. 6188)

(a) Maximum. (2474/Reso. 6188)

Arterial routes: As determined by the City Engineer. (2474/Reso. 6188)
Collector Streets: Seven percent (7%). (2474/Reso. 6188)
Local Streets: Nine percent (9%) (up to fifteen percent (15%) in Desert Uplands; see Section 9-6-5). (2474/Reso. 6188)
(b) Minimum grade for all streets shall be two-tenths percent (0.20%). (2474/Reso. 6188)

(c) Exceptions. Where rigid adherence to these standards causes unreasonable or unwarranted hardship in design or cost without commensurate public benefit, exceptions may be made by the City Engineer. (2474/Reso. 6188)

3. Vertical Curves. (2474/Reso. 6188)

(a) Arterial Streets. As determined by the City Engineer. (2474/Reso. 6188)

(b) Collector and Local Streets. Minimum length one hundred feet (100'), except in cases approved by the City Engineer. (2474/Reso. 6188)

4. Horizontal Alignment. (2474/Reso. 6188)

(a) When tangent centerlines deflect from each other more than one degree (1°) and less than ninety degrees (90°), they shall be connected by a curve with a minimum centerline radius of three hundred feet (300') and a minimum centerline length of curve of one hundred feet (100') for local streets (see Figure 6). When tangent centerlines on arterial and collector streets deflect from each other more than one degree (1°) and less than ninety degrees (90°), they shall be connected by a curve with a minimum centerline length of curve based on the data in the Curve Table (see next page). (2474/Reso. 6188)
(b) A tangent is not required between reverse curves on a local street. Between reverse curves on collector and arterial streets, refer to the Curve Table of this Section. (2474/Reso. 6188)

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**CURVE TABLE**

<table>
<thead>
<tr>
<th>Street Type (Width)</th>
<th>Right-of-Way (Feet)</th>
<th>Design Speed (MPH)</th>
<th>Radius (Feet)</th>
<th>Length (Feet)</th>
<th>Reverse Curve Tangent (1)</th>
<th>Intersection Tangent (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Residential</td>
<td>34'</td>
<td>50'</td>
<td>30'</td>
<td>100'</td>
<td>0 if local street</td>
<td>200' min. (3)</td>
</tr>
<tr>
<td>Collector</td>
<td>34'</td>
<td>80'</td>
<td>30'</td>
<td>100'</td>
<td>100'</td>
<td>200'</td>
</tr>
<tr>
<td></td>
<td>40'</td>
<td>80'</td>
<td>40'</td>
<td>300'</td>
<td>200'</td>
<td>300'</td>
</tr>
<tr>
<td></td>
<td>46'</td>
<td>80'</td>
<td>50'</td>
<td>500'</td>
<td>200'</td>
<td>375'</td>
</tr>
<tr>
<td>Major Collector</td>
<td>64'</td>
<td>110'</td>
<td>50'</td>
<td>1,432'</td>
<td>200'</td>
<td>475'</td>
</tr>
<tr>
<td>Local Industrial</td>
<td>40' &amp; 46'</td>
<td>80'</td>
<td>40'</td>
<td>800'</td>
<td>200'</td>
<td>300'</td>
</tr>
<tr>
<td>Arterial</td>
<td>68'</td>
<td>130'</td>
<td>60'</td>
<td>1,432'</td>
<td>200'</td>
<td>475'</td>
</tr>
<tr>
<td></td>
<td>68'</td>
<td>130'</td>
<td>50'</td>
<td>1,432'</td>
<td>200'</td>
<td>475'</td>
</tr>
<tr>
<td></td>
<td>94'</td>
<td>130'</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTES:

(1) Minimum length of tangent between curves in opposite directions (reverse curves). Reverse curves without tangent sections between the curves are not permitted, except on local streets.

(2) Minimum length of a tangent at an intersection is measured from the right-of-way line of the intersecting street. Tangents approaching an intersection may vary in length with increased design speed.

(3) Four hundred-foot (400') radius permitted on terminating street at "Tee" intersection only.

Special conditions may warrant the use of other variables subject to review and special approval by the Traffic Engineer and City Engineer.

(c) Streets intersecting an arterial street shall do so at an angle of ninety degrees (90°). Intersections of other streets shall not vary from ninety degrees (90°) unless otherwise approved by the Traffic Engineer and City Engineer. (2474/Reso. 6188)

(d) Street jogs with centerline offsets shall be not less than one hundred twenty-five feet (125') on local and forty-foot (40'-) wide collector streets. On all other collector streets, offsets shall be not less than two hundred fifty feet (250'). On arterial streets, offsets shall be not less than three hundred twenty-five feet (325'), unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 7). (2474/Reso. 6188)
(e) Local street intersections with four (4) legs and all collector and arterial street intersections shall be
designed to comply with the curve and tangent section requirements given in the Curve Table of this
Section, unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 6). (2474/Reso.
6188)

(f) Local streets intersecting any street shall have a tangent section of centerline at least two hundred feet
(200') in length measured from the right-of-way line of the intersecting street; except that no such tangent
is required when the local street curve has a centerline radius of four hundred feet (400') or greater and is
the terminating street at a "tee" intersection, with the center located on the intersecting street right-of-way
line. Where topographic conditions make necessary other treatment to secure the best overall design, these
standards may be modified by the Traffic Engineer and City Engineer (see Figure 6). (2474/Reso. 6188)

(g) Street intersections with more than four (4) legs and Y-type intersections where legs meet at acute angles
shall be prohibited. Intersections on the inside of a horizontal curve on arterial, collector, or local streets
shall be avoided, unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 9).
(2474/Reso. 6188)

(h) At all street intersections, property line corners shall be rounded by a circular arc, said arc having a
minimum radius of fifteen feet (15') or by a cutoff whose tangent lengths would be equal to those of a
rounded corner (see Figure 5). (2474/Reso. 6188)

(i) All street intersections shall be designed to meet minimum sight distance visibility requirements (refer to
Engineering Procedure Manual for specific requirements). (2474, 5395/Reso. 6188)

5. Private Streets. Private streets shall conform to the above-stated design standards. Where site conditions
necessitate unique design solutions, modifications may be approved by the City Engineer. (2474/Reso. 6188)

6. Half-streets. Half-streets shall conform to the above-stated design standards. They shall, however, be a
minimum of twenty-four feet (24') wide measured from the face of the curb to the edge of the asphaltic
pavement. Additional right-of-way in excess of that normally required for one-half (1/2) of a street of that
classification may be required as determined by the Traffic Engineer and City Engineer. (2474/Reso. 6188)

(D) Block Design. (2474/Reso. 6188)

1. The maximum length of blocks measured along the centerline of the street and between intersecting street
centerlines is one thousand five hundred feet (1,500'); except that in a development with lot areas averaging
one-half (1/2) acre or more or where conditions warrant, this maximum may be exceeded by five hundred feet
(500'). Blocks shall be as long as reasonably possible under the circumstances within the above maximums in
order to achieve depth and possible street economy and to reduce the expense and safety hazard arising from
excessive street intersections (see Figure 10). (2474/Reso. 6188)
2. Pedestrian/Bicycle ways: Pedestrian/bicycle ways with right-of-way widths of ten to twelve feet (10'-12') may be required where essential for circulation or access to schools, playgrounds, shopping centers, and transportation and other community facilities. Pedestrian/bicycle ways may also be used for utility and drainage purposes if so noted on the plat and approved by the Engineering Division (see Figure 11). (2474,4570/Reso. 6188)

(E) Lot Planning. (2474/Reso. 6188)

1. Lot width, depth, and area shall comply with the minimum requirements of the Zoning Ordinance and shall be appropriate for the location and character of development proposed and for the type and extent of street and utility improvements being installed. In general, urban densities must have urban street and utility improvements. The term "urban improvements" is interpreted to mean paved and curbed streets, sidewalks, local storm drainage system, public water supply, fire protection, streetlights, and public sanitary sewerage. Where steep topography, unusual soil conditions, drainage problems, abrupt changes in land use, or heavy traffic on adjacent streets prevail, the Board may make special lot width, depth, and area requirements which exceed the minimum requirements of the particular zoning district. (2474/Reso. 6188)

2. Lot depths should be at least ninety-four feet (94') and the depth-to-width ratio of the usable area of the lot not greater than three to one (3:1) (see Figure 12). (2474/Reso. 6188)

3. Side lot lines shall be substantially at right angles or radial to street lines except where other treatment may be justified in the opinion of the Board (see Figure 13). (2474/Reso. 6188)

4. All lots shall have frontage as required by the appropriate zoning district on a fully dedicated public street unless otherwise approved. (2474/Reso. 6188)

5. Single residential lots on curvilinear streets shall have rear lot lines consisting of a series of straight lines with points of deflection occurring only at the junction of side and rear lot lines unless otherwise approved. Curvilinear rear lot lines with a minimum radius of eight hundred feet (800') will be permitted (see Figure 14). (2474/Reso. 6188)

6. The street side rear corner of corner lots adjacent to "key" lots shall be angled to provide a ten-foot by ten-foot (10' x 10') cutoff (see Figure 14). (2474/Reso. 6188)

7. Single residential lots extending through the block and having frontage on two (2) parallel local streets are not permitted. Backing of the lots to collector streets shall be avoided except where necessary in the opinion of the Board to provide for separation of residential development from the collector street; or where expressly permitted in accordance with Subsection (B)6 of this Section (see Figure 15). (2474/Reso. 6188)

(F) Easement Planning. (2474/Reso. 6188)

1. Easements for utilities shall be provided as follows: (2474/Reso. 6188)

   (a) Along both sides of all local streets, minimum eight foot- (8'-) wide public utility and facilities easements ("PUFEs") shall be provided; along arterial, collector, and other major thoroughfares, widths shall be as determined by the Technical Review Committee. (2474,4570/Reso. 6188)

   (b) In Planned Area Developments (PADs), commercial and industrial centers, and other similarly developed projects, easement location and widths other than those along public streets will be determined by the Technical Review Committee. (2474/Reso. 6188)
(c) Other easements deemed necessary to provide utility or other services shall be provided as required by the Technical Review Committee. (2474/Reso. 6188)

2. For lots facing on curvilinear streets, utility easements shall consist of a curved line parallel to the front property line and a series of straight line segments or a curved line parallel to the rear property lines as may be required to complete an existing easement system. (2474/Reso. 6188)

3. Where a stream or important surface drainage course abuts or crosses the tract, dedication of a drainage easement of a width sufficient to permit widening, deepening, relocating, or protecting and maintaining said water course shall be required. (2474/Reso. 6188)

4. Land within a major drainage, flood, or transmission easement shall not be considered a part of the minimum required lot area except where lots exceed one-half (1/2) acre in area (see Figure 16). (2474/Reso. 6188)

5. Where alleys and/or eight-foot (8') PUFEs exist in adjacent subdivisions, this pattern shall be continued unless otherwise approved by the Technical Review Committee (see Figure 17). (2474/Reso. 6188)

6. Where alleys are provided in multiple-residence or commercial areas, a refuse container easement may be required of sufficient size as determined by the present City standards (see Figure 18). (2474/Reso. 6188)

(G) Street Naming. (2474/Reso. 6188)

1. The subdivider shall indicate the street name for public streets on the preliminary plat by projecting existing north-south and east-west street names that fall in alignment. When no current streets are in alignment, the subdivider may propose a name based on the City of Mesa Address and Street Name Assignment Policy. All names are subject to final approval by City staff at the technical review stage. (2474/Reso. 6188,3324/Reso. 7038, Reso. 10116)

2. Private streets within PAD detached single-residence subdivisions will be assigned public street names in accordance with the City of Mesa Address and Street Name Assignment Policy. (2474/Reso. 6188,3324/Reso. 7038, Reso. 10116)

3. Private drives and aisles in PAD manufactured home and recreational vehicle subdivisions and townhome or condominium subdivisions shall not be named or numbered. The site will receive a single master address based on the public street on which it fronts. Lots, buildings, and dwelling units within the project will be assigned lot numbers, unit numbers, and building numbers by the City staff for mail delivery, emergency, or other service needs. (3324/Reso. 7038, Reso. 10116)

9-6-4: PUBLIC IMPROVEMENT REQUIREMENTS:

(A) Purpose. It is the purpose of this Section to outline the minimum acceptable standards for improvement of public streets and utilities as well as certain private street improvements; define the responsibility of the subdivider in the planning, constructing, and financing of public improvements; and to establish procedures for review and approval of engineering plans. All improvements required in streets, alleys, or easements that are required as a condition of plat approval shall be the responsibility of the subdivider. They may be allowed to meet the requirements by participation in an improvement district if approved by the City. (2474/Reso. 6188)
(B) Engineering Plans. (2474/Reso. 6188)

1. A complete set of engineering plans for construction of all required improvements shall be prepared by an engineer registered in Arizona. Such plans shall be based on the technical review of the preliminary plat and be prepared in conjunction with the final plat. (Refer to Engineering Procedure Manual for more specific and detailed requirements for this Section.) (2474/Reso. 6188)

2. No plat shall be recorded until the engineering plans have been approved by the City. (2474/Reso. 6188)

(C) Construction and Inspection. (2474/Reso. 6188)

1. All improvements in the public right-of-way or in public easements shall be constructed under the inspection and approval of the City Engineer. Construction shall not commence until a permit has been issued for such construction. Work shall not be discontinued or suspended unless first approved by the City Engineer and it shall not be resumed prior to notification and approval of the Engineering Department. (2474,4570/Reso. 6188)

2. All underground utilities to be installed in streets and alleys shall be constructed, inspected, and approved prior to the surfacing of such streets and alleys. (2474/Reso. 6188)

(D) Public Improvements. The City Engineer is hereby delegated authority to develop and apply such engineering standards, specifications, and procedures for the design and construction of public improvements as are in harmony with the objectives of this Section and necessary or appropriate to protect the public health, safety, and welfare. (2474/Reso. 6188)

1. Streets. All streets within the subdivision, including perimeter streets or half-streets, shall be paved including concrete curbs installed to lines, grades, and dimensions approved by the City Engineer and in conformance with City standards. When a major collector or arterial street is included within the subdivision or is a perimeter street, the City may pay for such extra width paving as may be deemed appropriate by the City. (2474/Reso. 6188)

2. Alleys. All alleys within the subdivision, including perimeter alleys and partial alleys, shall be surfaced with granite or Aggregate Base Course (ABC) to grades and dimensions approved by the City Engineer in conformance with City standards. Alleys to be used for primary vehicular access as defined under Section 9-5-1 of the City Code shall be improved as required by said Section and in conformance with City standards. (2474/Reso. 6188)

3. Sidewalks. Concrete sidewalks shall be constructed along both sides of all streets within the subdivision and along one side of perimeter streets to a width and to lines and grades approved by the City Engineer and in conformance with City standards. (2474/Reso. 6188)
4. Water and Sewer Lines and Services. Water and sewer lines shall be installed within the subdivision, and all adjoining streets, to lines and grades and of such sizes and lengths as approved by the City Engineer and in conformance with City standards. Water and sewer service lines of sizes and at locations approved by the City Engineer and in conformance with City standards shall be installed for each lot within the subdivision prior to paving the street and improving the alleys. Service stubs to platted lots and tracts within the subdivision for underground utilities shall be placed to such length and size so as not to necessitate disturbance of street and utility improvements when future service connections are made. Where it is necessary to extend a water or sewer main from an existing adequate main to the subdivision, the subdivider will be required to pay the full cost of the line extension. However, if so requested, the City may participate in the oversize cost or enter into a "private line agreement" with the subdivider requiring the subsequent users to pay a share of the cost of the line extension at such time as they take service from the line extension if such service is taken during the term of the agreement. (2474,4570/Reso. 6188)

5. Fire Hydrants. Fire hydrants shall be installed within and along perimeter streets of the subdivision at locations and to lines and grades approved by the City Engineer and Fire Department and in conformance with City standards. (2474/Reso. 6188)

6. Gas. Gas service may be furnished according to current available supplies as determined by the City or other franchised supplier for that area. (2474/Reso. 6188)

7. Irrigation Lines and Ditches. All irrigation and other ditches within the subdivision or within perimeter half-streets or alleys or easements shall be tiled or abandoned in accordance with plans and specifications as approved by the City Engineer and/or the respective irrigation district. (2474/Reso. 6188)

8. Storm Water Retention. The subdivider shall make provisions for the retention and subsequent bleedoff of all storm water within the proposed subdivision in accordance with plans approved by the City Engineer and in conformance with City standards. The plans shall show the type, extent, location, and capacity of existing and proposed drainage and retention that may affect the subdivision. Complete hydrology and hydraulic design computations shall accompany the plans and shall be approved prior to the recordation of the final plat. The design shall be based on the following: (3868)

    Citywide: one hundred- (100-) year, two- (2-) hour storm. (3868)

    Downtown Redevelopment Area: Two-thirds (2/3) of the volume of a one hundred- (100-) year, two- (2-) hour storm. (3868)

Once constructed and approved by the City, the drainage facilities shall not be modified unless such modification is approved by the City Engineer. (2474/Reso. 6188)

9. Retention Basins. Public retention basins are encouraged to provide additional land area (up to twenty-five percent [25%] of the basin size) above the minimum land area calculated to retain their specified volume of water to help insure that public basins provide usable "flat" areas for recreational purposes. The design, amount, and location of the additional area which could be provided should be considered in the initial design of the project. The need for additional open space and the design of the basin will be reviewed by the staff on a project-by-project basis to help insure that adequate recreational facilities are provided to serve the needs of the future residents of the proposed subdivision. Multiple small retention basins are not acceptable for either public or private developments unless otherwise approved by the City Engineer and in conformance with City standards. Upon completion of an approved maintenance period for a public retention basin that will be maintained by the City, the subdivider shall provide at no cost to the City a clear title to the public retention basin. Once constructed and approved by the City, the retention facilities shall not be modified unless such modification is approved by the City Engineer. (2474/Reso. 6188)
10. Streetlights. Streetlights shall be installed along all streets within the subdivision and along all perimeter streets developed in conjunction with the subdivision. Streetlights shall be LED or HPS and shall be installed by the subdivider in accordance with plans approved by the City and in conformance with City standards. Streetlight illumination levels shall comply with the Streetlight Lumen Level and City Engineering standards. LED lights shall have a color temperature/kelvin rating as approved by the Transportation Department Director. For a single parcel development with less than one hundred fifty feet (150') of street frontage, the City Engineer may waive the required streetlight installation. If installation is waived, prior to the issuance of a building permit, the subdivider shall pay an amount determined by the City based on the street frontage to pay for the future installation of streetlights by the City or others. (2474/Reso. 6188, 5376)

(a) Pilot Program. During the Pilot Study Period and within the Pilot Study Areas, the City’s Transportation Department Director, or his designee, may reduce and vary the streetlighting lumen levels (including from week-to-week, day-to-day, or within a single night or with the use of a time-of-night dimming schedule) so long as the lumen level is not lower than the Minimum Pilot Lumen Level or greater than the Maximum Pilot Lumen Level. (5376)

i. Within ninety days after the Pilot Study Period, the illumination levels that were reduced under the Pilot Study shall be brought into conformance with the Streetlight Lumen Level. (5376)

ii. The Pilot Program shall not apply to new streetlights installed in connection with City capital improvement projects or non-City projects except as may be approved by the Transportation Department Director with a dimming system that complies with the Pilot Program requirements in Subsection 9-6-4(D)(10)(a). (5376)

11. Traffic Control Devices. Traffic control devices shall be provided or existing control devices shall be modified in conjunction with the development in accordance with designs approved by the Development Services Department, where required in accordance with the Mesa Transportation Division. The Transportation Division may defer the installation of required traffic control devices. (4570)

When the installation of required traffic control devices is deferred, the owner/developer shall pay the City a payment in-lieu of causing the actual design, installation, and/or construction of the devices. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (4570)

12. Street Name Signs. Street name signs shall be placed in all street intersections. The subdivider shall install signposts and signs per Mesa Standard Details with designs approved by the City Traffic Engineer. (2474, 4570, 5395/Reso. 6188)

13. Survey Monuments. Survey monuments conforming to City standards shall be installed at all corners, angle points, and points of curves and at all street intersections for streets within and around the perimeter of the subdivision and at such other locations as may be required by the City Engineer. After all improvements have been installed, the subdivider’s registered land surveyor shall check the location of the monuments and mark the brass cap. (2474, 4570/Reso. 6188)

14. Lot Corners. Iron pipe or round reinforced steel bars not less than one-half inch (1/2") in diameter shall be set at all corners, angle points, and points of curve for each lot within the subdivision prior to the recording of the plat, except that the City Engineer may approve a temporary delay where topographic conditions make it necessary. (2474, 4570/Reso. 6188)
15. Parkway Landscaping. Parkway areas along arterial streets and other streets, as deemed necessary by the City Engineer, shall be landscaped in accordance with approved plans and standards set by the City Engineer. In PADs, a statement shall be contained in both the deed restrictions and the owners’ association by-laws that all landscaping, including that within the public right-of-way adjacent to the site, shall remain the responsibility of the owners’ association to maintain in perpetuity. (2474,4570/Reso. 6188)

16. Underground Utilities. Electric lines and communication lines shall be constructed underground as required by the Arizona Corporation Commission. City ordinance also requires cable TV to utilize a common trench for undergrounding their facilities in new developments, and the subdivider must provide backfill under the same conditions as are extended to other trench users; e.g., electric, telephone, and communications. (2474,4570/Reso. 6188)

17. Construction Certification. Upon completion of development, the subdivider’s engineer shall provide as-built certification to the City Engineering Inspector that all required improvements in dedicated City rights-of-way or public utility easements were constructed according to approved plans and conform to City standards. The subdivider’s engineer or surveyor shall also certify the as-built volume of all retention facilities. All certifications shall be signed by the engineer or surveyor and stamped with a professional seal. (2474,4570/Reso. 6188)

(E) Schedule of Improvements by Zoning Classification. Specific standards of improvements to be installed in a subdivision shall be related to the location of the subdivision and type of development proposed therein, as outlined in the following schedule of improvement requirements. (2474/Reso. 6188)

1. Urban Developments (R1-35, R1-15, R1-9, R1-7, R1-6, R-2, R-3, and R-4 Zoning Districts). (2474/Reso. 6188)

   (a) Description. Single-residence development with lot widths less than one hundred thirty feet (130’) and lot areas less than forty three thousand five hundred sixty (43,560) square feet (one acre) and multiple-residential development regardless of site area or density. (2474/Reso. 6188)

   (b) Requirements. (2474/Reso. 6188)

      i. All streets shall include pavement, concrete curb, and sidewalks on both sides. (2474/Reso. 6188)

      ii. Alleys, where required for single residential development, shall have a sixteen-foot (16’) right-of-way completely surfaced with approved material to an approved width. Multiple-residential development shall have a twenty-four-foot (24’) right-of-way completely surfaced to an approved width. (2474/Reso. 6188)

      iii. Public water supply in accordance with Subsection (D)4 of this Section, including mains and fire hydrants for fire protection. (2474/Reso. 6188)

      iv. Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

      v. Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

      vi. Public sewer in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

      vii. Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

      viii. Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)
ix. Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474/Reso. 6188)

x. Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

xi. Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)

2. Suburban Developments (R1-90 and R1-43 Zoning Districts). (2474/Reso. 6188)

(a) Description. Single-residence development with minimum lot widths of one hundred thirty feet (130') and minimum lot areas of forty-three thousand five hundred sixty (43,560) square feet (one acre). (2474/Reso. 6188)

(b) Requirements. (2474/Reso. 6188)

i. All streets shall include pavement and concrete curbs. Sidewalks shall be included if so required by the City Engineer. (2474/Reso. 6188)

ii. Alleys, where required to complete an existing system, shall have a sixteen-foot (16') right-of-way completely surfaced with approved material to an approved width. (2474/Reso. 6188)

iii. Public water supply systems, including mains and fire hydrants, for fire protection in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

iv. Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

v. Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

vi. Public sewer is required in accordance with Subsection (D)4 of this Section unless waived by both the Maricopa County Health Department and the City Engineer. (2474,4570/Reso. 6188)

vii. Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

viii. Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)

ix. Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474,4570/Reso. 6188)

x. Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

xi. Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)
3. Office, Commercial and Industrial (O-S, C-1, C-2, C-3, M-1, M-2, and PEP Zoning Districts). (2474/Reso. 6188)

(a) All streets shall include pavement, concrete curb, and sidewalks on both sides; for "Industrial" districts (M-1, M-2, PEP), the sidewalk requirements may be waived on one (1) or both sides by the City Engineer should land use, building occupancy, location, or other factors so indicate. (2474/Reso. 6188)

(b) Alleys, where required, shall have a twenty-four-foot (24') right-of-way completely surfaced with approved material to an approved width. (2474/Reso. 6188)

(c) Public water supply in accordance with Subsection (D)4 of this Section, including mains and fire hydrants for fire protection. (2474/Reso. 6188)

(d) Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

(e) Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

(f) Public sewer in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

(g) Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

(h) Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)

(i) Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474,4570/Reso. 6188)

(j) Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

(k) Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)

(F) Oversize of Required Public Improvements. The developer may be required to oversize certain public street and utility improvements for the purpose of ensuring that the City of Mesa's public improvement standards for transportation, utility service, and infrastructure are maintained. The City of Mesa may participate in the increased costs of oversize improvements when approved by the Development Services Manager. The City's commitment to participate in these increased costs may be formalized in a development agreement limited to those improvements specifically identified as oversize and executed by the developer and the Development Services Manager. (2907,3766)

(G) In order to allow flexibility in lighting design to create a variety of unique neighborhoods and environments across the Mesa Proving Grounds Project, streetlighting on public local streets within the Mesa Proving Grounds located in the area north of Williams Field Road, west of Signal Butte Road, south of Elliot Road and east of Ellsworth Road shall be provided as specified below. (4894)

1. In land use groups V-Village and D-District where continuous sidewalk and landscape/hardscape lighting are provided, and in land use groups OS-Open Space, CS Civic Space, E-Estate, R-Retreat and in service lanes irrespective of sidewalk and landscape/hardscape lighting, streetlighting shall be provided at locations specified below to the light level required by City Standards as set forth in 9-6-4(D)(10) and City of Mesa Engineering and Design Standards:

(a) At all public street intersections and all locations where private commercial driveways with heavy nighttime use as determined by the City Traffic Engineer, multi-family driveways serving twenty (20) or more units, or service lanes intersect a public street. (4894)
(b) At all marked and unmarked pedestrian crosswalks. (4894)

(c) At all marked and unmarked pedestrian, bicycle, equestrian or multi-use pathway crossings. (4894)

(d) At the end of a cul-de-sac or hammerhead. (4894)

(e) At all driveway entrances to schools or civic buildings. (4894)

(f) Continuously along streets where adjacent major nighttime gathering locations are brightly lighted and there is no fence or other physical barrier between the street and the outdoor facility that limits pedestrian access to specific crossing points, as determined by the City Traffic Engineer. (4894)

(g) At other locations specified by the City based on roadway design characteristics, land use or anticipated public use. (4894)

(h) In service lanes, additional privately owned and maintained lighting shall be provided as specified at the Development Unit Plan level. (4894)

2. In all other land use groups continuous streetlighting shall be provided in accordance with subsection 9-6-4(D)(10) and City of Mesa Engineering and Design Standards. (4894)

(H) In order to provide for creation of a unique neighborhood environment based on the agricultural heritage of the southeast valley and to provide consistency throughout a 2,000 acre master planned community on the former Morrison Ranch properties, streetlighting on public local streets within the area south of Guadalupe Road, north of the power line easement approximately one-half mile south of Guadalupe Road, west of Sossaman Road, and east of the East Maricopa Floodway shall be provided as specified below. (5108)

1. A minimum of one streetlight shall be placed at each intersection and at the end of each cul-de-sac that is more than two hundred feet (200’) long. (5108)

2. A minimum of one streetlight shall be placed at each marked and unmarked pedestrian crosswalk, and at each marked and unmarked pedestrian, bicycle, equestrian or multi-use pathway crossing unless such crosswalk or pathway crossing will be lighted by a streetlight at an intersection pursuant to Subsection (H)(1) above. (5108)

3. On street sections longer than four-hundred-feet (400’), streetlights shall be placed at a maximum spacing of four-hundred-feet (400’). (5108)

4. Streetlights may consist of decorative poles and decorative post top mounted fixtures as approved by the City Traffic Engineer, with a typical mounting height of approximately sixteen-feet (16’), but in no case lower than sixteen feet (16’) or higher than twenty-five feet (25’). (5108)

5. Continuous lighting along sections of streets adjacent to school sites, public parks, or activity centers shall be provided in accordance with Subsection 9-6-4 (D)(10) and City of Mesa Engineering and Design Standards. (5108)

(I) In order to provide for creation of a unique neighborhood environment based on early American neighborhood character throughout the 484 acre Pacific Proving Ground North development, streetlighting on public local streets within the area south of Ray Road, and east of Ellsworth road shall be provided as specified below. (5251)

1. All local public street intersections shall be illuminated per the city standards. (5251)
2. One light shall be installed at each elbow intersection. (5251)

3. Lights shall be installed at all marked or un-marked pedestrian, bicycle, equestrian or multi-use pathway street crossings (crosswalks) to meet city light level standards. (5251)

4. One light shall be installed at all public driveway entrances to schools. (5251)

5. Continuous lighting along sections of streets adjacent to school sites, parks, or activity centers shall be provided in accordance with Subsection 9-6-4(D)(10) and City of Mesa engineering and design standards. (5251)

6. One light shall be installed at the end of each cul-de-sac that is longer than 200 feet as measured from the centerline of the intersection at the beginning of the cul-de-sac to the face of curb at the farthest point of the cul-de-sac. (5251)

7. Street lights may be decorative post top style fixtures, as approved by the City Traffic Engineer, to meet the theme of the community. Light source shall be either HPS (High Pressure Sodium) or LED (Light Emitting Diode). (5251)

8. Street lights will have an approximate 15’ to 25’ mounting height. (5251)

(J) In order to provide for creation of a unique neighborhood environment based on early American neighborhood character throughout the 172.5 acre Mulberry Development located north of Guadalupe Road and west of Signal Butte Road, streetlighting on public local streets within phases one, two, three and four of Mulberry shall be provided as specified below. (5257)

1. All local public street intersections shall be illuminated per the city standards. (5257)

2. One light shall be installed at each elbow intersection. (5257)

3. Lights shall be installed at all marked or un-marked pedestrian, bicycle, equestrian or multi-use pathway street crossings (crosswalks) to meet city light level standards. (5257)

4. One light shall be installed at all public driveway entrances to schools. (5257)

5. Continuous lighting along sections of streets adjacent to school sites, parks, or activity centers shall be provided in accordance with Subsection 9-6-4(D)(10) and City of Mesa engineering and design standards. (5257)

6. One light shall be installed at the end of each cul-de-sac that is longer than 200 feet as measured from the centerline of the intersection at the beginning of the cul-de-sac to the face of curb at the farthest point of the cul-de-sac. (5257)

9-6-5: DESERT UPLANDS DEVELOPMENT STANDARDS:

(A) Purpose and Intent. The purpose of these standards is to minimize hillside disturbance and encourage preservation of the natural character and aesthetic value of the desert within the Desert Uplands Area by allowing the flexibility necessary to produce unique, environmentally sensitive projects. It is the intent of these standards to encourage development of subdivisions with a distinctive southwest desert design theme. The requirements of this Section 9-6-5 apply only to the Desert Uplands Area. (2474/Reso. 6188, 5376)
All present City design standards may not be applicable to desert preservation-oriented development. Due to the anticipated vehicular and pedestrian volumes normally associated with higher residential densities, developments within the R1-15 zone and higher-density residential and nonresidential uses shall generally comply with present City of Mesa ordinance requirements. Standard City requirements for subdivision design, stormwater retention, right-of-way, pavement width, and street design shall apply except in the following areas where alternatives may be permitted to maintain the natural desert character of the area. (2474/Reso. 6188)

1. PADs and nonresidential developments will be reviewed at the time of zoning approval or building permit application review for compliance with applicable Desert Uplands Standards and for a southwestern design theme. (2474/Reso. 6188)

2. In lower-density residential areas (R1-35 and lower), development standards similar to those for suburban areas may be approved. (2474/Reso. 6188)

3. Prior to any development, a Grading Permit shall be obtained in accordance with the Mesa City Code. (3693)

(B) Local Streets. Local street standards may be modified to encourage better adjustment to the topography of the area. Existing significant topographical features, such as washes, hillsides, boulders, and rock outcroppings, and established stands of native vegetation which cannot be revegetated may warrant the approval of alternative engineering designs. Modifications would be considered on an individual basis, with approval by the Mesa Planning Director, City Engineer, and Traffic Engineer. The following are requirements and design alternatives for street construction in the Desert Uplands Area. (2474/Reso. 6188)

1. Local Residential Streets - Public. (4233)

The chart below specifies the local residential public street standards for each residential zoning district. (4233)
<table>
<thead>
<tr>
<th>DIST.</th>
<th>LOT SIZE, SF</th>
<th>R.O.W.</th>
<th>CL TO BC</th>
<th>PARKING</th>
<th>CURB</th>
<th>SIDEWALK</th>
<th>WATER MAIN</th>
<th>STREETLIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1-6 to R1-9</td>
<td>6,000+ to 9,000+</td>
<td>53'</td>
<td>17.5'</td>
<td>Both Sides</td>
<td>2' Roll</td>
<td>5' Width, Detached 5&quot;</td>
<td>1' Behind Curb</td>
<td>4' Behind Curb</td>
</tr>
<tr>
<td>R1-15</td>
<td>15,000+</td>
<td>47'</td>
<td>14.5'</td>
<td>One Side Only</td>
<td>2' Roll</td>
<td>5' Width, Detached 5&quot;</td>
<td>1' Behind Curb</td>
<td>4' Behind Curb</td>
</tr>
<tr>
<td>R1-35</td>
<td>35,000+</td>
<td>43'</td>
<td>12.5'</td>
<td>None</td>
<td>2' Roll</td>
<td>5' Width, Attached</td>
<td>1' Behind Curb</td>
<td>6' Behind Curb</td>
</tr>
<tr>
<td>R1-43 to R1-90</td>
<td>43,560+</td>
<td>30'</td>
<td>12.0'</td>
<td>None</td>
<td>3' Ribbon</td>
<td>None</td>
<td>1' Behind Curb</td>
<td>None</td>
</tr>
</tbody>
</table>

* Landscaping shall consist of trees with limited canopies and shrubs selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)(3) of this Section. Fifty percent (50%) of the trees are to be twenty-four-inch (24") box (new or salvage), within the five-foot (5') landscape strip between the curb and sidewalk.

** Certain streets may have a reduced or no streetlighting requirement pursuant to 9-6-5(D).

(4233, 4513, 4570, 4766, 5326, 5376)

Homeowners' associations shall be responsible for maintenance of landscaping between the curb and sidewalk. To avoid damage to landscaping, the covenants, conditions, and restrictions are to require garbage/recycling barrels to be placed in the street adjacent to the curb, not in the landscaped area. (4233)

2. Where topographical conditions warrant, cul-de-sac lengths in excess of four hundred feet (400') may be approved by the City Engineer if an improved turning radius of fifty-five feet (55') is provided to facilitate the turning radius of emergency vehicles. In such situations, however, the Fire Department may require installation of individual protection systems where appropriate. Cul-de-sacs should be designed to serve twelve (12) to fourteen (14) homes maximum, regardless of length. (2474/Reso. 6188,4233)

3. With approval of the Traffic Engineer and City Engineer, the minimum centerline radius may be reduced to two hundred feet (200') and the minimum curve length reduced to seventy-five feet (75') with a twenty-five-mile-per-hour (25 mph) street design (see Figure 26). Local street intersections may vary from ninety degrees (90°) on short street segments, at cul-de-sacs, or at the termination of streets where the traffic speeds and volumes are lower. At "tee" intersections, the intersection tangent length may be reduced to one hundred fifty feet (150') minimum. For twenty-five-mile-per-hour (25 mph) streets terminating at the "tee" intersection, the center line radius shall be no less than a two-hundred-foot (200') radius. For thirty-mile-per-hour (30 mph) streets terminating at the "tee" intersection, the center line radius shall be not less than a three-hundred-foot (300') center line radius. (2474/Reso. 6188,4233)
4. Landscape medians are recommended at subdivision entrances and adjacent to open spaces. Landscape islands are recommended within cul-de-sacs. Landscape plans for the medians and islands shall utilize plants salvaged from the site, or selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section. Medians and islands cannot obstruct access to lots, impair visibility at sight triangles, or obstruct drainage, and are to be located pursuant to Fire Department and Development Services Department access requirements. Integral colored concrete and alternative sidewalk and pavement materials are encouraged subject to City review and approval. Homeowners’ associations are to own the medians and islands, and be responsible for landscape, special concrete, and pavement section maintenance. (4233)

5. Maximum street grades may be increased, provided adequate visibility and access for fire protection and refuse collection vehicles is maintained. Local street grades should not exceed fifteen percent (15%), and streets exceeding twelve percent (12%) should have a maximum length of four hundred feet (400'). Exceptions require approval of the Traffic Engineer and City Engineer (see Figure 26). (2474/Reso. 6188,4233)

6. Where scarring occurs as a result of street or utility construction, revegetation and restoration shall be required of the subdivider. Restored areas shall be graded and landscaped to blend with the natural vegetation and terrain and stabilized to control erosion. Landscape plans for the areas to be restored shall utilize plants salvaged from the site or selected from the Preferred Desert Uplands Plant List. The plants shall be of the same species mix, and equivalent in size and density to the surrounding undisturbed area. Landscaping and stabilization shall occur concurrently with construction. (2474/Reso. 6188,4233)

7. Grade changes that require retaining walls may be used only with the approval of the City Engineer. Where approved for use, vertical retaining walls shall have a maximum height of five feet (5'). For grade changes of more than five feet (5'), the use of multiple walls in a series of terraces is required. Each terrace shall have a four-foot (4') minimum width and shall be landscaped. There shall be a four-foot (4') landscaped strip between the top terrace and any freestanding enclosure wall used. The finished surfaces of retaining walls shall blend into the natural setting by such means as texturing and the use of earth tone coloring. The use of native stone as a veneer is also possible (see Figure 27). (2474/Reso. 6188,4233)

For slopes of sixty degrees (60°) and less, mortar-free stone retaining walls using irregularly shaped native boulders may be used, subject to structural and slope stability design considerations. Landscaping of the slope shall be provided to produce a more natural appearance (see Figure 27). Modifications to these standards may be considered on an individual basis where unusual topographical conditions, parcel configurations, or other relevant factors are present. (2474/Reso. 6188,4233)

8. All excess excavated material shall be removed or incorporated as an integral part of the site development so that a natural look is maintained. (2474/Reso. 6188,4233)

9. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

(a) Where drainageways cross streets, culverts shall be installed to convey ten- (10-) year frequency storm flows under the pavement, with higher- volume storm flows being allowed to flow over the pavement in dip sections (see Figures 29 and 30). (2474/Reso. 6188,4233)

For washes with low flows, deletion of the culvert may be permitted where a concrete dip section is provided when approved by the City Engineer. (2474/Reso. 6188,4233)

(b) With approval of the City Engineer, the use of three-foot (3') to five-foot (5') roadside drainage swales with appropriate erosion protection to provide a natural appearance will be permitted. (see Figure 28). (2474/Reso. 6188,4233)

(c) The use of integral colored concrete for ribbon curbing is encouraged (see Figure 26). (2474/Reso. 6188,4233)
(C) Collector Street - Public. Where no lot/home access is provided along a collector street, and the area served by the collector is not so large as to require a wider street, the collector street may be as follows: eighty feet (80') right-of-way, thirty-four-foot (34') face-of-curb to face-of-curb, no on-street parking, and five-foot (5') sidewalks detached a minimum of four feet (4'). At intersections with major streets and adjacent to school sites, parks, or activity centers, the face-of-curb width shall be increased to forty-six feet (46'). (4233)

(D) Streetlights. (2474/Reso. 6188,4233,5376)

1. Full cutoff streetlight fixtures shall be required in the Desert Uplands Area. Fixtures may be HPS or LED. (5376)

2. Streetlights on major streets and collector streets shall comply with City standard illumination and spacing requirements except as specified in Subsections (D)(3), (D)(6), and (D)(7) of this Section and Section 9-6-4(D)(10). Streetlights shall not be installed in medians except as may be approved by the Transportation Department Director after considering potential light pollution impacts on adjacent residential property. Mounting height shall be thirty-five feet (35') to forty feet (40'). (2474/Reso. 6188,4513,4233,4766,5376)

3. On collector streets as permitted under Subsection (C) of this Section, street lighting shall use poles with a thirty-foot (30') or thirty-five foot (35') maximum mounting height and an average 0.37 footcandle light level with a six-to-one (6:1) average-to-minimum ratio. Lighting along the forty-six-foot- (46') wide sections of these streets adjacent to school sites, parks, or activity centers shall comply with City standard illumination and spacing requirements for collector streets. (4233,5376)

4. Streetlights on local streets shall be placed at all intersections and at the end of cul-de-sacs that are more than two hundred feet (200') long except as specified in Subsection (D)(6) and Subsection (D)(7). On straight sections of roadway, spacing between streetlights may not exceed four hundred-foot (400'). However, other factors must also be evaluated; e.g., horizontal and vertical alignment. Topographical conditions may require additional lighting. Mounting height on local streets shall be twenty-five feet (25') with a fixture that emits between 2,900 and 4,000 lumens. (2474/Reso. 6188,4513,4570,4233,4766,5376)

5. Pull box spacing for streetlighting shall not exceed two hundred feet (200'). (2474/Reso. 6188,4233,5376)

6. For the area north of McDowell Road and east of Hawes Road and west of Usery Mountain Regional Park along public streets (inclusive of McDowell Road and Hawes Road, but exclusive of Ellsworth Road), no lighting on the public street shall be required. The developer shall provide an area light with a light pole no less than eight (8) feet in height and no greater than sixteen (16) feet in height with a fixture that emits between 2,900 and 4,000 lumens. The type of area light fixture and pole shall be installed at each entrance to a multi-unit subdivision. The area light fixture and pole shall be owned, operated and maintained by the owners of the property, where the area light is installed; the City shall not be deemed to own, operate, maintain, or otherwise be responsible for such area light fixtures and poles. The area light fixture and pole shall be installed outside of the City right-of-way or public utilities and facilities easement and shall be installed adjacent to the edge of the driveway approach. (4513,5376)

7. Streetlighting on public collector and local streets located in the area north of McLellan Road, west of Ellsworth Road/92nd Street alignment, south of McKellips Road and east of a north/south line one-quarter mile west of Hawes Road, and for the area north of McKellips Road, west of Ellsworth Road/92nd Street alignment, south of Hermosa Vista Drive, and east of Hawes Road, shall be provided at locations specified below to the light level required by City standards as set forth in 9-6-4(D)10 and City of Mesa Engineering and Design Standards: (5376)

(a) At all public street intersections and all locations where private driveways intersect a public street. (4766,5376)

(b) At all marked and unmarked pedestrian crosswalks. (4766,5376)

(c) At all pedestrian crossing points adjacent to parks or other activity centers. (4766,5376)
(d) At all pedestrian, bike, equestrian, or joint use pathway crossings where pathway lighting is provided. (4766,5376)

(e) At locations adjacent to parks or other outdoor activity centers continuous streetlighting shall be provided where such locations provide lighting for nighttime use and there is no fence or other physical barrier between the street and park or outdoor facility that limits pedestrian access to specific crossing points. (5376)

(f) At the end of a cul-de-sac. (5376)

8. Streetlighting in the Desert Uplands Area is subject to the requirements, provisions, and modifications in Subsection 9-6-4(D)(10), except as specified in Subsections (D)(3), (D)(4), (D)(6), and (D)(7) of this Section, and is subject to the Pilot Program in Subsection 9-6-4(D)(10)(a). (5376)

(E) On-Site Street Name Signs (Public Streets). (2474/Reso. 6188,4233)

1. Street name signs and posts shall be standard (green reflectorized sign with white reflectorized lettering and a steel pole) unless the applicant receives approval of a modification from the Traffic Engineer. (2474/Reso. 6188,4233)

2. Any approval of nonstandard street sign materials shall be conditional upon the development’s homeowners' association assuming responsibility for the installation, future maintenance, and liability relating to the signs. (2474/Reso. 6188,4233)

3. Nonstandard street name signs which are installed and maintained by a homeowners' association shall have reflective letters and background. (2474/Reso. 6188,4233)

(F) Walls and Fences. (2474/Reso. 6188,4233)

1. Perimeter subdivision walls shall be designed to reflect a southwestern design theme and be constructed to reflect changes in the topography (see Figures 31 and 32). (2474/Reso. 6188,4233)

2. Perimeter subdivision walls shall be designed and constructed in a height and style which preserves desert vistas and environment to the extent possible. Perimeter walls along arterial or collector streets should not extend over two hundred fifty (250) linear feet without a one-foot (1') vertical or three-foot (3') horizontal variation. Walls shall include clear ground-level openings no smaller than eighteen inches (18") high to permit wildlife passage. (see Figure 32). (2474/Reso. 6188,4233)

3. The height of walls shall be measured from the original grade. (4233)

4. Walls or fences on individual lots which are visible from the street shall be designed to match the character and appearance of the home (see Figure 26). (2474/Reso. 6188,3693,4233)

5. The use of chain link as a permanent fencing material is prohibited in the Desert Uplands Area. (2474/Reso. 6188,4233)

6. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

(a) As a means of preserving the natural desert character, views, wildlife corridors, and habitat, developers of low-density residential subdivisions are encouraged to only utilize entry features and not utilize subdivision perimeter walls. (4233)
(b) In larger-lot subdivisions, the subdivider shall confine fencing to the residential private activity areas on each lot, with the balance of the lot to remain open and unwalled. (2474/Reso. 6188,3693,4233)

c) Walls on individual lots shall be designed to match the character and appearance of the home (see Figure 26). (2474/Reso. 6188,3693,4233)

(G) Native Plant Preservation. (2474/Reso. 6188,3693,4233)

The Desert Uplands Area is an Upper Sonoran Desert community with unique plants, washes, and land forms which create its own identity and character. To preserve and maintain its unique character, proposed developments shall have two (2) major categories of landscaping: (3693,4233)

1. RETAINED DESERT: Natural, undisturbed open spaces, common areas, and washes which should be subject to no grading and no additional plant materials, except where stabilization of washes is needed to accommodate flows. (3693,4233)

2. REVEGETATED DESERT: Reconstructed desert landscaping, including both retained and revegetated plant materials, shall be in accordance with the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section, and are to be of the same species mix, and equivalent in size and density to the surrounding undisturbed area. (3693,4233)

3. A minimum of fifty percent (50%) of the plant material used for common area, parkway, and median landscaping shall be selected from the Preferred Desert Uplands Plant List, and the remainder selected from the Acceptable Desert Uplands Plant List. Subdividers are encouraged to select at least ninety percent (90%) of the plant material used for common area, parkway, and median landscaping from the Preferred Desert Uplands Plant List. (4233)

4. The use of turf is discouraged in order to retain the desert character and to conserve water resources. (4233)

5. Front and Rear Private Yards/Gardens. Plant materials for this area are left to the choice of the individual homeowners and their homeowners' association. Homeowners are encouraged to use plants from the Preferred Desert Uplands Plant List. (3693,4233)

6. Retained or transplanted cactus and ocotillo may be substituted to achieve up to fifty percent (50%) of the required number of trees to be planted in the street right-of-way. (2474/Reso. 6188,3693,4233)

7. Thorny plants, cactus, and ocotillo must maintain a minimum setback of seven feet (7') from sidewalks and/or vehicular roadways. Such plants will be allowed in a curved median island, provided a minimum of three feet (3') is maintained from curbs as a clear zone (measured from the nearest part of the plant) (see Figures 33 and 34). (2474/Reso. 6188,3693,4233)

8. Boulders and large-diameter trees may be placed in large-width median islands as design elements if berming is provided for protection (see Figure 34). (2474/Reso. 6188,3693,4233)
9. Thorny plants, cactus, and ocotillo shall have a minimum of three (3) buffer shrubs in front of such plants (pedestrian/street side) (see Figures 33 and 34). Examples of buffer shrubs are creosote, chuparosa, fairy duster, and desert lavender. (2474/Reso. 6188,3693,4233)

10. Transplanted native plants that die within one (1) year are to be replaced within thirty (30) days of written notification by the City. Replacements are to be indigenous plant material selected from the Preferred Desert Uplands Plant List. A bubbler or emitter irrigation system shall be extended to new or transplanted plants. (2474/Reso. 6188,3693,4233)

11. Existing healthy trees (4" caliper and larger) and all healthy cacti in common open space areas shall be preserved in place where possible. When retention of trees and cacti is not possible due to lot sizes or location, removal and replanting on other areas of the site is required. (2474/Reso. 6188,3693,4233)

12. Vegetation shall be re-established by the subdivider on all graded areas and exposed cut and fill slopes. Desert grasses, shrubs, trees, and cacti from the Preferred Desert Uplands Plant List shall be used to prevent erosion and permit natural revegetation. (2474/Reso. 6188,3693,4233)

13. Low-Density Development Standards. One (1) dwelling unit per acre (R1-35) or less: Existing healthy trees (4" caliper and larger) and all healthy cacti shall be preserved in place where possible. When retention of healthy trees and cacti is not possible due to building site location, removal and replanting on other areas of the site or lot is required. (2474/Reso. 6188,3693,4233)

(H) Lot Development. The following are low-density development standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,3693,4233)

1. Building Envelope Requirements. All improvements shall be located within a building envelope, occupying not more than fifty percent (50%) of the total lot area. The building envelope is the specified area on a lot within which all areas of disturbance, including structures, driveways, walkways, patios, pools, walls, construction work access, grading, slopes, and riprap are located. (4233)

(a) Protective Fencing. A building envelope protective fencing permit shall be obtained prior to any plant removal or disturbance activities. The building envelope protective fencing shall be installed on the disturbance line as identified on the approved plans. The building envelope fence line shall be established and staked by an Arizona registered engineer or land surveyor. The fencing is to display appropriate warning signs posted every one hundred (100) linear feet in English and Spanish, indicating "Protected Area - Do Not Remove Fence." A zoning inspection is required to ensure compliance with the fencing permit, and shall occur prior to the issuance of the building/grading permit for the lot. The fencing and signage shall be maintained in place throughout the grading/construction process and shall only be removed after a final inspection is approved. Failure to maintain the fencing as permitted may result in stop work orders or other penalties as provided in this Chapter and Title 4 of this Code. The Planning Director may authorize the partial or total removal of the temporary fence to facilitate final grading, revegetation, and installation of site flat work or hardscape. (4233)

(b) Work Access Areas. To accommodate the redirection of existing drainage/washes around structures and to provide area for sufficient work access during construction, the maximum disturbed area may be increased, subject to plan approval, to sixty percent (60%) of the total lot area. All disturbed areas beyond the fifty-percent (50%) building envelope shall be enclosed within the protective fencing during construction and shall be fully revegetated using plant material salvaged from the same lot, which if necessary may be supplemented with plants from the Preferred Desert Uplands Plant List. The revegetation plan shall provide plant materials designed to blend with or exceed the existing surrounding plant densities. (4233)
<table>
<thead>
<tr>
<th>PREFERRED DESERT UPLANDS PLANT LIST</th>
</tr>
</thead>
<tbody>
<tr>
<td>RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS</td>
</tr>
<tr>
<td>TREES</td>
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<tr>
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<th>ACCEPTABLE DESERT UPLANDS PLANT LIST</th>
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<tr>
<td>ALLOWABLE DROUGHT-TOLERANT PLANTS - NOT NATIVE TO LOCAL AREA</td>
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<td>TREES</td>
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<td>3. ACACIA GREGGII</td>
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<td>5. AMBROSIA AMBROSIOIDES</td>
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<td>6. AMBROSIA DELTOIDEA</td>
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<td>8. ANISACANTHUS THURBERI</td>
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<td>9. AQUILEGIA CHRYSANTHA</td>
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<td>10. ARCTOSTAPHYLOS PUNGENS</td>
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<td>11. ASCLEPIAS LINARIA</td>
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<td>12. ASCLEPIAS SUBULATA</td>
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<td>13. ATRIPLEX CANESCENS</td>
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<td>14. BACCHARIS GLUTINOSA</td>
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<td>15. BACCHARIS SAROTHROIDES</td>
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<td>17. BERBERIS HAEMOTOCAARPA</td>
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<td>18. BRICKELLA COULTERI</td>
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<td>19. CALLIANDRA ERIOPHYLLA</td>
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<td>20. CELTIS PALLIDA</td>
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<td>21. CERCOCARPUS MONTANUS</td>
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<td>22. COURSETIA GLANDULOSA</td>
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<td>23. DODONAEA VISCOSA</td>
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<td>24. ENCELIA FARINOSA</td>
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<td>BOTANICAL NAME</td>
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<td>ACACIA CRASPEDOCARPA</td>
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<td>ACACIA RIGENS</td>
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<tr>
<td>ATRIPLEX HYMENELYTRA</td>
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<tr>
<td>ATRIPLEX LENTIFORMIS</td>
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<td>ATRIPLEX NUMMULARIA</td>
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<td>ATRIPLEX POLYCARPA</td>
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<tr>
<td>ATRIPLEX TORREYI VAR. GRIFFITHSII</td>
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<tr>
<td>BUDDLEJA MARRUBIFOLIA</td>
</tr>
<tr>
<td>BURSERA FAGAROIDES</td>
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<td>CAESALPINIA GILLESII</td>
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<td>CAESALPINIA PUMILA</td>
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<td>DAELEA BICOLOR VAR. ARGYREA</td>
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<tr>
<td>DAELEA FORMOSA</td>
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<tr>
<td>DAELEA VERSICOLOR VAR. SESSILIS (SYN., DAELEA WISLEZENI)</td>
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<td>EYSENHARTIA ORTHOCARPA</td>
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<tr>
<td>FALLUGIA PARADOXA</td>
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<tr>
<td>FORESTIERA NEOMEXICANA</td>
</tr>
<tr>
<td>JATROPHA CARDIOPHYLLA</td>
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<td>JUSTICIA CANDICANS</td>
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## Preferred Desert Uplands Plant List

### Recommended Local Sonoran Desert Native Plants

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Agave tomei</strong></td>
<td><strong>Toumei Agave</strong></td>
</tr>
<tr>
<td>2. <strong>Agave chrysantha</strong></td>
<td><strong>Golden-Flowered Agave</strong></td>
</tr>
<tr>
<td>3. <strong>Carnegiea gigantea</strong></td>
<td><strong>Saguaro</strong></td>
</tr>
<tr>
<td>4. <strong>Dasylirion wheeleri</strong></td>
<td><strong>Desert Spoon/Sotol</strong></td>
</tr>
<tr>
<td>5. <strong>Echinocereus engelmannii</strong></td>
<td><strong>Hedgehog Cactus</strong></td>
</tr>
<tr>
<td>6. <strong>Ferocactus cylindraceus</strong></td>
<td><strong>Compass Barrel Cactus</strong></td>
</tr>
<tr>
<td>7. <strong>Ferocactus wislizenii</strong></td>
<td><strong>Fishhook Barrel Cactus</strong></td>
</tr>
<tr>
<td>8. <strong>Mammillaria graharnii</strong></td>
<td><strong>Fishhook Pincushion Cactus</strong></td>
</tr>
<tr>
<td>9. <strong>Opuntia acanthocarpa</strong></td>
<td><strong>Buckhorn Cholla</strong></td>
</tr>
<tr>
<td>10. <strong>Opuntia bigelovii</strong></td>
<td><strong>Teddy Bear Cholla</strong></td>
</tr>
<tr>
<td>11. <strong>Opuntia fulgida</strong></td>
<td><strong>Chainfruit Cholla</strong></td>
</tr>
<tr>
<td>12. <strong>Opuntia leptocaulis</strong></td>
<td><strong>Desert Christmas Cactus</strong></td>
</tr>
<tr>
<td>13. <strong>Opuntia phaeacantha</strong></td>
<td><strong>Prickly Pear</strong></td>
</tr>
<tr>
<td>14. <strong>Yucca baccata</strong></td>
<td><strong>Banana Yucca</strong></td>
</tr>
<tr>
<td>15. <strong>Yucca elata</strong></td>
<td><strong>Soaptree Yucca</strong></td>
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</tbody>
</table>

## Acceptable Desert Uplands Plant List

### Allowable Drought-Tolerant Plants - Not Native to Local Area

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
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<tbody>
<tr>
<td>1. <strong>Agave arizonica</strong></td>
<td><strong>Arizona Agave</strong></td>
</tr>
<tr>
<td>2. <strong>Agave deserti</strong></td>
<td><strong>Desert Agave</strong></td>
</tr>
<tr>
<td>3. <strong>Agave species</strong></td>
<td><strong>Agave/Century Plants</strong></td>
</tr>
<tr>
<td>4. <strong>Agave murpheyi</strong></td>
<td><strong>Murphey Agave</strong></td>
</tr>
<tr>
<td>5. <strong>Hesperaloe parviflora</strong></td>
<td><strong>Red Yucca</strong></td>
</tr>
<tr>
<td>6. <strong>Opuntia ficus-indica</strong></td>
<td><strong>Indian Fig</strong></td>
</tr>
<tr>
<td>7. <strong>Yucca species</strong></td>
<td><strong>Yucca</strong></td>
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</tbody>
</table>

## Preferred Desert Uplands Plant List

### Recommended Local Sonoran Desert Native Plants

#### Vines

<table>
<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Cucurbita digitata</strong></td>
<td><strong>Coyote Gourd Vine</strong></td>
</tr>
<tr>
<td>2. <strong>Janusia gracilis</strong></td>
<td><strong>Slender Janusia</strong></td>
</tr>
</tbody>
</table>
# PREFERRED DESERT UPLANDS PLANT LIST
## RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS
### ANNUALS, PERENNIALS, GROUNDCOVERS, WILDFLOWERS

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<thead>
<tr>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Botanical Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARGEMONE PLEIA CANTHA</td>
<td>PRICKLY POPPY</td>
<td>26 MIRABILIS MULTIFLORA</td>
<td>COLORADO FOUR O'CLOCK</td>
</tr>
<tr>
<td>ARTEMISIA LUDO VICIANA</td>
<td>PRAIRIE SAGEBRUSH</td>
<td>27 OENOTHERA CAESPITOSA</td>
<td>WHITE EVENING PRIMROSE</td>
</tr>
<tr>
<td>BAILEY MULTIRADIATA</td>
<td>DESERT MARIGOLD</td>
<td>28 ORTHOCARPUS PURPURASCENS</td>
<td>OWL'S CLOVER</td>
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<tr>
<td>CALOCHORTUS KENNEDYI</td>
<td>DESERT MARIPOSA LILY</td>
<td>29 PECTIS PAPPOSA</td>
<td>CHINCHWEED</td>
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<td>CHAENACTIS STEVIOIDES</td>
<td>ESTEVE'S PINCUSHION</td>
<td>30 PENSTEMON BARBATUS</td>
<td>SCARLET BUGLER</td>
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<tr>
<td>Datura Wrightii</td>
<td>SACRED DATURA</td>
<td>31 PENSTEMON EATONI</td>
<td>FIRECRACKER PENSTEMON</td>
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<td>DELPHINIUM PARISHII</td>
<td>DESERT LARKSPUR</td>
<td>32 PENSTEMON PSEUDOSPECTABILIS</td>
<td>CANYON PENSTEMON</td>
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<td>DICHLOSTEMMA PULCHELLUM</td>
<td>BLUE DICKS</td>
<td>33 PENSTEMON SUBULATUS</td>
<td>BEARDTONGUE</td>
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<td>ERIASTRUM DIFFUSUM</td>
<td>WOOLSTAR/PRICKLY STARS</td>
<td>34 PERITYLE EMORYI</td>
<td>ROCK DAISY</td>
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<tr>
<td>ERIGERON DIVERGENS</td>
<td>NATIVE FLEABANE</td>
<td>35 PHACELIA CAMPANULARIA</td>
<td>DESERT BLUEBELLS</td>
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<td>ESCHSCHOLZIA CALIFORNICA</td>
<td>CALIFORNIA POPPY</td>
<td>36 PHACELIA CRENULATA</td>
<td>SCORPIONWEED</td>
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<td>ESCHSCHOLZIA MEXICANA</td>
<td>MEXICAN GOLD POPPY</td>
<td>37 PHACELIA DISTANS</td>
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<td>42 RAFINESQUA NEOMEXICANA</td>
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<td>CHIA</td>
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<td>DESERT LUPINE</td>
<td>44 SENNA COVESII</td>
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<td>TEXAS BETONY</td>
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<td>SCARLET MONKEY FLOWER</td>
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<td>HUMMINGBIRD FLOWER</td>
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<td>MIMULUS GUTTATUS</td>
<td>YELLOW MONKEY FLOWER</td>
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(4233)
### ACCEPTABLE DESERT UPLANDS PLANT LIST
ALLOWABLE DROUGHT-TOLERANT PLANTS - NOT NATIVE TO LOCAL AREA

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<thead>
<tr>
<th>ANNUALS, PERENNIALS, GROUNDCOVERS, WILDFLOWERS</th>
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<tr>
<td>BOTANICAL NAME</td>
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<tr>
<td>1 BAHIA ABSINTHIIFOLIA</td>
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<td>2 SWAINSONA FORMOSA</td>
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<tr>
<td>3 DYSSODIA PENTACHAETA</td>
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<td>4 ERODIUM TEXANUM</td>
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<tr>
<td>5 NOLINA BIGELOVII</td>
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<td>6 PENSTEMON SPECIES</td>
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<td>7 PLANTAGO INSULARIS</td>
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### PREFERRED DESERT UPLANDS PLANT LIST
RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS

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<tr>
<td>1 ARISTIDA PURPUREA</td>
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<td>2 MUHLENBERGIA DUMOSA</td>
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<td>3 MUHLENBERGIA RIGENS</td>
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<tr>
<td>4 BOUTELLOUA CURTIPENDULA</td>
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<td>5 MUHLENBERGIA PORTERI</td>
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<td>CYPRESS</td>
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<td>4 CHAMAECYPARIS</td>
<td>FALSE CYPRESS</td>
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<td>7 OLEA EUROPAEA</td>
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<td>8 NERIUM OLEANDER</td>
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<tr>
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<td>FOUNTAIN GRASS</td>
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<tr>
<td>11 CITRUS</td>
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</tbody>
</table>

NOTE: Protected Native Plants: The Arizona Department of Agriculture Plants Services Division has formulated a policy concerning protected native plants. A permit is required for the removal and transportation of protected native plants. All protected native plants shall be tagged by the Arizona Department of Agriculture. (3693,4233)
(c) Minimum Setback. There shall be a minimum ten-foot (10') setback from any property line for the building envelope that shall remain undisturbed except for the allowed driveway, utility trenching, approved drainage improvements, and approved work access area. (4233)

(d) Driveway Exception. The area of a single-access driveway extending beyond the first thirty feet (30') of lot depth may be excluded from the building envelope disturbance calculation provided that the driveway is a maximum width of sixteen feet (16'), that all disturbance associated with the construction of the driveway is minimized to the greatest extent possible, and that all disturbed area resulting from the driveway construction is fully revegetated using plant material salvaged from the same lot or supplemented with plants from the Preferred Desert Uplands Plant List. (4233)

(e) Utility Exception. The area for utility trenching may be excluded from the building envelope disturbance calculation provided that disturbance associated with the installation of utilities is minimized to the greatest extent possible, that all disturbance as a result of the trenching is fully revegetated using plant material salvaged from the same lot or supplemented with plants from the Preferred Desert Uplands Plant List, and that the utility trench is located adjacent to or under the driveway or at alternative locations as approved by the Planning Director or designee. (4233)

(f) Limitation on Driveway and Utility Exceptions. The building envelope exclusions relating to driveways and utility trenches are limited to a combined, maximum exclusion of ten percent (10%) of the total lot area. (4233)

(g) Compliance. Occupancy or other utilization of any structure shall not commence until all requirements of the Desert Uplands Development Standards and the requirements of Title 4 of this Code have been fulfilled and a final inspection has been completed. (4233)

2. Building Envelopes With Natural Area Open Space Preservation. Variations to the building envelopes may be approved as part of an approved Planned Area Development (PAD) that preserves Natural Area Open Space (NAOS) in compliance with the following requirements: (4233)

(a) Intent. This Subsection is intended to allow variations to the building envelope requirements in 9-6-5(H)1 with the approval of a PAD when NAOS is preserved in common tract and on-lot areas. (4233)

(b) The location of NAOS on a preliminary subdivision plat shall be based on the following considerations: preservation of natural washes; preservation of significant features and vegetation, including rock outcroppings and significant concentrations of native vegetation in relation to the surrounding development project; continuity of open space within the development project and with adjacent developments; continuity of on-lot open spaces on adjoining lots; provision for unimpeded wildlife access and movement between open space areas. (4233)

(c) Natural Area Open Space shall be designed to preserve environmental features with consideration of the surrounding environment in order to connect with existing or planned open space of adjacent lots or common areas so that continuous areas of meaningful Natural Area Open Space are formed. The minimum contiguous area for NAOS shall be four thousand (4,000) square feet with a minimum horizontal dimension of thirty feet (30'), except along roadways, where the minimum shall be twenty feet (20'). (4233)

(d) Natural Area Open Space shall be undisturbed areas or a combination of undisturbed and revegetated areas. Subdivisions designed with a combination of undisturbed Natural Area Open Space and revegetated open space shall have at least seventy percent (70%) of the required Natural Area Open Space as undisturbed Natural Area Open Space. This minimum applies to both common tract and on-lot Natural Area Open Space. Revegetated areas shall not exceed thirty percent (30%) of the Natural Area Open Space. (4233)
(e) The fifty-percent (50%) building envelope limitation, 9-6-5(H)1, may be increased in direct proportion to the percentage of Natural Area Open Space preserved within common tracts controlled by a homeowners' association, land trust, or similar entity; or located on-lot within designated easements, as indicated in the following chart: (4233)

<table>
<thead>
<tr>
<th>NATURAL AREA OPEN SPACE PRESERVED IN THE SUBDIVISION WITHIN HOA/TRUST-OWNED AND-MAINTAINED AREAS AND ON-LOT EASEMENTS</th>
<th>MAXIMUM BUILDING ENVELOPE PER LOT BASED UPON NATURAL AREA OPEN SPACE PRESERVED WITHIN THE SUBDIVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 10%</td>
<td>50 - 60%</td>
</tr>
<tr>
<td>10 - 25%</td>
<td>60 - 75%</td>
</tr>
<tr>
<td>25 - 35%</td>
<td>75 - 85%</td>
</tr>
<tr>
<td>35 - 49%</td>
<td>85 - 99%</td>
</tr>
<tr>
<td>50% and Above</td>
<td>100% Subject to Envelopes or Easements That May Be Required to Preserve Environmental Features Identified on the Preliminary Subdivision Plat</td>
</tr>
</tbody>
</table>

Example 1: If 25% of the overall subdivision were preserved as NAOS, then building envelopes could be increased by 25% to a maximum of 75% per lot.

Example 2: If 32% of the overall subdivision were preserved as NAOS, then building envelopes could be increased by 32% to a maximum of 82% per lot.

(f) Natural Area Open Space shall be identified on the preliminary and final plat. (4233)

(g) The driveway and utility trench exceptions specified in 9-6-5(H)1(d) and (e) are not permitted if increased building envelopes are approved as part of a Planned Area Development with Natural Area Open Space. The work access area exception specified in 9-6-5(H)1(b) is permitted as part of a Planned Area Development with Natural Area Open Space. (4233)

5. If any part of the approved building pad is to be built above natural mean grade, the property owner or designee shall provide a PAD height certification statement that is prepared, stamped, and signed by an Arizona registered engineer or land surveyor. The PAD certification statement shall be submitted prior to the approval of the footing inspection. (4233)

6. Easements for NAOS, open space, or drainage shall be provided for those lot areas with slopes of fifteen percent (15%) or greater or natural area washes that carry significant drainage as determined by the City Engineer. (2474/Reso. 6188,3693,4233)

7. Where easements are provided, the balance of the lot or the "buildable area" must have a usable shape and size and provide adequate street access. (2474/Reso. 6188,4233)

(I) Building Height/Density. (2474/Reso. 6188,4233)
1. Densities shall be determined by the underlying zoning district. (2474/Reso. 6188, 4233)

2. Building height shall be limited to two (2) stories or thirty feet (30'), whichever is the lesser; or the maximum height permitted by the underlying zoning district; or Site Plan Approval as approved by the City Council. (2474/Reso. 6188, 4233)

3. Building height for flat roof buildings shall be measured as the vertical distance from the natural mean ground elevation of the lot to the top of the parapet. Building heights for all other roofs shall be measured as the vertical distance from the natural mean ground elevation of the lot to the mean height between the plate line and the ridge, excluding embellishment. (4233)

4. All buildings shall be located below the ridge line (see Figure 26). (2474/Reso. 6188, 4233)

(J) Fifteen Percent (15%) Slope/Open Space. (2474/Reso. 6188, 4233)

1. Slopes of fifteen percent (15%) or greater shall remain in undeveloped natural open space. (2474/Reso. 6188, 3693, 4233)

2. The open space within the lots, common open space areas with slopes of fifteen percent (15%) or greater, or natural area washes that carry significant drainage as determined by the City Engineer shall be identified and secured by an open space and/or drainage easement and be maintained by the lot owner or homeowners' association. (2474/Reso. 6188, 3693, 4233)

3. Preserved natural washes, undisturbed Natural Area Open Space, and sensitive areas as identified in approved preliminary and final plats, and construction drawings are required to be fenced prior to and during construction. Fencing is to be installed and inspected prior to any site preparation, grading, plant removal, or construction. Fencing is to display signage indicating, "Protected Area - No Access." (4233)

4. Ridge lines shall remain as undeveloped natural open space. (2474/Reso. 6188, 3693, 4233)

(K) Washes/Drainage. (2474/Reso. 6188, 4233)

1. Retained washes and new drainage channels shall maintain a "natural" desert character. Requirements include landscaping with native rock and plant materials, use of integral colored alternative material, contouring and preservation of existing natural features (see Figure 35). (2474/Reso. 6188, 3693, 4233)

2. Man-made channels and existing natural washes conveying flows from adjacent properties shall remain separate from retention basins storing on-site drainage. (4233)

3. To preserve riparian zones, undisturbed areas shall extend, as determined by the City, beyond the banks of significant washes, including those regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. (4233)

4. Natural drainage patterns shall be maintained onto and off development sites, as determined by the City Engineer, in such a manner that existing vegetation along natural washes continues to receive runoff water. Water collection structures and retention basins shall be installed so that water from significant storm events flows into the same offsite downstream flow paths that existed prior to development, as determined by the City Engineer. (4233)
5. Storm water retention basin design layouts shall be incorporated with the overall site landscaping plan including amenities, access, and plantings. Landscaping shall be provided in all areas of the basin (slope, top, and bottom). A transitional area shall be introduced between the top of the retention basin slope and the edge of sidewalks, street curbs, parking spaces, driveways, or parking screen walls. A variety of side slopes and contouring shall be utilized, and radii shall be varied between top and bottom of slope for a smooth transition. Incorporate major horizontal and/or vertical slope changes every one hundred feet (100') of linear slope length. (4233)

6. Where retention basins occur along arterial streets, berms shall be along fifty percent (50%) of the basin frontage. Berms shall be four-to-one (4:1) (horizontal-to-vertical) maximum slope, and no more than two feet (2') high above adjacent street grade. (4233)

7. With approval of the City Engineer, basin side slopes which are adjacent to streets (public or private) and pedestrian walkways, may be steeper than a six-to-one (6:1) slope if a five-foot (5') transition area, no steeper than a six-to-one (6:1) slope, is provided. Side slopes over five feet (5') away from the street/walkway may be permitted as steep as four-to-one (4:1). (4233)

8. Vertical walls will be considered subject to aesthetic and engineering review and may be used for up to twenty-five percent (25%) of the perimeter of the basin. Walls retaining over two feet (2') of soil require structural design. Walls with over two feet (2') of drop-off require railing. Walls retaining water require waterproof design. (4233)

9. Storm water retention basins shall be landscaped/revegetated with existing or salvage vegetation and native plant materials selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section. (2474/Reso. 6188,4233)

10. Random-sized rock (six inches [6"] and larger) may be utilized to create a natural-appearing desert wash within the basin bottom. Basins are encouraged to provide up to twenty-five percent (25%) more land area than the minimum area necessary to retain their specified volume of water in order to allow for the creation of peninsulas, more "natural" contouring, and the placement of boulders and rock outcroppings. (2474/Reso. 6188,4233)

11. Native materials shall be utilized in the construction of headwalls, flow-retardant structures and devices, culverts, and drainage channel bottoms in the Desert Uplands Area (see Figure 30). Headwall designs are required to blend in color, surface treatment, and shape with surrounding landscaping. Headwalls shall be flared or sloped to follow the contours of the basin or channel. (2474/Reso. 6188,3693,4233)

12. Safety rails shall utilize alternative designs such as wrought iron to match theme walls, boulders, and pilasters and shall be a minimum forty-two inches (42") high. Inlet/outlet grates or gates utilizing alternative designs are required on twenty-four-inch (24") and larger diameter pipes. (4233)

13. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

   (a) Nonturfed drainage swales are encouraged in the Desert Uplands Area. (2474/Reso. 6188,4233)

   (b) Erosion protection of drainage swales will be encouraged through the use of native rocks and native plant materials. Where runoff velocities necessitate additional erosion protection, the use of integral colored gunite or alternative material may be approved by the City Engineer. (2474/Reso. 6188,4233)
LAND SPLITS:

(A) Purpose and Intent. This Subsection is intended to implement procedures whereby property owners may split parcels of land in compliance with the following objectives: (2474/Reso. 6188)

1. To protect and promote the public health, safety, convenience, and welfare. (2474/Reso. 6188)

2. To implement the City of Mesa General Plan and elements contained therein. (2474/Reso. 6188)

3. To provide building sites of sufficient size and appropriate design for the purposes for which they are to be used. (2474/Reso. 6188)

4. To provide adequate pedestrian and vehicular access for individual lots. (2474/Reso. 6188)

5. To provide for water supply, sewage disposal, drainage, dust control, and other requirements necessary to protect the environment and to promote the aesthetics of the City. (2474/Reso. 6188)

6. To allow the further intensification of land uses through the land split process only in areas that are improved with public facilities and provided with public services so that negative or undesirable impacts to the public are minimized. (2474/Reso. 6188)

(B) Applicability. The regulations contained in this Section shall apply to all divisions of land made within the corporate limits of the City of Mesa since January 1, 1974 or other divisions determined by the Planning Director to be a land split. (2474/Reso. 6188)

It shall be unlawful for any person, partnership, or other legal entity to sell or offer a contract to sell any parcel that is subject to the requirements of this regulation until an approved land split map complying with the provisions of this regulation has been filed with the Development Services Department and approval given by the Planning Director. (2474/Reso. 6188, 3766)

The division of any property into four (4) or more parcels or the division of any property involving a new street shall proceed through the subdivision process. The division of any property, the boundaries of which have been fixed by a recorded plat into more than two (2) parcels, shall proceed through the subdivision process unless waived by the Planning Director. (2474/Reso. 6188)

The creation of two (2), three (3), or more units having the right of exclusive occupancy coupled with an undivided interest in the land, such as in a condominium, horizontal property regime, cooperative, community apartment, townhouse, or similar project, shall proceed through the subdivision process. (2474/Reso. 6188)

These regulations may be modified by the Planning Director when the division of land involves two (2) or more separately owned parcels which cannot be subdivided into lots in accordance with the standards and procedures set forth in Section 9-6-2 of this regulation and with the zoning regulations of the zoning district in which they are located. All affected property owners must agree to the following: (2474/Reso. 6188)

1. To follow a "Neighborhood Plan" ("NP") prepared either by the Department or others. (2474/Reso. 6188)

2. To dedicate their portion of any public street shown on the approved "Neighborhood Plan" ("NP") at the time at least two (2) key parcels desire to subdivide as determined by the City Engineer and the Planning Director. (2474/Reso. 6188)
3. To provide the minimum standards for dust-proofing and road base support in accordance with Development Services and Fire Department standards necessary to support the vehicles that will serve this area. (2474/Reso. 6188,3766)

4. To participate in any improvement district(s) initiated by the City or the property owners to provide water and sewer and other public street improvements. (2474/Reso. 6188)

5. To participate in any necessary land acquisitions to provide required drainage retention facilities to control flooding. (2474/Reso. 6188)

Boundary adjustment plats and deeds, where land taken from one (1) parcel is added to an adjacent parcel, shall not be considered to be a land split under the terms of this Section, provided that the proposed adjustment does not: 1) create any new lots; 2) render any existing lot substandard in size or shape; 3) render substandard the setbacks to existing development on the affected property; and 4) impair any existing access, easement, or public improvement. (2474/Reso. 6188)

(C) Relationship to Other Regulations. (2474/Reso. 6188)

1. A land split shall conform to all applicable policies of the General Plan. (2474/Reso. 6188)

2. A land split map shall conform to all applicable regulations of the Zoning Ordinance. (2474/Reso. 6188)

3. A land split map shall conform to the adopted street details and standards. (2474/Reso. 6188)

4. All public improvements required under this regulation shall conform to the development regulations of Section 9-6-4. (2474/Reso. 6188)

5. A land split shall conform to the requirements for dedications as set forth in Section 9-8-3(F) Rights-of-Way Dedication table of the Mesa City Code. (4570)

(D) Application and Approval Procedures. (2474/Reso. 6188)

1. The division of land into two (2) or three (3) parcels and under those special conditions described in Subsection (B) of this Section requires the approval of a land split map. The purpose of the land split map review is to determine the appropriateness of the access and lot design with respect to the contours of the land, to determine if the setbacks of existing development on the site(s) are being rendered to be in violation with the creation of new lot lines, to determine if a subdivision is being created, and to determine the conformity of the proposed land split to City policies and ordinances. Land splits shall proceed through the required approval process. Anyone requesting land split map approval shall submit the following to the Development Services Department:

(a) A completed application form. (2474/Reso. 6188)

(b) A fee as established in the most recent Mesa Schedule of Fees and Charges. (3911,4076, 4497,4570)

(c) A list of real property owners with addresses adjacent to the parcel proposed to be split, as determined from the latest equalized assessment roll of the County Assessor’s Office. (2474/Reso. 6188,3911)

(d) A chain of title or a history of the ownership of the parcel proposed to be split, dating back to January 1, 1974, furnished by a recognized title company. Such information shall be presented so that it may be determined if the proposed land split does or does not constitute a subdivision. (2474/Reso. 6188,3911)
2. The information required for the land split map shall be shown graphically or by note on plans at a standard engineering scale large enough to show all details clearly. The size of the map shall be either eighteen inches by twenty-four inches (18" x 24") or twenty-four inches by thirty-six inches (24" x 36") and shall contain the following information: (2474/Reso. 6188)

(a) Name, address, and telephone number of the property owner(s). (2474/Reso. 6188)

(b) Name, address, and telephone number of the engineer or land surveyor preparing the map, including professional seal and signature. (2474/Reso. 6188)

(c) Graphic and written scale, north indicator (up or to the right), and date of preparation. (2474/Reso. 6188)

(d) Legal description of the property. (2474/Reso. 6188)

(e) The General Plan designation for the subject site. (2474/Reso. 6188)

(f) The existing zoning classification of the subject site and adjacent properties. (2474/Reso. 6188)

(g) The topography of the site shown at one-foot (1') contour intervals if the site slopes less than five percent (5%); two-foot (2') contour intervals if the site slopes up to twenty percent (20%); and five-foot (5') contour intervals if the site slopes more than twenty percent (20%). (This requirement may be waived by the Planning Director upon documentation or good cause.) (2474/Reso. 6188)

(h) The property boundaries of the existing site and of all property within one hundred fifty feet (150'). (2474/Reso. 6188)

(i) The parcel boundaries of the proposed parcels to be created and the net area (the area exclusive of roadways dedicated to the public) in square feet of each parcel. (2474/Reso. 6188)

(j) The location of existing streets and rights-of-way proposed to be dedicated with all dimensions. (2474/Reso. 6188)

(k) The locations of existing structures, fences, walls, etc. (2474/Reso. 6188)

(l) Any additional pertinent information as required by the staff, such as copies of current "Covenants, Conditions, and Restrictions" ("C.C.&R.s"), in the case of land splits in recorded subdivisions. (2474/Reso. 6188)
3. Development Services staff shall review the application and the proposed land split map for completeness and accuracy. When deficiencies are determined, these shall be noted and relayed to the applicant. No decision shall be rendered until the application is determined to be complete. Department staff, in evaluating and making decisions on land split proposals, shall consider the following criteria: (2474/Reso. 6188,3766)

(a) Consistency of the proposed land split with the General Plan. (2474/Reso. 6188)

(b) Conformity of the proposed land split to the Zoning Ordinance. (2474/Reso. 6188)

(c) Conformity of the proposed land split to Section 9-6-3 (Subdivision Design Principles and Standards) and other applicable sections of the Subdivision Regulations. (2474/Reso. 6188)

(d) Conformity of the proposed land split with the City’s existing street patterns and details. (2474/Reso. 6188)

(e) Lot size and design results from the proposed land split in relation to the site’s topography. (2474/Reso. 6188)

(f) Determination from the title information and lot/street design that a subdivision is not being created. (2474/Reso. 6188)

(g) Other pertinent criteria. (2474/Reso. 6188)

4. An improper land split renders the property involved unsuitable for building and not entitled to a construction permit. (2474/Reso. 6188)

9-6-7: MODIFICATIONS: (2474/RESO. 6188,3105,4606,4771)

(A) Where an individualized assessment reveals the existence of special conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for subdivision or land split improvements associated with the proposed development, the City Manager or designee may eliminate, reduce, defer, or approve alternatives to the requirements and specifications contained in this Chapter based upon a finding that such conditions or factors exist and that the elimination, reduction, deferral, or alternative: (3105,3766,4606,4771,4777)

1. Is consistent with the intent of these regulations; (3105)

2. Will result in improvements that are adequate to meet the City's needs; (3105,4606)

3. Does not constitute a grant of special privilege; and (3105)

4. Is not contrary to the public interest. (3105)

(B) Where an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for the dedication of rights-of-way for land splits, the City Manager or designee may eliminate, reduce or approve alternatives to the dedication of rights-of-way requirements for land splits contained in this chapter upon finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (4570,4606,4771)
(C) With the approval of, or amendment to, a rezoning to PC District, the City Council may approve modifications to the requirements and specifications required by this Chapter if the City Engineer or City Traffic Engineer recommends approval of the modification. The City Engineer or City Traffic Engineer, in consultation with the Planning Director, may recommend the elimination, reduction, or approval of alternatives to the requirements and specification required by this Chapter. If the City Engineer or City Traffic Engineer recommends approval of such a modification, the recommendation, which may be subject to conditions or stipulations, shall be forwarded to the City Council with the PC district. City Council may approve the modification as recommended. The City Engineer's or City Traffic Engineer's recommendation shall be based upon a finding that the modification:

1. Is consistent with the intent of these regulations; (4771)

2. Will result in an equivalent level of service for health, safety and welfare to the General public; (4771)

3. Will result in improvements that are adequate and meet the City's needs; (4771)

4. Furthers the purposes of the PC District; and (4771)

5. Is not contrary to the public interest. (4771)

(D) To ensure compliance with any elimination, modification, deferral, or alternative, the City Manager or designee may require certain provisions, such as protective covenants, bonds, and development agreements. Such provisions may be recorded against the property being developed. (3105,3766,4570,4771,4777)

1. When the deferral of certain right-of-way improvement requirements is authorized by the City Manager or designee for a specific development project, the owner and/or developer shall remit to the City of Mesa a payment in lieu of causing the actual design, installation, and/or construction of said required public improvements. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (3881,4570,4771)

2. The obligation to construct right-of-way improvements or make an in-lieu payment prior to the issuance of permits, including the determination of the amount of the in-lieu payment required, may be deferred to a future date if the developer provides financial assurances acceptable to the City Engineer and the City Attorney, the developer and City enter into a development agreement that provides adequate financial assurance for the future construction of the improvements and/or the future payment of an in-lieu amount, and the City Manager or designee finds that such deferral meets all of the following criteria:

   (a) The development is non-residential; and (4777)

   (b) The property is zoned as a commercial or industrial district; and (4777)

   (c) The deferred right-of-way improvements are not included in this City's Capital Improvement Plan for construction within five (5) years of the deferral; and (4777)

   (d) The deferral is in the best interest of the City of Mesa. (4777)
9-6-8: **APPEALS:**

(A) Discretionary decisions of the Planning Director and Development Services Manager may be appealed to the Hearing Officer, who shall be appointed by the City Manager, when such decisions involve one (1) or more of the following: (3105,3766)

1. Any requirement that exceeds or is in addition to the minimum development requirements as defined in this Chapter. (3105)

2. Any requirement not specified in the Mesa City Code or other legislative act of the City of Mesa. (3105)

3. Any requirement resulting from a discretionary act of an administrative official of the City of Mesa. (3105)

(B) Appeals to the Hearing Officer may be submitted by the developer or owner of the property proposed for development which is affected by a discretionary decision of the Planning Director or Development Services Manager. The appeal shall be submitted within thirty (30) days of such decision by filing with the Planning Director or Development Services Manager a notice of appeal on a form provided therefor. No fee is required for this appeal. The Planning Director and Development Services Manager shall transmit to the Hearing Officer all the papers constituting the records upon which the decision appealed was taken. (3105,3766)

(C) The Hearing Officer shall schedule a time for the appeal to be heard, which shall be no later than thirty (30) days from receipt of the appeal. The appellant shall be given at least ten (10) days' prior notice of the date and time set for the hearing. The Hearing Officer shall decide the appeal within five (5) working days from the date the appeal hearing concludes. (3105)

(D) For determination of the appeal, it shall be the responsibility of the City to establish that there is a nexus between the requirement and a legitimate governmental interest and that the requirement is roughly proportional to the impact of the proposed use, improvement, or development. If more than a single parcel is involved, this requirement applies to the entire property that is subject to the approval. (3105)

(E) If the appeal is upheld, the Hearing Officer shall modify or delete the requirement. If the appeal is denied, the appellant may at any time within thirty (30) days of the decision of the Hearing Office file a complaint for a trial de novo in the Superior Court on the facts and the law regarding the issues of the requirement. (3105)

9-6-9: **PENALTIES:**

(A) It is unlawful to develop land contrary to or in violation of any provisions of this Chapter or of any provisions designated as a condition of approval either by the plan review process or through an amendment, variance, or appeal by an office, board, commission, or the City Council as established by this Chapter.

(B) Any person, firm, or corporation violating any provision of this Chapter and any amendment to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (3105)
FIGURE 1

Actions by Staff, Boards, and Council:
- **Preapplication Conference**
  - Subdivider meets with Staff and submits five (5) copies of proposed "sketch plan." Plan is distributed to determine if Zoning/ Site Plan/DMP approval is required and to determine need for park and school sites.
- **Preliminary Plat Approval**
  - These requirements can occur simultaneously; however, approvals shall be final or be scheduled for final approval by City Council and/or for Design Review Board prior to Technical Review meeting.
- **Technical Review Meeting**
  - (Engineering/Building Inspections Staff) Review and approval of engineering, architectural, landscaping, and site plans occur during this time. Plans must be approved prior to plat recording.
- **Prefinal Review**
- **Council Approval**
- **Recordation of Plat**
- **Permit Stage**

Actions by Subdivider and Progressive Stages of Plat Approval:
- **Preapplication Conference**
- **Preliminary Plat Approval**
- **Technical Review Meeting**
- **Prefinal Review**
- **Council Approval**
- **Recordation of Plat**
- **Permit Stage**
FIGURE 2
If, due to special conditions, the City approves a variance to the maximum cul-de-sac length, then the cul-de-sac radius will increase to 55' with an improved turning radius of 50'.

FIGURE 3
CUL-DE-SACS FOR LOCAL STREETS

FIGURE 4

Intersections on inside curves are undesirable and will require special staff approval.

CUL-DE-SACs should be used to serve irregular areas of a tract that would otherwise be inaccessible. CUL-DE-SACs should not be used excessively nor as a primary design feature.
AVOID ACUTE ANGLE INTERSECTIONS WITH REAR LOT LINES.

SIDE LOT LINES SHOULD BE PERPENDICULAR OR RADIAL TO R/W LINES.

CORNER LOTS SHOULD BE 10% - 20% WIDER THAN INTERIOR LOTS.

WHEN REQ'D, PROVIDE ADEQUATE ACCESS TO ALLEY.

PROVIDE RADIUS ON CORNER LOTS.

FIGURE 5
CURVE DATA FOR LOCAL STREETS

**Figure 6**

- **Reverse Curves:**
  - 100' foot tangent section. (Tangent section is not required on local streets.)
  - Note: Centerline curve lengths cannot be less than 100' feet long.

- **Single Curve Required:**
  - Curve radius cannot be less than 200' feet nor have a centerline curve length less than 100' feet long.
  - Minimum angle defects over 1° but less than 30°.

- **Sine Curves Not Less Than 40°:**
  - 200' minimum straight tangent.

- **Local Collector or Arterial Street:**
  - Terminating street at "tee" intersection only.
MINIMUM CENTERLINE OFFSETS FOR LOCAL, COLLECTOR, AND ARTERIAL STREETS

MIN. OFFSET FOR LOCAL & 40' COLLECTOR STREETS.

MIN. OFFSET FOR ALL OTHER COLLECTOR STREETS.

ARTERIAL TO ARTERIAL STREET INTERSECTIONS MUST ALIGN.

FIGURE 7
ILLUSTRATION #1
UNACCEPTABLE DESIGN
INTERSECTIONS ARE TOO CLOSE AND EXCESSIVE.

INTERSECTIONS WITH ARTERIAL STREETS SHOULD BE LIMITED TO QUARTER MILE INTERVALS. HOWEVER, SHOULD MORE FREQUENT INTERSECTIONS BE NECESSARY, THEY SHOULD BE "T" TYPE INTERSECTIONS AS ILLUSTRATED IN #3.

ILLUSTRATION #2
PREFERRED DESIGNS

ILLUSTRATION #3
"T" TYPE INTERSECTIONS
ILLUSTRATION *1
MULTIPLE LEGS-
IN EXCESS OF FOUR(4).

ILLUSTRATION *2
ACUTE ANGLE OR Y-TYPE
INTERSECTIONS,
(LESS THAN 90°).

ILLUSTRATION *3
INSIDE OF A CURVE

FIGURE 9
Blocks shall be as long as reasonably possible in order to achieve adequate street length, reduce expense and safety hazards arising from excessive street intersections, yet still provide necessary interior circulation between adjacent subdivisions and neighborhoods.

Lots under one half acre, 1500' maximum block length.
Lots of one half acre or greater, 2000' is the maximum block length.

FIGURE 10
ILLUSTRATION #1
PEDESTRIAN/BICYCLE WAY
REQUIRED UNDER SPECIAL
CONDITIONS FOR ACCESS
TO SCHOOLS, PARKS,
SHOPPING CENTERS ETC.

ILLUSTRATION #2

FIGURE 11
LOT DESIGN
(DEPTH & WIDTH RATIO AND LOT ACCESS)

THE DEPTH-TO-WIDTH RATIO OF THE USABLE AREA OF THE LOT SHALL NOT BE GREATER THAN THREE (3) TO ONE (1).

ILLUSTRATION #1

- REAR SETBACK LINE
- SIDE SETBACK LINES
- FRONT SETBACK LINE
- MIN. DEPTH AS PER ZONING DISTRICT
- DISTRICT
- PUBLIC STREET

ILLUSTRATION #2

- PARCELS IN REAR
- VEHICULAR EASEMENTS TO REAR PARCELS DO NOT QUALIFY AS LEGAL FRONTAGE
- NOTE: EVERY LOT SHALL HAVE FRONTAGE ON A FULLY DEDICATED PUBLIC STREET. THE ZONING DISTRICT DETERMINES THE MINIMUM FRONTAGE IN ORDER TO OBTAIN A BUILDING PERMIT.

- PUBLIC STREET

UNACCEPTABLE LOT ACCESS

FIGURE 12
NOTE: LOTS MAY BE DESIGNED WHICH MEET ALL CODE MINIMUMS, YET WILL NOT ACCOMMODATE A BUILDERS PRODUCT. SUCH LOTS ARE UNACCEPTABLE AND WILL NOT BE APPROVED. ADEQUATE BUILDING AREAS MUST BE PROVIDED.

SPECIAL LOT TYPES WILL RECEIVE SPECIAL CONSIDERATION WHEN DETERMINING LOT WIDTHS AND DEPTHS.

THE LOT WIDTH IS DETERMINED BY THE LENGTH OF A LINE PERPENDICULAR TO THE AXIS OF THE LOT TAKEN AT THE NARROWER OF EITHER THE FRONT OR REAR BUILDING SETBACK LINE. SPECIAL CONSIDERATION IS GIVEN ON UNUSUALLY DEEP AND NARROWER LOTS.

FIGURE 13
REAR LOT LINES SHALL BE A SERIES OF STRAIGHT LINE SEGMENTS OCCURRING AT JUNCTIONS OF SIDE AND REAR LOT LINES.

ILLUSTRATION #1

ILLUSTRATION #2

CURVED REAR LOT LINES WILL BE PERMITTED IF CURVE RADIUS IS 800 OR GREATER.

MINIMIZE THE NUMBER OF 'KEY' LOTS WHENEVER POSSIBLE.

FIGURE 14
RESIDENTIAL LOT BACKUP
AND CORNER LOTS
TYPICALS

ILLUSTRATION #1
THROUGH LOT
REQUIREMENTS
ADJACENT TO ARTERIAL
STREETS.

ILLUSTRATION #2
CORNER LOT EXAMPLES.

FIGURE 15
ILLUSTRATION #1

- Setbacks
- Useable Lot Area
- Building Area Affected
- Lot Area Affected
- Area Excessively Steep or May Be Covered by Water or Basements

ILLUSTRATION #2

- Major Power
- Basement
- Tower
- Useable Lot Area
- Setbacks

FIGURE 16
ILLUSTRATION #1

AERIAL OVERHEAD EASEMENTS, WHEN REQ'D, SHALL BE COVERED IN THE FLAT DEDICATION STATEMENT ONLY.

ILLUSTRATION #2

STANDARDS FOR FRONT, REAR & SIDE PUFE'S AND GUY & ANCHOR EASEMENT DESIGNS... (SOME VARIATIONS IN SIZE MAY OCCUR AS CONDITIONS VARY...UTILITY COMPANIES WILL PROVIDE FINAL LOCATIONS DURING THE TECHNICAL REVIEW PROCESS).

FIGURE 17
PUBLIC ALLEY REQUIREMENTS
WIDTHS, PAVING, PARKING, AND DUMPSTER EASEMENTS

ILLUSTRATION #1
DEAD END ALLEYS PROHIBITED.

ILLUSTRATION #2
RESIDENTIAL ALLEY (SECONDARY ACCESS) 4" ABC OR GRANITE TO CITY SPECS.

COMMERCIAL ALLEY, ASPHALTIC PAVING WITH A 2" CONCRETE VALLEY GUTTER.

ILLUSTRATION #4
COMMERCIAL & MULTI-RESIDENTIAL ALLEY (PRIMARY ACCESS) 24" VALLEY GUTTER

ILLUSTRATION #3
MAX. 30" TO SANITATION TRUCK DIRECTION OF TRAVEL.

(REFER TO MESA STANDARD DETAILS) BASEMENT SIZED TO ACCEPT DUMPSTER UNIT

REQUIRED GUARD RAIL TO PROTECT FENCES ETC. WHEN VEHICLES BACK INTO ALLEY, INSTALL TO CITY SPECS.

NOTE: FIG. 18 - Алleys is maximum that can back into a public alley. Six (6) or more must enter and exit in a forward motion to any public way.

FIGURE 18
HALF-STREET PAVING REQUIREMENTS

Developer may need to acquire additional R/W for compliance with 24' minimum half-street requirements. (Refer to Mesa standard details).

**Figure 19**

Unsubdivided

Full or partial street dedication

Full dedication

Min. dedication

Plan View

Note: Half streets prohibit on-street parking. A variance must be obtained to construct homes on less than a fully dedicated street.
SIGHT DISTANCE REQUIREMENTS

REFER TO ENGINEERING PROCEDURE MANUAL
FOR SPECIFIC REQUIREMENTS
(Ord #5395)
"EYEBROW" DESIGNS
FOR LOCAL STREETS

NOTE: EYEBROW DESIGNS SHOULD NOT BE USED ON COLLECTOR OR ARTERIAL STREETS.

EYEBROW DESIGN PROVIDES NECESSARY FRONTAGE FOR ADDITIONAL LOTS; HELPS TO BALANCE LOT SIZE AND CREATE SAFETY ZONES IN THE DEEPER PORTIONS OF A BLOCK THAT RESULT FROM CURVILINEAR STREET PATTERNS.

ILLUSTRATION #1

EYEBROW RADIUS POINT LOCATION IS DETERMINED BY THE NEED TO ACHIEVE THE REQUIRED LOT WIDTH AND DEPTH THAT RESULTS IN BETTER DESIGN.

ILLUSTRATION #2

FIGURE 21

ILLUSTRATION #3
TEMPORARY TURNAROUND
ALTERNATE TURNAROUNDS FOR DIFFICULT SITES

ILLUSTRATION #1

FUTURE DEVELOPMENT

ILLUSTRATION 2

PROVIDE TEMPORARY EASEMENT AND ASPHALT TURN-AROUND ABLE TO SUPPORT FIRE DEPARTMENT VEHICLES.

ILLUSTRATION 3

ILLUSTRATION 4

FIGURE 22
9-6-3

FRONTAGE STREET DESIGN STANDARDS
(REQUIRES SPECIAL APPROVAL BY BOARD AND COUNCIL)

NOTE: DUE TO EXCESSIVE COSTS, FRONTAGE STREETS ARE PERMITTED ONLY WITH SPECIAL APPROVAL BY THE BOARD AND COUNCIL.

FIGURE 23
STREETS SHOULD BE SO DESIGNED AND ARRANGED IN RELATION TO EXISTING TOPOGRAPHY AS TO FACILITATE DRAINAGE. PROPER DESIGN WILL ELIMINATE EXCESSIVE CUTS AND FILLS AND UNNECESSARY DRAINAGEWAYS BETWEEN LOTS.

POOR
(DRAINAGE EASEMENT & PIPES THROUGH LOTS).

GOOD

ILLUSTRATION #1

ILLUSTRATION #2

FIGURE 24a
STREETS SHOULD BE SO DESIGNED AND ARRANGED IN RELATION TO EXISTING TOPOGRAPHY AS TO FACILITATE DRAINAGE. PROPER DESIGN WILL ELIMINATE EXCESSIVE CUTS AND FILLS AND UNNECESSARY DRAINAGE WAYS BETWEEN LOTS.

ILLUSTRATION #1

ILLUSTRATION #2

FIGURE 24b
ILLUSTRATION #1

FACE OF CURB

PAVEMENT NOT LESS THAN 24'-0" FOR HALF STREETS.

WIDTH VARIES 48'-0"/48'-0"

MIN.

SEWER

P.U.E. (WIDTH MAY VARY)

LANDSCAPE STRIP

OPTIONS FOR INTERIOR STREETS IN BUSINESS & INDUSTRIAL PARKS

(FINAL DETERMINATION RESTS WITH CITY ENGINEER).

ILLUSTRATION #2

SIDEWALK

WIDTH VARIES 48'-0"/48'-0"

SEWER

RIGHT-OF-WAY VARIES 80'-0"

UTILITIES

LANDSCAPE STRIP

SIDEWALK MAY BE REQUIRED - (LAND USE, BUILDING OCCUPANCY, LOCATION & OTHER FACTORS WILL INDICATE SIDEWALK NEED. SIDEWALK ON ONE SIDE MAY BE ADEQUATE).

FIGURE 25
ALL BUILDINGS SHALL BE LOCATED BELOW RIDGE LINE.

WALLS TO MATCH CHARACTER AND APPEARANCE OF HOME.

GRADES UP TO 12% (12% TO 15% UP TO 400' LONG, WITH APPROVAL).

RIBBON CURB, INTEGRAL COLORING ENCOURAGED.

REDUCED CENTERLINE RADIUS AND CURVE LENGTHS WITH APPROVAL.

FIGURE 26
ILLUSTRATION #1

TERRACED VERTICAL RETAINING WALLS.

TERRACES TO BE LANDSCAPED

ENCLOSURE WALL

MINIMUM

SIZE DETERMINED BY STRUCTURAL CALCULATIONS, SOIL STABILITY, SLOPE.

MORTAR-FREE RETAINING WALL WITH PLANTING SUBJECT TO STRUCTURAL AND SLOPE STABILITY DESIGN CONSIDERATIONS.

R/W

60° OR LESS

ILLUSTRATION #2.

FIGURE 27
DRAINAGEWAY CROSSING
CULVERT AND DIP SECTION

FIGURE 29
MULTIPLE CULVERTS
FOR LARGER DRAINAGEWAYS

ROADWAY

MULTIPLE CULVERTS SUGGESTED FOR SHALLOW WASHES, SUBJECT TO HYDRAULIC REQUIREMENTS, TO CARRY 10 YEAR STORM.

NATIVE STONE HEADWALLS, NOT IN RIGHT-OF-WAY. STONES SHALL BE PERMANENTLY HELD IN PLACE MECHANICALLY BY CEMENTATION OR SOME OTHER APPROVED METHOD.

FIGURE 30
"SHOEBOX" STREETLIGHT

REFER TO ENGINEERING PROCEDURE MANUAL & MESA STANDARD DETAILS FOR SPECIFIC REQUIREMENTS

FIGURE 31
ILLUSTRATION #1

WALL HEIGHTS TO RESPOND TO TOPOGRAPHIC CHANGES TO PRESERVE DESERT VISTAS.

ILLUSTRATION #2

INDIVIDUAL LOT WALLS, VISIBLE FROM STREET TO MATCH CHARACTER AND APPEARANCE OF HOME.

IN LARGER SUBDIVISIONS, FENCING ENCOURAGED TO BE CONTINUED TO PRIVATE ACTIVITY AREAS.
THORNY PLANT BUFFERING REQUIREMENTS

9-6-5

7' MIN. SETBACK. SIDEWALK OR CURB TO NEAREST THORNY PLANT. (BASED ON FULL GROWTH).

ROADWAY

RETENTION BASIN

STREET

MAXIMUM SLOPE ADJACENT TO STREET.

GUARD RAIL

CROSS-SECTION

GUARD RAIL PAINTED TO BLEND WITH ENVIRONMENT (LT. GREEN OR TAN PER EXAMPLE).

EXAMPLE: HITEX MANG CASTUS PURPLE CASTLE TREE (MULTI-BRANCH)

MAX. REVEAL

C.O.C. MAX.

TO LARGE MASH OR RETENTION BASIN

NEHIDWALL

PLAN VIEW

FIGURE 33
BOULDERS, TREES, & THORNY PLANTS IN LARGE-WIDTH MEDIANS

FIGURE 34
LANDSCAPING WITH ROCK, NATIVE PLANT MATERIALS, INTEGRAL COLORED GUNNITE SIDES AND BOTTOM.

FIGURE 35
NATIVE PLANT PRESERVATION IN DESERT UPLANDS AREA
CHAPTER 7

COMMUNITY ANTENNA TELEVISION SYSTEMS

SECTION: (1947)

9-7-1: DEFINITIONS
9-7-2: AUTHORITY TO GRANT LICENSE
9-7-3: LICENSE REQUIRED
9-7-4: LICENSE APPLICATION PROCEDURE
9-7-5: ACCEPTANCE OF LICENSE
9-7-6: DURATION OF LICENSE
9-7-7: LIMITATIONS OF LICENSE
9-7-8: PERFORMANCE REVIEW AND LICENSE RENEGOTIATION SESSIONS
9-7-9: PERFORMANCE BOND OR CERTIFICATE OF DEPOSIT
9-7-10: LICENSE FEE
9-7-11: EXTENSION OF SERVICE
9-7-12: SYSTEM CONSTRUCTION AND MAINTENANCE
9-7-13: COMMON TRENCH AND CABLE PROTECTION REQUIREMENTS
9-7-14: TECHNICAL AND SAFETY STANDARDS
9-7-15: OPERATION OF SYSTEM
9-7-16: ACCESS, SERVICE, AND REPORTING REQUIREMENTS
9-7-17: SUBSCRIBER SERVICE REQUEST AND COMPLAINT PROCEDURE
9-7-18: GENERAL REQUIREMENTS AND REGULATION OF SERVICE
9-7-19: LIABILITY AND INDEMNIFICATION
9-7-20: TERMINATION OF LICENSE
9-7-21: OPTIONS UPON EXPIRATION OR TERMINATION OF LICENSE
9-7-22: REMOVAL OR ABANDONMENT OF PROPERTY
9-7-23: AMENDMENTS
9-7-24: SEVERABILITY

9-7-1: DEFINITIONS:
For the purposes of this Chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein unless they are defined differently in a license, in which case for that license the definition set forth therein shall apply, or unless a license specifies that the definitions set forth herein in whole or in part do not apply to such license, in which case they do not apply to such license (in whole or in part, as the case may be). 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. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in the Federal Cable Communications Policy Act of 1984 and in the Federal Communications Commission (FCC) rules and regulations shall apply. (972,1947,4110)

APPLICANT: Any person that applies for a license. (972,1974)

APPLICATION: Licensee’s proposal and all additional representations to the City, both written and oral, the latter when electronically recorded. (1947)

CABLECASTING: Programming (exclusive of broadcast signals) and/or all other forms of information, whether audio, video, facsimile, data, or of any other form carried on a cable television system, whether originated by the cable operator or by any other party. (1947)
CABLE TELEVISION SYSTEM OR CABLE COMMUNICATION SYSTEM OR CATV OR SYSTEM: A system, under common ownership and control, of antennas, cables, fiber optics, wires, lines, towers, waveguides, or other conductors, converters, equipment, or transmission paths designed and constructed for the purpose of generating, producing, receiving, transmitting, amplifying, and distributing and controlling audio, video, and other forms of electronic or electrical signals. Said definition shall not include any facility that serves or will serve only subscribers in one or more multiple dwellings under common ownership, control, or management and which does not use City rights-of-way. (972,1947)

CHANNEL: Unless otherwise defined, a six (6) megahertz (MHz) frequency band which is capable of carrying either one (1) standard video signal or a combination of nonstandard signals. (972,1947)

CHIEF ADMINISTRATIVE OFFICER: The City Manager of the City of Mesa, Arizona, or his designee appointed to act on his behalf in cable television matters. (972,1947)

CITY: The City of Mesa, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form. (972,1947)

COUNCIL: The City Council of the City of Mesa, Arizona, or its designee appointed to act on its behalf in cable television matters. (972,1947)

CONVERTER: An electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver. (1947)

EDUCATIONAL ACCESS CHANNEL or EDUCATIONAL CHANNEL: Any channel where educational institutions are the sole programmers and exercise editorial control over the programming and other information transmitted over that channel. (1947)

EQUIPMENT, APPARATUS, AND APPURTENANCES: Any manholes, underground conduits, poles, cables, boxes, pedestals, wire fixtures, conductors, or other facilities necessary, essential, used, or useful to and operated by the cable television system. (1947)

FCC: The Federal Communications Commission, its designated representative, or its lawful successor. (972,1947)

GOVERNMENT ACCESS CHANNEL OR LOCAL GOVERNMENT ACCESS CHANNEL: Any channel where governmental institutions, bodies, or agencies are the sole programmers and exercise editorial control over the programming and other information transmitted over the channel. (1947)

GROSS SUBSCRIBER REVENUES: Any and all compensation and other consideration received directly or indirectly, in payments or lump sum, by the licensee from subscribers in providing subscriber services. (972,1947)
**INSTALLATION**: The connection of the system from activated feeder line(s) to subscribers’ terminals for the reception of cable service. (1947)

**INSTITUTIONAL NETWORK, INSTITUTIONAL LOOP, OR I-NET**: Video, audio, digital, videotext, data, and/or any other one-way or two-way transmission or reception services provided to institutional users on an individual, private-channel basis, not normally accessible to regular subscribers, but which may include signals among institutional users or to and/or from institutional users to regular subscribers. (1947)

**INTERCONNECT or INTERCONNECTION OF FACILITIES**: Connection of one (1) or more channels of licensee’s system with other cable systems by direct cable, microwave link, satellite, or other appropriate methods. (1947)

**LEASED ACCESS CHANNEL**: Any channel available for lease and programming by persons or entities other than and not affiliated with the licensee, including those portions of the other access channels not in use by their designated programmers, and over which channels the lessee(s) shall exercise editorial control. (1947)

**LICENSE**: The nonexclusive right and authority to construct, maintain, and operate a cable television system through use of the public streets, public utility easements, other public rights-of-way, or public places in the City. (972,1947)

**LICENSEE**: The person granted a license by the Council and the lawful successor, transferee, or assignee of said person. (972,1947)

**LICENSOR**: The City of Mesa as represented by the Council, City Manager, or their designee(s) acting within the scope of their authority. (1947)

**LOCAL ORIGINATION CHANNEL**: Any channel where the licensee is the programmer and provides video programs of local origination and interest and/or other cablecast signals to subscribers. (1947)

**NONEXCLUSIVE**: That more than one (1) license may be granted by the City at any time for any area of the City to any qualified applicant. (1947)

**PERSON**: Any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies, or any other legal entity. (972,1947)

**PROPERTY OF LICENSEE**: All property owned, installed, or used within the City by a licensee in the conduct of its cable television system business. (972,1947)

**PROPOSAL**: Licensee’s written response to the City’s request for proposals to provide cable communications services to the City. (1947)

**PROGRAMMER**: Any person or entity who or which produces or otherwise provides program material or information for transmission to subscribers by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, by means of the cable television system. (1947)
PUBLIC ACCESS CHANNEL, COMMUNITY ACCESS CHANNEL, OR COMMUNITY CHANNEL: Any channel upon which any member of the public or any noncommercial organization may become a programmer on a first-come, first-served, nondiscriminatory basis. (1947)

RESIDENT: Any person residing in the specified license area of the City or as otherwise defined by applicable law. (1947)

SECTION: Any section, subsection, or provision of this Chapter. (1947)

STREET: The surface, the air space above the surface, and the area below the surface of any public street, other public right-of-way, or public place, including public utility easements. (972,1947)

SUBSCRIBER: Any person receiving for any purpose any service of the licensee’s cable television system including, but not limited to, the redistribution of broadcast television signals; radio signals; licensee’s original cablecasting; local government, education, and public access channels; and other services including, but not limited to, leased channels, data and facsimile distribution, pay or premium channels, and emergency or nonemergency public service communications. (972,1947)

TOTAL GROSS RECEIPTS OR TOTAL GROSS REVENUES: Any and all compensation and other consideration collected or received or in any manner gained or derived by licensee from the operation of its cable system within the corporate limits of the City as they now exist or as they may be established hereafter. (972,1947)

TWO-WAY CAPABILITY OR BI-DIRECTIONAL CAPABILITY: The technical capacity for the transmission of telecommunications signals of any type or form from subscriber locations or other points throughout the system back to the system’s control center or to other points on the system, as well as transmission of signals from the system’s control center or another point on the system to any and/or all subscriber locations. (1947)

UNDERGROUND: Cable and appurtenances are either directly buried or placed in an underground conduit system. (1947)

USER: A party utilizing a cable television system channel for purposes of production or transmission of material to subscriber, as contrasted with receipt thereof in a subscriber capacity. (1947)

9-7-2: AUTHORITY TO GRANT LICENSE:

(A) A nonexclusive license to install, construct, operate, and maintain a cable television system on streets, public utility easements, other public rights-of-way, or public places within the City may be granted by the Council pursuant to three (3) separate and distinct sources of authority. The first source of authority is that conveyed to the City by its Charter. The second source of authority is that conveyed by the State of Arizona pursuant to Arizona Revised Statutes 9-505 et seq as it presently exists and as it hereafter may be amended. The third source of authority is that found in common law pursuant to the City’s ownership of the fee simple title to the streets and alleys of the City as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use. (972,1947)

(B) No provision of this Chapter may be deemed or construed to require the granting of a license. (972,1947)
9-7-3: LICENSE REQUIRED:

(A) It shall be unlawful for any person to establish or operate within the corporate limits of the City a cable system as defined in this Chapter and in Section 9-505, Arizona Revised Statutes, unless a license therefor has first been obtained pursuant to the provisions of this Chapter and unless such license is in full force and effect. (972,1947)

(B) Any cable system operating in an unincorporated area which is annexed by the City shall have sixty (60) days from the date the annexation is effective to apply for a license to operate in the City. Failure to do so will constitute a violation of this Chapter and shall be cause for termination of said system’s operation inside the corporate limits of Mesa by order of the Mesa City Council and following ten (10) days’ written notice to the cable system operator. (1947)

(C) Any cable system not currently operating in the City which desires to do so shall apply for a license pursuant to the provisions and requirements of this Chapter. (1947)

9-7-4: LICENSE APPLICATION PROCEDURE:

(A) Each application for a license to construct, operate, and/or maintain any cable television system in the City shall be filed with the City Manager’s office, shall be subject in whole or in part to Council approval, and shall contain, as a minimum, the following: (972,1947)

1. The name and both the home and business addresses and telephone numbers of the applicant. If the applicant is a partnership, the main home and business addresses of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and home and business addresses of its directors, officers, major stockholders (any person controlling more than five percent (5%) of the ownership of the applicant), and associates, and the names and business addresses of parent and subsidiary companies. (972,1947)

2. A statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral or implied, existing or proposed to exist, between the applicant and any person who proposes to have an ownership interest with respect to the proposed license or to the proposed cable television operation. If a license is granted to a person acting as a representative of another person and such information is not disclosed in the original application, such license shall be deemed void and of no force and effect whatsoever. (72,1947)

3. Financial statements, as may be determined by the City, prepared by a certified public accountant or person otherwise satisfactory to the City, showing applicant’s financial status and financial ability to complete construction and installation of the proposed cable system. (972,1947)

4. A map satisfactory to the City indicating the proposed initial area of the City that will be served with cable television. (972,1947)

5. A general five- (5-) year plan for the proposed expansion of licensee’s cable service area within the City. (972,1947)
6. A proposed time schedule for the installation of all equipment necessary to become operational throughout the initial area to be serviced. The proposed schedule shall meet minimum FCC construction requirements. (972,1947)

7. A statement or schedule setting forth the programming and other services to be offered initially and the rates and charges to be made against subscribers for them, including installation and service charges. (972,1947)

8. A statement or schedule setting forth the number of channels and all the television or radio stations and/or other communication services initially proposed to be received, distributed, relayed, or otherwise conveyed over the cable system. (972,1947)

9. A statement describing the cable system and specifying the type and capacity of the cable system proposed to be constructed, installed, maintained, or operated by the applicant and the proposed location of the cable system headend, microwave dishes, towers and antennas, access facilities, and local business offices. (972,1947)

10. A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields. (972,1947)

11. Any other details, statements, information, or references pertinent to this application which shall be required or requested by the City or by any provision of any other enactment of the City. (972,1947)

(B) Prior to the issuance of a license, the City shall hold a public hearing, following reasonable notice to the public, at which every applicant and its proposals shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published not less than fourteen (14) days before the day of such hearing. (972,1947)

(C) In making any determination as to any application, the Council may give due consideration to the quality of the service proposed; experience, character, background, and financial responsibility of any applicant and its management and owners; technical and performance quality of equipment; willingness and ability to meet construction and physical requirements and to utilize technological advances to better its system; and any other considerations deemed pertinent by the Council for safeguarding the interest of the City and the public. The Council, in its discretion, shall determine the award of any license on the basis of such considerations and without competitive bidding. (972,1947)

9-7-5: ACCEPTANCE OF LICENSE:

(A) No license shall become effective for any purpose unless written acceptance thereof shall have been received by the City Manager. Written acceptance, which shall be addressed to the Council and shall be in a form and of a substance approved by the City Attorney, shall also be and operate as an acceptance of each and every term, condition, and/or limitation contained in this Chapter or otherwise specified as herein provided. (972,1947)
(B) Pending litigation against the licensee shall not excuse the licensee from the performance of its obligations under the license. Failure of the licensee to perform such obligations because of pending litigation may result in penalties, forfeiture, revocation, or liquidated damages pursuant to the provisions of the license. (1947)

(C) The written acceptance shall be received by the City Manager not later than one minute after twelve (12:01) P.M. of the thirtieth (30th) day next following the effective date of granting of such license. If written acceptance is not received within such time period, the licensee shall be deemed to have rejected the license, and thereafter the acceptance of the licensee shall not be received by the City Manager. The licensee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received, and then upon such terms and conditions as the Council may impose. (972,1947)

(D) Neither the granting of any license nor any of the provisions contained herein shall be construed to prevent the City from granting any license to any other person. (972,1947)

9-7-6: DURATION OF LICENSE:

(A) The rights, obligations, privileges, and authority contained herein shall take effect upon acceptance of the license and final execution of a license agreement as provided for in Section 9-7-5 of this Chapter, provided licensee has obtained all necessary permits, licenses, and authorizations and has complied with all other applicable provisions of this Chapter to that date. (972,1947)

(B) Unless otherwise provided in a license, the term of any license granted under this Chapter shall be fifteen (15) years, commencing on the effective date as provided for in Subsection (A) of this Section. (972,1947,4110)

(C) Neither the granting of any license nor any of the provisions contained herein or in any other license shall be construed to prevent the City from granting any license to any other person. (1947)

9-7-7: LIMITATIONS OF LICENSE:

(A) No privilege or exemption shall be granted or conferred by any license pursuant to this Chapter except those specifically provided for herein. (972,1947)

(B) Any privilege granted under any such license to use any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property. (972,1947)

(C) Unless specifically provided otherwise in a license, any such license granted shall not relieve the licensee of complying with any rule or regulation of the City. (972,1947,4110)

(D) The provisions in this Subsection (D) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. Any such license shall be a privilege granted only to the original licensee. Such license cannot be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation, or otherwise, excepting a transaction between a wholly owned subsidiary and its parent company, without prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Manager within thirty (30) days after such transfer or assignment. The proposed assignee must show financial responsibility to the satisfaction of the Council and must agree to comply with all provisions of this Chapter and meet, if the assignee acquires the entire cable television system, all of the qualifications that must be met by an original licensee; and provided further that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed fifty percent (50%) of the market value of the property used by the licensee in the conduct of the cable television system, prior consent of the Council shall be required for such encumbrance. (972,1947,4110)
(E) The provisions in this Subsection (E) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. In the event that licensee is a corporation, prior approval of the Council, expressed by resolution, which shall not be unreasonably withheld, shall be required where there is change in control or where ownership of more than fifty percent (50%) of the voting stock of the licensee is acquired by a person or group of persons acting in concert, singly or collectively. Any such acquisition occurring without prior approval of the Council shall constitute a failure to comply with this Chapter. (972,1947,4110)

(F) Unless otherwise provided in a license, every licensee shall be subject to any tax or fee now or hereafter imposed by the City on all businesses of the same or similar class. (972,1947,4110)

(G) Unless otherwise provided in a license, every licensee’s service policies shall show no preferential or discriminatory practices and shall be on file with the City Manager. (972,1947,4110)

(H) Unless otherwise provided in a license, time shall be of the essence in complying with the requirements of any license granted hereunder. No licensee shall be relieved of its obligation to comply promptly with any of the provisions of this Chapter by failure of the City to enforce prompt compliance. (972,1947,4110)

(I) Unless specifically provided otherwise in a license, no licensee shall have recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Chapter or of any license issued hereunder or because of its proper enforcement. (972,1947,4110)

(J) Unless otherwise provided in a license, licensee shall be subject to all requirements of the law, rules, regulations, and specifications heretofore or hereafter enacted or established by the City. (972,1947,4110)

(K) Every licensee shall at all times comply with all laws and regulations of the State and Federal governments or any administrative agencies thereof with authority over it. If any such State or Federal law or regulation shall require a licensee to perform any service or shall permit a licensee to perform any service or shall prohibit a licensee from performing any service in conflict with the terms of its license under this Chapter or under any law or regulation of the City, then as soon as possible following knowledge thereof, such licensee shall notify the City of the point of conflict believed to exist. (1947)

(L) If the City determines that a material provision of a licensee’s license issued under this Chapter is affected by any subsequent action of the State or Federal government, the City shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter and any licenses issued under it. (1947)

9-7-8: PERFORMANCE REVIEW AND LICENSE RENEGOTIATION SESSIONS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Performance review sessions between the City and each licensee under this Chapter shall be held within six (6) months of the effective date of each new license and once every twelve (12) months thereafter. (1947)

(B) Such sessions may be held at any other time during the term of a license at the request of the Council, the City Manager, or the licensee. (1947)
(C) The licensee and the City shall hold scheduled renegotiation sessions every three (3) years from the effective date of any license unless both the licensee and the City agree to a waiver of such renegotiation session. The topics of discussion may include anything but the term of the license. (972,1947)

Special renegotiation sessions may be held at any time during the term of any license, provided that both the licensee and the City shall mutually agree on the time, the place, and the topics to be renegotiated. (972,1947)

9-7-9: PERFORMANCE BOND OR CERTIFICATE OF DEPOSIT:
Unless otherwise provided in a license, every licensee shall file with the City Manager and shall thereafter, annually, during the entire term of such license, maintain in full force and effect a corporate surety bond or other adequate surety agreement in a company and in such amount as shall have been approved by the Council in the license. The bond or agreement shall be so conditioned that in the event that licensee shall fail to comply with one (1) or more of the provisions of this Chapter or of the license, there shall be recoverable jointly and severally from the principal and surety any damages or loss or costs suffered or incurred by the City as a result thereof, including attorneys’ fees and costs of any action or any action proceeding, and including the full amount of any compensation, indemnification, cost, or removal or abandonment of any property or other cost which may be in default, up to the full principal amount of such bond. Said condition shall be a continuing obligation during the entire term of such license and any renewal thereof and thereafter until the licensee shall have satisfied in full any and all obligations to the City which arise out of or pertain to said license. Neither the provisions of this Section nor any bond accepted by the City pursuant hereto nor any damages recovered by the City thereunder shall be construed to exercise faithful performance by the licensee or limit the liability of the licensee under any license issued pursuant to this Chapter or for damages either to the full amount of the bond or otherwise. (972,1220,1947,4110)

9-7-10: LICENSE FEE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall pay to the City during the life of such license, on a quarterly basis, a sum no less than five percent (5%) of the total gross revenues from all sources received from the operation of a cable system within the City. (972,1947)

(B) Payments due the City under this provision shall be computed quarterly for the quarters ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report showing the basis for the computation. (972,1947)

(C) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Section. All amounts paid shall be subject to audit and recomputation by the City. (972,1947)

9-7-11: EXTENSION OF SERVICE:(972)
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) When there is only one (1) active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C) for areas not covered under Subsection (B). (2273)  

When there is more than one active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C). (2273)  

Licensees who do not have a Citywide license shall comply with the provisions of Subsections (B) and (C) within their designated service area. (2273)  

(B) When there is only one (1) active Citywide license that is in effect under this Chapter, that licensee shall provide cable television service to any resident(s), residence(s), or other person(s) or facility(ies) in areas containing not less than seventy-five (75) dwelling units per trench mile (underground construction) and/or not less than fifty (50) dwelling units per strand mile (aerial construction) and not currently served by any licensee within the corporate limits of the City as now established and as may be expanded or extended at any time hereafter. (2273)  

1. For purposes of this Section, "provide cable television service" shall mean having all cable plants including trunk feeder and drop lines and other necessary electronics in place and activated. (1947, 2273)  

2. When fifty percent (50%) of all dwelling units passed by the licensee’s cable system inside the corporate limits of the City subscribe to the licensee’s cable television service, that is, when the licensee’s penetration rate reaches fifty percent (50%), then the residential density requirement for service under Subsection (B) of this Section shall be forty (40) dwelling units per strand and/or trench mile, without regard for method of construction. (1947, 2273)  

3. For purposes of this Section, "dwelling units" shall be defined as single-family residences and all multiple-family residences, with the exceptions that: (1947, 2273)  

   (a) Multiple-family residences such as, but not limited to, condominiums, townhouses, apartments, and other multiple-unit dwellings, excluding duplexes, triplexes, and fourplexes, which shall be counted as single-family residences, shall be counted as one-half (1/2) a dwelling unit under this Section. (1947, 2273)  

   (b) Mobile home parks and recreational vehicle parks which allow for rental space by a majority of their tenants/lessees for periods of less than six (6) months shall be excluded from this definition of dwelling units under this Section. (1947, 2273)  

   (c) Multiple-unit dwellings served by satellite master antenna television (SMATV) shall be excluded from the definition of dwelling units in this Section. (1947, 2273)  

4. In the case of new development, a licensee, if refused access to an open or joint trench, or in the case of multiple-unit dwellings, to a construction site, in order to prewire those units for receipt of cable service, may exclude said development from consideration for the licensee’s cable service under this Section for a period of five (5) years. (1947, 2273)  

   (a) For purposes of this Section, "new development" is defined as a development in which an open trench, and in the case of multiple-unit dwellings, in which access to the site, for prewiring is provided by the developer during the initial construction period. (1947, 2273)  

   (b) Refusal by a developer or owner shall be demonstrated by the licensee. (1947, 2273)
(C) When there is more than one active Citywide license that is in effect under this Chapter or in areas not covered under Subsection (B) of this Section, for extension of service, residents may petition any licensee for service. Petitions for service may be filed as follows: (1947,2273)

1. If fifty-one percent (51%) of the persons residing in a specific area of the City not covered under Subsection (B) of this Section and not served by any licensee petition, in writing, one (1) or more licensees for service, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving services or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

2. If fifty-one percent (51%) of the subscribers in a specific area of the City containing not less than fifty (50) dwelling units per street mile and currently availing themselves of the services of a licensee petition, in writing, other licensees under this Chapter to provide service to them in the event that said subscribers allege and believe that service provided by their current cable operator is unacceptable to them, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving service or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

3. For purposes of this Section, "economically feasible" shall mean that the additional incremental revenues that may reasonably be generated by extending service to a specific area will equal or exceed the additional incremental costs incurred in furnishing service to that specific area in an amount sufficient to provide the licensee(s) with a reasonable Internal Rate of Return (IRR). (1947,2273)

4. Licensees must extend and make cable television service available at the standard connection charge to any resident(s) isolated from a standard residential area who requests connection, provided the isolated residence is passed by existing cable, if the connection to the isolated resident(s) would require no more than a standard one hundred fifty-foot (150') drop. (1947,2273)

Licensees must extend and make cable television service available to any isolated resident(s) requesting it, provided the isolated residence is passed by existing cable, even if the connection would require more than a one hundred fifty-foot (150') drop, at a charge not to exceed the actual installation costs incurred by the licensee for the distance exceeding one hundred fifty feet (150'). (1947,2273)

5. Licensee shall keep a record for at least three (3) years of all petitions and requests for service received pursuant to this Section. (1947,2273)

(D) Nothing herein shall be construed to prevent any Citywide licensee from serving more areas and residents of the City than is required by this Section. Conversely, if any licensee shall determine that the provisions under Subsection (B) of this Section under particular circumstances combine to work a severe economic hardship on him/her, the licensee shall have the right of appeal to the City Manager for a waiver of the performance required by that portion of said Subsection (B) of this Section. (1947, 2273)

(E) A licensee intending to overbuild another licensee under this Section shall obtain all applicable permits from the City to do so and shall be obligated by this Section to notify, in writing, the licensee to be overbuilt no less than ten (10) days prior to the start of construction. (1947,2273)

(F) All licensees under this Chapter shall be required to provide, upon request, current and accurate maps showing the full extent of the licensee’s system both inside the corporate limits of the City and in other incorporated and unincorporated areas outside the City. (1947,2273)
9-7-12: **SYSTEM CONSTRUCTION AND MAINTENANCE:**

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) New licensees or licensees proceeding with reconstruction of an existing system under this Chapter shall establish and file with the City Manager a construction plan, including maps showing construction locations, and a timetable for buildout and activation of cable lines. (1947)

(B) After acceptance of a license in the City, any licensee shall proceed with diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or associated microwave transmission facilities. (972,1947)

(C) Copies of all petitions, applications, and reports submitted by the licensee to the Federal Communications Commission with respect to any matters affecting the licensee’s cable television operations under the license shall be available for inspection by the City Manager. A copy of any agreement covering the licensed area between the applicant and any public utility providing for the use of any facilities of the public utility, including but not limited to, poles, lines, or conduits, shall also be available for inspection by the City Manager. (972,1947)

(D) All lines, equipment, and connections in, over, under, and upon the streets and public ways in the City, wherever situated or located, shall at all times be maintained in a safe and suitable condition and in good order and repair. (972,1947)

(E) The licensee shall repair the streets and public ways. (972,1947)

1. Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction of the cable television system shall be promptly repaired by the licensee at its expense and to the satisfaction of the City Manager. (972,1947)

2. Upon the failure, refusal, or neglect of the licensee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street or other public place within any time prescribed therefor or upon notice given when no time is prescribed, the City Manager may cause such work or other activity to be completed in whole or in part to his satisfaction and upon so doing, shall submit to licensee an itemized statement of the cost thereof. The licensee shall, upon thirty (30) days after receipt of such statement, pay to the City the entire amount thereof. (972,1947)

(F) No licensee shall erect any pole on or along any street or public way of the City except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems, and only with the approval of the City Manager. Nothing in this provision shall be construed to prohibit the use of existing poles provided that satisfactory use agreements are entered into between the licensee and the owners of said poles. (972,1947)

(G) In those areas and portions of the City where the transmission or distribution facilities of the utility providing telephone service or those of the utility providing electric service are underground or hereafter may be placed underground, then the licensee shall likewise construct, operate, and maintain all of its transmission and distribution facilities or other means of transmitting signals underground. The City shall not be responsible for any costs incurred by the licensee in placing the licensee’s facilities underground. (972,1947)
(H) Every licensee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of the public or private property by any person. In the event of such interference, the City Manager may require the removal of licensee’s lines, cables, and appurtenances. (972,1947)

(I) Every licensee or its designated contractors or subcontractors, when constructing or installing cable equipment of any kind in public right-of-way and/or easements on private property, shall fully and completely restore any and all such property to its original condition. (1947)

9-7-13: COMMON TRENCH AND CABLE PROTECTION REQUIREMENTS:  
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Cable television shall utilize common or joint trench with telephone and/or utilities for undergrounding where a developer provides a trench for undergrounding by negotiating a joint trench agreement with those entities. Where a developer provides a trench for undergrounding in a new development, the developer must allow any licensee to utilize this trench and provide backfill under the same conditions as are extended to other trench users. (972,1947)

(B) When a licensee will be affected thereby, such licensee’s representative shall be notified of and be present at subdivision reviews and other City meetings where location of cable and utilities are discussed prior to the start of particular construction projects. (1947)

(C) All licensees shall become members of the Blue Stake program and shall be notified at the same time and in the same manner as telephone and utility companies before developers/excavators break ground. (1947)

Developers, contractors, subcontractors, excavators, or others subsequently damaging or breaking cable which has been properly laid and marked shall be liable for its immediate repair or replacement. (1947)

(D) Any licensee shall be relieved of the responsibility to build out and/or activate cable in an area where properly laid and marked cable has been damaged or destroyed until such time as said cable is repaired or replaced by the responsible parties in accordance with original system specifications. (1947)

Subsection (D) of this Section shall not apply when damage or destruction is done by a licensee or its agents, contractors, or subcontractors or when damage or destruction is the result of negligence on the part of a licensee. (1947)

(E) Every licensee shall, upon request of the City, interconnect the public, educational, and government access channels in its system with any and/or all other cable systems licensed in the City and, when economically feasible, with any and/or all other cable systems licensed in adjoining or adjacent incorporated communities or unincorporated County areas. (1947)

1. Upon receiving an interconnect request, a licensee shall initiate and pursue with all reasonable diligence negotiations with other affected cable systems so that interconnection construction and operations costs may be shared equitably among all systems affected. (1947)

2. A licensee, upon receiving an interconnect request, must establish a timetable, approved by the City, for completion of said interconnect and must adhere to that schedule unless an extension or waiver is granted by the City. (1947)
9-7-14: TECHNICAL AND SAFETY STANDARDS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall construct, operate, maintain, and reconstruct the cable system in accordance with the most recent technical performance standards of the FCC; shall have no greater obligation to maintain or reconstruct than that imposed by the FCC but may voluntarily agree to exceed said standards as part of the license. (1947)

(B) Every licensee shall deliver signals to subscribers which are not degraded in appearance or sound as perceived by the human eye or ear from those signals which are available at the licensee’s receiving site. (972,1947)

Upon reasonable request by the City Manager, every licensee shall make a demonstration satisfactory to the City Manager that a signal is being delivered to any designated area which is of sufficient strength and quality to meet the standards set forth in the regulations of the FCC and in this Chapter. (1947)

(C) Every licensee shall place all cable and appurtenances underground to the maximum extent possible, in particular where utilities are located underground. Existing technology may preclude the placing of some appurtenances underground; any such appurtenances placed above ground shall be located so as to be as unobtrusive as possible, consistent with the design of the cable system. As new technology and economic feasibility allow, appurtenances associated with future lines shall be placed underground. Every licensee shall install cable underground in all areas where all existing utilities are underground. Underground cable shall also be installed in all new developments. Previously installed aerial cable shall be underground with adjacent utilities when they are placed underground. (1947)

(D) Every licensee shall construct, install, operate, and maintain its system at its own cost in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, a licensee shall provide the City Manager with a written report, including a layman’s interpretation of results, of the results of the licensee’s annual proof-of-performance tests conducted pursuant to FCC standards and requirements. The City Council may, at City cost, require that said performance tests be monitored and interpreted by a professional engineer not on the permanent staff of the licensee. (1947)

(E) Every licensee shall have the right and privilege of construction throughout the term of this license; however, should improvements in the technology cause FCC performance standards to become outdated or to exceed those of the licensee, then the licensee’s performance standards shall be updated, amended, or otherwise revised to reflect changed conditions and technology. Said updated, revised, or amended standards shall apply immediately to all construction begun after the effective date of said updates, amendments, or revisions. (972,1947)

(F) Every licensee shall construct, install, and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee’s employees, the employees of utilities, and all other property affected by the licensee’s construction shall be a primary objective whenever or wherever a licensee operates in the license area or in other areas where the licensee may locate equipment. (1974)
Every licensee shall be solely and completely responsible for the actions taken by any contractor, journeyman, consultant, or any other person employed by the licensee to place, remove, maintain, repair, or relocate any of the licensee’s facilities on public or private rights-of-way or easements as well as in or on public or private buildings or structures. (1947)

Every licensee shall have available at all hours of every day personnel to locate its underground and buried facilities as the result of emergency conditions requiring immediate repair to any facilities owned by the State, County, or City or the gas, electric, and telephone utilities as well as pipe line companies or similar industries. Every licensee shall respond to normal location requests as required by the Blue Stake program. (1947)

All working facilities and conditions used during construction, installation, and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration. (1947)

Every licensee shall maintain equipment capable of providing standby power for the headend for a minimum of three (3) hours. Every licensee shall install uninterrupted power sources capable of providing retention of data stored in the memories of the cable system’s various computer systems at the point of origination of transmission. (1947)

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

Every licensee shall put, keep, and maintain all parts of the licensee’s system in good condition throughout the entire license period. (972, 1947)

Every licensee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. (972, 1947)

No licensee shall allow its cable or other operations to unreasonably interfere with television reception of persons not served by the licensee, nor shall the system interfere with, obstruct, or hinder in any manner the operation of the various utilities serving the residents within the City. (1947)

Every licensee shall continue, through the term of this license, to maintain the technical standards and quality of service set forth in this Chapter and in its license. Should the City find that the licensee has failed to maintain these technical standards and quality of service, the Council, by resolution, may specifically enumerate improvements to be made. Failure of a licensee to make such improvements within the time frame specified in such resolution shall constitute a violation of this Chapter for which damages may be assessed by the City. (1947)

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee shall provide such public, education, and government access and local origination services and such access equipment, facilities, and public training as are required by and enumerated in its license or in any subsequent amendments to that license. (972,1947)

(B) Every licensee shall provide the City, upon request and at no cost to the City, up-to-date as-built maps of a suitable scale showing all transmitting and receiving pickup locations and the location of all amplifiers and all trunk and distribution feeder lines. Additional current maps shall be provided to the City at no cost to the City upon request. (972,1947)

(C) Every licensee shall submit an annual report to the City Manager no later than ninety (90) days after the close of the licensee’s fiscal year. Said report shall be specific to Mesa and to the licensee’s operation of its system in Mesa, separate and apart from any corporate annual report compiled and provided by a licensee’s parent company, and shall include, but not be limited to: (972,1947)

1. A fully-audited and certified statement of revenues for the previous calendar or fiscal year, including gross revenues from all sources and gross subscriber revenues from each category of service. (972,1947)

2. A summary of the previous year’s activities including, but not limited to: services begun and/or dropped, subscribers gained and/or lost and year-end totals, service area at beginning and end of year (map and text), revenues collected, license fees paid to the City, plant miles constructed, plant miles activated, changes in local management and staff, rate structure and changes during the year, new services offered, programming changes, changes in service policies and/or procedures, and system technical changes. (972,1947)

3. A summary of complaints received, by type, and how they were handled. (972,1947)

(D) Every licensee shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property as may be reasonably necessary and appropriate for the evaluation of the licensee’s performance under this Chapter and its license. (1947)

(E) Every licensee shall maintain an office in the City or in an unincorporated area of Maricopa County immediately adjacent to the City limits which shall be open during all usual business hours with a local telephone number listed in directories of the telephone company serving the City and shall be so operated that requests for repairs and service adjustments can be received at any time day or night (twenty-four (24) hours a day), seven (7) days a week. (972,1947)

(F) Every licensee shall maintain adequate office and service personnel at its Mesa or Mesa-area location to properly answer telephones, service walk-in customers, and dispatch service and repair personnel in a timely manner to all portions of its Mesa service area. (1947)

9-7-17: SUBSCRIBER SERVICE REQUEST AND COMPLAINT PROCEDURE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee, when required by the City and to the extent required by the City, shall establish and maintain a subscriber service request and complaint procedure satisfactory to the City. For the purposes of this Section, "service request" shall mean an initial request by a subscriber for service related to the installation, operation, performance, and/or quality of a licensee’s cable television service as provided to the subscriber’s residence. "Complaint" shall mean a service request not resolved to the satisfaction of the subscriber on initial contact, requiring further action by the licensee. The service request and complaint procedure established by the licensee shall include, but not be limited to: (972,1947)

Maintenance of an accurate and complete written record listing, as a minimum, times and dates of customer service requests and complaints, identifying customers by name, address, and telephone number, describing the nature of the requests and/or complaints, and indicating when and what action was taken by licensee in response thereto. Said record shall be kept at the licensee’s local office and shall be available for inspection by the City Manager and the public during regular business hours. (972,1947)

(B) Every licensee shall provide each subscriber annually with a written statement describing in full the process for submitting a service request or complaint. (972,1947)

(C) Every licensee shall provide, in writing, upon request of the City Manager, a detailed description of any complaint and the manner in which it has been resolved. (972,1947)

9-7-18: GENERAL REQUIREMENTS AND REGULATION OF SERVICE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) The City shall not regulate subscriber rates and charges for services provided by a licensee. However, every licensee shall provide the City with a listing of all current subscriber rates and charges for services and an updated listing of these rates and charges on each occasion when these are changed in any way. (972,1947)

(B) Every licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, of the Federal Cable Communications Policy Act of 1984, and of all other applicable Federal, State, and local laws and executive and administrative orders relating to nondiscrimination. (972,1947)

(C) No cable, line, wire, amplifier, converter, or other piece of equipment owned by a licensee may be installed in a public or private easement or in the public right-of-way on public or private property without first notifying the occupants of the property and securing from the City or the owner of the private property involved, as the case may be, all necessary permits, authorizations, and permissions to do so. (972,1947)

(D) Neither a licensee nor any other person shall monitor or arrange for the monitoring of any cable, line, signal input device, or subscriber outlet or receiver for the purposes of determining viewing habits, except for such generalized monitoring as is necessary to insure accurate billing, prevention of theft of service, and maintenance of system integrity without first securing the written permission of the subscriber. (972,1947)

(E) No licensee shall sell or otherwise make available the lists of the names and addresses of its subscribers to any person not connected with the licensee’s system or the City without first securing the written permission of the subscriber. (972,1947)
1. Every licensee shall provide to each subscriber annually a separate written notice which clearly advises said subscribers of the personally identifiable information collected or to be collected by licensee as provided for in Section 631 of the Federal Communications Policy Act of 1984 and amendments thereto. (1947)

2. Every licensee shall conform to all other protection of subscriber privacy provisions of Section 631 of the Federal Cable Communications Policy Act of 1984 and amendments thereto. (1947)

(F) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, electronically, inductively, or otherwise, with any part of a licensed cable system within the City for the purpose of enabling himself/herself or others to receive any television or radio signals, pictures, programs, or sound without payment to the owner of said cable system. (972,1947)

1. Every licensee, at the time of installation of service to any subscriber, shall have available and shall install all necessary parts and equipment to insure that said subscriber receives only the cable services contracted for and does not for any reason receive extra services not desired and/or not reflected in the subscriber’s agreement with the licensee. (1947)

2. It shall be unlawful for any person, without the consent of the cable system owner, to willfully tamper with, remove, injure, or destroy any cable wires or other equipment used for distribution of television and/or radio signals, pictures, programs, or sound. (972,1947)

3. Any person who shall violate this Section (F) or its subparts may be prosecuted under all applicable local, State, and Federal laws including, but not limited to, those provisions found in Section 633 of the Cable Communications Policy Act of 1984, but shall specifically in the City be guilty of a misdemeanor and upon conviction thereof individuals shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period of time not to exceed six (6) months, or by both such fine and imprisonment, and firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000.00). Each day a violation continues shall be a separate offense, punishable as described. (1947,2466,4110)

(G) Every licensee shall wholly comply with Sections 612(h) and 639 of the Federal Communications Policy Act of 1984 related to the prohibition of obscene programming and shall not offer such programming on the Mesa system. (1947)

Every licensee shall provide, free of charge or by sale or lease, a lockbox device by which a subscriber can prohibit the viewing of a particular cable service during periods selected by that subscriber as provided for in Section 624(d)(2)(A) of the Cable Communications Policy Act of 1984. (1947)

(H) Every licensee shall provide to the City, in times of emergency, the right and the capability to override, by remote control, the audio of all channels simultaneously. Said override system shall be placed under City control and shall be activated from a location or locations as reasonably determined by the City Manager. (1947)

Additionally, every licensee, in consultation with the City, shall designate and make available the government access channel which can be used for emergency broadcasts of both audio and video. Every licensee shall, upon request, provide at no cost to the City the equipment and facilities necessary to do so. (1947)
**LIABILITY AND INDEMNIFICATION:**

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including, but not limited to, damages to City property and damages arising out of copyright infringements; damages arising out of any failure by licensee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the licensee’s cable television system; and libel judgments for programming), costs, or liabilities (including costs or liabilities of the City with respect to its employees) of every kind and nature whatsoever including, but not limited to, damages for injury or death or damage to person or property regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise of the enjoyment of any license hereunder by a licensee or the granting thereof by the City. (972, 1947)

(B) Every licensee shall, at the sole risk and expense of the licensee, upon demand of the City, made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees and arising out of or pertaining to the exercise or the enjoyment of such license or the granting thereof by the City. (972, 1947)

Every licensee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against the licensee, the City, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue with reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder or otherwise; provided that neither a licensee nor the City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding without first obtaining the written consent of the other. (972, 1947)

(C) Any licensee shall, concurrently with the filing of an acceptance of award of any license granted, furnish to the City and file with the City Manager, and at all times during the existence of any license granted hereunder maintain in full force and effect, a general comprehensive liability insurance policy in a company approved by the City Manager and a form satisfactory to the City Attorney, protecting the City, its officers, boards, commissions, agents, and employees against liability for loss or damage for bodily injury, death, and property damage resulting from the installation, development, maintenance, or expansion of the cable system. The Council, in the license, shall set the insurance amounts to be maintained by the licensee. The City shall be named on such policy as a coinsured or added thereon by endorsement as a named insured. A certificate of the insurance required herein, as well as a copy of the policy, shall be filed with the City Manager. The certificate shall provide that if the policy is cancelled by the insurance company or the licensee during the term of the license, ten (10) days’ written notice shall be given to the City Manager prior to the effective date of such cancellation. (972, 1947)
9-7-20: **TERMINATION OF LICENSE:**
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Any license granted may be terminated prior to its date of expiration by the Council in the event that the Council finds that: (972,1947)

1. The licensee has failed to comply with any material provision of this Chapter. (972,1947)

2. The licensee has, by act or omission, violated any material term or condition of any license issued. (972,1947)

3. The licensee has failed to comply with any material rule or regulation of the Council or City Manager validly adopted pursuant to this Chapter. (972,1947)

4. The licensee has failed to comply with any rule, regulation, or order of the FCC or rule or regulation contained in the Cable Communications Policy Act of 1984 as now constituted or as it may hereafter be amended. (972,1947)

5. Upon the request of the licensee and upon the approval of the Council. (972,1947)

(B) The City Manager may make written demand that the licensee comply with any requirements, limitations, terms, conditions, rules, or regulations. If the failure, neglect, or refusal of the licensee continues for a period of thirty (30) days following such written demand, the City Manager may place his request for termination of the license upon the next regular Council meeting agenda. The City Manager shall cause to be served upon such licensee, at least ten (10) days prior to the date of such Council meeting, a written notice of his intent to request such termination and the time and place of the meeting, notice of which shall be published by the City at least ten (10) days before such meeting. (972,1947)

(C) The Council shall consider the request of the City Manager, shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by the licensee was with just cause. (972,1947)

(D) If such failure, refusal, or neglect by the licensee was with just cause, the Council shall direct the licensee to comply within such time and matter and upon such terms and conditions as are reasonable. (972,1947)

(E) If the Council shall determine such failure, refusal, or neglect by the licensee was without just cause, then the Council may, by resolution, declare that the license of such licensee shall be terminated and forfeited unless there be compliancy by the licensee within such period as the Council may fix. (972,1947)

9-7-21: **OPTIONS UPON EXPIRATION OR TERMINATION OF LICENSE:**
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Upon expiration of the initial term of any license granted hereunder, any license may be renewed by the Council upon application of the licensee. The terms of the renewal shall be in accordance with the existing rules of the FCC, as provided for under the Cable Communications Policy Act of 1984 and amendments thereto, and as determined by the Council. Renewal considerations shall include, but not be limited to, the City and the licensee reports prepared throughout the life of the license, the cable system’s technical performance, the development of cable services, the quality of all services to the subscribers, the demonstrated ability of the licensee to properly service the area of the City for which its license is granted, and the cooperation exhibited by the licensee with the City and its residents throughout the license period. Nothing herein shall be construed to require such renewal. (972,1947)

Each application for a renewal of any license shall be accompanied by an application fee in an amount determined by the Council. (972,1947)

(B) In the event that the Council and any licensee are unable to reach an accord on the renewal of any license, the Council may elect to invite additional proposals for the operation of one (1) or more cable television systems. Such cable system or cable systems may either replace an existing cable system or systems or be in addition to it/them. (972,1947)

(C) In the event of expiration of the initial term without renewal or of termination for any cause of any license, the City shall have the right of first refusal to purchase the affected cable television system or systems at a price not to exceed its/their then fair market value. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow, and other factors, may be considered. However, under no circumstances shall any valuation be made for any right or privilege granted to any license. (972,1947)

(D) In the event that the City elects to purchase the cable system or systems or the license is awarded to a new licensee upon expiration without renewal or termination of the term of any license, the current licensee shall sell the cable system to the City or to the new licensee, whichever is applicable. The price for such sale shall be the fair market value of the cable system, as defined above. (972,1947)

(E) It shall be the continuing right of all subscribers to receive all available services during the term of the license insofar as their financial and other obligations to the licensee are honored by them. In the event of expiration of the initial term of the license, regardless of whether it is intended that the license be renewed or not or in the event of termination for cause of any license, every licensee shall continue all services to subscribers and shall fulfill all of the obligations required by the license and this Chapter until twelve o’clock (12:00) midnight of the day of such expiration of final termination. (972,1947)

9-7-22: REMOVAL OR ABANDONMENT OF PROPERTY:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City Manager by reason of traffic conditions; public safety; street vacation; freeway or street construction; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structure; or improvements by public agencies. Nothing required herein shall be deemed a taking of the property of a licensee, and the licensee shall be entitled to no surcharge by reason of anything required herein. (972,1947)
(B) Removal or abandonment shall apply in the event that: (972,1947)

1. The use of any part of the cable system of a licensee, excepting unactivated cable installed in joint trench, is discontinued for any reason for a continuous period of thirty (30) days without prior written notice to and approval of the City; or (972,1947)

2. Any part of such system has been installed in any street or other area without complying with the requirements thereof; or (972,1947)

3. This license shall be terminated or shall expire without renewal. Then the licensee shall promptly, upon request and ten (10) days’ written notice by the City Manager, remove from the streets or public places, at the expense of the licensee and at no expense to the City, all such property and poles of such system in place, other than any which the Council may permit to be abandoned. In the event of such removal, the licensee shall properly restore the street or other area from which such property has been removed to such condition as the City Manager shall approve. (972,1947)

(C) The Council may, upon written application by a licensee, approve the abandonment of any property in place by a licensee and under such terms and conditions as the Council may prescribe. Upon abandonment of any property of the licensee in place, the property shall become that of the City, and the licensee shall submit to the City Manager an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. (972,1947)

(D) Any property of the licensee remaining in place one hundred eighty (180) days after the cancellation, termination, or expiration of the license shall be considered permanently abandoned. The Council may extend such time not to exceed thirty (30) days. (972,1947)

9-7-23: **AMENDMENTS:**

Unless specifically provided otherwise in a license, there is hereby reserved to the City the right and authority to amend any section of this Chapter so as to require additional or greater standards of construction, operation, maintenance, or otherwise on the part of the licensee to reflect technical and economic changes occurring during the license term and to enable the City and the licensee to take advantage of new developments in the cable television industry so as to more effectively, efficiently, and economically serve the public. Such additional or greater standards may be imposed by the City if not prohibited by the FCC or the Cable Communications Policy Act of 1984 and amendments thereto. (972,1947,4110)

9-7-24: **SEVERABILITY:**

(A) If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. (1947)

(B) In the event any future law, rule, or regulation adopted by the Federal government makes it necessary or desirable to amend or change any of the terms or conditions of this Chapter or of any license issued hereunder, the City reserves the right to renegotiate the terms and conditions of this Chapter and/or such license(s). (972,1947)
CHAPTER 8
OFF-SITE IMPROVEMENT REGULATIONS

SECTION:

9-8-1: PURPOSE AND INTENT
The purpose of these regulations is to provide for the orderly growth and harmonious development of the City of Mesa; to insure that proper off-site facilities are constructed in conjunction with the development of unsubdivided land for commercial, industrial, and multiple-residential uses, and single residential uses not in a subdivision, where no subdivision of land is required; to provide for public dedication of such rights-of-way as streets or easements as are reasonably required by or related to the effect of the proposed use; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements as part of the development. In its interpretation and application, the provisions of these regulations are intended to provide a common ground of understanding and equitable working relationship between public and private interests to the end that both independent and mutual objectives can be achieved in the development of land where no subdivision is required. (1095,4570)

9-8-2: DEFINITIONS:

COUNCIL: The City Council of the City of Mesa. (1095)

DEVELOPER: A developer shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust, or other legal entity that initiates the development of land for commercial, industrial, multifamily purposes or single residential uses not in a subdivision in accordance with the provisions of this Ordinance; and said developer need not be the owner of the property as defined by this Chapter. (1095,4570)

EASEMENT: A grant by the owner of the use of a strip of land by the public, a corporation, or persons for specific uses and purposes, and so designated. (1095)

EASEMENT, PUBLIC UTILITY (PUE): An easement for overhead and underground utility facilities provided for the use of the public, including water, storm drainage, sewage, electricity and communication, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (4570)

EASEMENT, PUBLIC UTILITY AND FACILITIES (PUFE): An easement for the installation of facilities, underground or overhead, furnished for the use of the public, including electricity, gas, steam, communication, water, storm drainage, sewage, sidewalks, landscaping, traffic control devices, street lights, flood control, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments or boards. (4570)
ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public improvements, prepared by a civil engineer registered in the State of Arizona in accordance with the approved preliminary plat and in compliance with City of Mesa standards of design and construction approved by the City Engineering Division. (1095,4570)

IRRIGATION FACILITIES: Includes canals, laterals, ditches, conduits, gates, pumps, and allied equipment necessary for the supply, delivery, and drainage of irrigation water and the construction, operation, and maintenance of such. (1095)

OWNER: The person or persons holding title by deed to land or holding title as vendees under land contract or holding any other title of record. (1095)

PUBLIC IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, and instructions to be followed in the planning, design, and construction of certain public improvements in the City of Mesa, formulated by the City Engineer, the County Health Department, and other City departments. (1095)

RIGHT-OF-WAY IMPROVEMENTS: Construction in the public right-of-way and public easements, including, but not limited to: Streets, alleys, medians, bicycle lanes, curbs and gutters, stormwater facilities, water and sewer lines and services, fire hydrants, gas lines and services, sidewalks, driveways, streetlights, traffic control devices, street name signs, landscaping, underground and overhead utilities as required by the City Engineer. Right-of-way improvements do not include right-of-way land dedications. (4570)

RIGHT-OF-WAY, PUBLIC: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to: Street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public rights-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state or municipal regulations. (1095,4570)

STREET: Any street, avenue, boulevard, road, lane, parkway, place, viaduct, easement for access, or other way which is an existing state, county, or municipal roadway, or which is dedicated as such by the owner, or a street or way in a plat duly filed and recorded in the County Recorder’s office. A street includes land between the right-of-way lines, whether improved or unimproved, and may comprise pavement, shoulders, curbs, gutters, sidewalks, parking areas, and landscape areas. (1095,4570)

ARTERIAL STREET: A general term including freeways, expressways, and major arterial streets and interstate, state, or county highways having regional continuity. (1095)

COLLECTOR STREET: Provides the traffic movement within neighborhoods of the City and between major streets and local streets and for direct access to abutting property. (1095)

LOCAL STREET: Provides for direct access to residential, commercial, industrial, or other abutting land or for local traffic movements and connects to collector and/or major streets. (1095)
ALLEY: A public service way used to provide secondary vehicular access to properties otherwise abutting upon a street. (1095)

UTILITIES: Installations or facilities, underground or overhead, furnishing for the use of the public electricity, gas, steam, communication, water, drainage, sewage disposal, or flood control, owned and operated by any person, firm, corporation, City of Mesa department, or board duly authorized by state or City of Mesa regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards as sense requires. (1095)

9-8-3: STREET AND UTILITY IMPROVEMENT REQUIREMENTS:

(A) Purpose. It is the purpose of this Section to establish in outline the minimum acceptable standards for improvement of public streets and utilities, and dedication of rights-of-way where required, to define the responsibility of the developer in the planning, constructing, and financing of public improvements and to establish procedures for review and approval of engineering plans. (1095,3105,4570)

All improvements required in streets, alleys, or easements which are required as a condition of site plan approval shall be the responsibility of the developer. (1095)

The City Engineer is authorized to develop and apply such engineering standards, specifications, and procedures for the design and construction of improvements as are consistent with the objectives of this section and necessary or appropriate to protect the public health, safety, and welfare. (4570)

(B) Applicability. The standards and requirements of this Section shall apply to all commercial, industrial, and multiple-residential developments, and single residential developments where no subdivision of land is required, as follows: (3105,4570)

1. Any new construction on undeveloped or vacant parcels; or (3105)
2. Total removal and reconstruction of existing buildings and structures; or (3105)
3. A one hundred percent (100%) or more increase in the total aggregate area of existing building and structures. (3105,4570)
4. Buildings and structures existing at the time of annexation by the City. (4834)

(C) Responsibility for Improvements -- New Development. All requirements required under Section 9-8-3(B)1 shall be the responsibility of the developer. (4570)

(D) Responsibility for Improvements -- Existing Development. The requirements of Section 9-8-3(B)2 and 3 apply to parcels and shall be the responsibility of the developer as follows:

1. For parcels that have not previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for all improvements. (4570,4834)
2. For parcels fronting on other than arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is not responsible for additional improvement requirements. (4570,4834)

3. For parcels fronting on arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is not responsible for arterial street widening improvements when such improvements are not identified on the City's currently adopted Transportation Plan. (4570,4834)

4. For parcels fronting on arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for fifty percent (50%) of the costs of the arterial street widening requirements calculated in accordance with City policy as approved by the City Engineer when such street widening improvements are identified on the City's currently adopted Transportation Plan but are not a part of the City's five (5) year Capital Improvement Plan. (4570,4834)

5. For parcels fronting arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for all of the costs of the arterial street widening requirements calculated in accordance with City policy as approved by the City Engineer when such street widening improvements are identified on the City's currently adopted Transportation Plan and are a part of the City's five (5) year Capital Improvement Plan. (4570,4834)

The developer's responsibility for right-of-way improvements as determined in this section may be fulfilled by constructing the required right-of-way improvements in accordance with all City requirements and standards or by paying an in-lieu payment in accordance with Section 9-8-4(C), as approved by the City Engineer. (4570)

(E) Engineering Plans. (1095,3105,4570)

1. It shall be the responsibility of the developer to have prepared by a civil engineer, registered in the State of Arizona, a complete set of engineering plans, satisfactory to the City Engineer, for construction of required improvements. Such plans shall be prepared and submitted to the City of Mesa Building Safety Director together with the on-site construction plans. (1095,4570)

2. Engineering plans shall be approved by the City Engineer prior to the issuance of a building permit by the City Building Safety Director. (1095,4570)

(F) Dedication of Rights-of-Way. The dedication of rights-of-way in accordance with Section 9-6-2 and the table contained in this Section shall be made prior to the issuance of a building permit, or rights-of-way permit, or pursuant to the recording of a subdivision plat or land split document. (1095,3105,4570)

<table>
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<tr>
<th>Street Classification</th>
<th>Local</th>
<th>Collector</th>
<th>Major Collector</th>
<th>Local Industrial</th>
<th>Arterial</th>
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<td>80' Full Street</td>
<td>110' Full Street</td>
<td>80' Full Street</td>
<td>*130' Full Street</td>
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<td></td>
<td>25' Half Street</td>
<td>40' Half Street</td>
<td>55' Half Street</td>
<td>40' Half Street</td>
<td>*65' Half Street</td>
</tr>
</tbody>
</table>

* Footnote: Additional right-of-way width required at arterial-to-arterial intersections. See Section 11-13-2 (J). Refer to Sections 9-8-4 and 9-8-5 for modifications and appeals to these requirements.
(G) Construction and Inspection. (1095,3105,4570)

1. All improvements in the public right-of-way shall be constructed under the inspection and approval of the City Engineer. Construction shall not be commenced until a permit has been issued for such construction, and if work has been discontinued for any reason, it shall not be restarted prior to notifying the City Engineer. (1095,4570)

2. All underground utilities to be installed in streets and alleys shall be constructed prior to the surfacing of such streets and alleys. Service stubs for underground utilities shall be placed in such length and size as not to necessitate disturbance of street improvements when service connections are made. (1095)

(H) Required Right-of-Way Improvements. (1095,3105,4570,5395)

1. Streets. All streets contiguous to the developing land shall be paved and concrete curbs and gutters installed to lines, grades, and dimensions approved by the City Engineer and in conformance with City standards. The streets shall be improved to the centerline thereof. When improvement of a major collector or arterial street is required, the City will pay for such extra width paving as may be deemed appropriate by the City. (1095)

2. Alleys. All alleys adjacent to the developing land shall be surfaced with granite or ABC to grades and dimensions approved by the City Engineer and in conformance with City standards, except that alleys to be used for primary vehicular access as defined under Section 9-5-1 of the City Code shall be improved as required by Section 9-5-1 of the City Code. Alleys to be used for delivery of goods and materials to commercial and industrial buildings shall be considered to be used for primary vehicular access. (1095)

3. Sidewalks. Concrete sidewalks shall be constructed along the entire length of the street adjacent to the land under development to a width and to lines and grades approved by the City Engineer and in conformance with City standards. (1095)

4. Water and Sewer Lines. Water and sewer lines shall be installed in all streets adjacent to the land under development to lines and grades and of such sizes as approved by the City Engineer and in conformance with City standards. Water and sewer service lines of sizes and at locations approved by the City Engineer and in conformance with City standards shall be installed prior to paving the streets and improving the alleys. Where it is necessary to extend a water or sewer main from an existing main of adequate size to the development, the developer will be required to pay the full cost of the line extension; however, and if so requested, the City will enter into a private line agreement with the developer requiring others to pay a share of the cost of the line extension at such time as they take service from the line extension if such service is taken during the term of the agreement. (1095)

5. Fire Hydrants. Fire hydrants shall be installed along adjacent streets at locations and to lines and grades approved by the City Engineer and in conformance with City standards. (1095)

6. Irrigation Lines and Ditches. All S.R.P. and R.W.C.D. irrigation ditches located in the streets, alleys, or public easements adjacent to the land being developed shall be piped or abandoned in accordance with plans and specifications prepared by the respective irrigation district and as approved by the City Engineer. All private irrigation ditches in the streets, alleys, or public easements adjacent to the land being developed shall be piped or abandoned to lines and grades as approved by the City Engineer and in conformance with City standards. (1095,4570)
7. Storm Drainage. (1095,1896)

(a) The developer shall make provisions to retain within the boundaries of his development the runoff generated by development of the site in accordance with plans approved by the City Engineer and in conformance with City standards. The plans shall show the method, location, and capacity of retention to be provided. The plans shall also show the runoff calculations, surface, grades, and methods of draining the retention facility. A one hundred- (100-) year, two- (2-) hour storm will be used as a minimum basis for the design of drainage facilities. (1095,1896,2776)

(b) In lieu of retaining runoff within the boundaries of the development, a common retention facility may be established for two (2) or more developments. This shall be done in accordance with plans approved by the City Engineer and in conformance with City standards. (1095,1896)

(c) Retention facilities shall be of the type and size approved by the City Engineer. (Multiple, small retention areas shall not normally be acceptable.) (1896)

(d) At the time of completion of development, the developer’s engineer shall provide as-built certification to the City Engineer that the drainage and retention facilities were constructed in accordance with the approved plans and conform to City standards. Said certification shall be signed by the engineer and stamped with his professional seal. (1896)

(e) Once constructed and approved by the City, the drainage and retention facilities may not be modified unless modification is approved by the City Engineer. (1896)

8. Streetlights. Streetlights shall be installed along all perimeter streets developed in conjunction with the development in accordance with a design approved by the Development Services Department. For developments with less than one hundred fifty feet (150') of street frontage, the City Engineer may waive the required streetlight installation. If installation is waived, prior to the issuance of a building permit, the developer shall pay to the City an amount, determined by the Development Services Department, for his arterial street frontage to pay for the future installation of streetlights by the City. All streetlights along other perimeter streets shall be installed by the developer in accordance with plans approved by the Development Services Department and in conformance with City standards. (1095,1647,1772,3766)

9. Traffic Control Devices. Traffic control devices shall be provided or existing control devices shall be modified in conjunction with the development in accordance with designs approved by the Development Services Department, where required in accordance with the Mesa Transportation Division. The Transportation Division may defer the installation of required traffic control devices. (4570)

When the installation of required traffic control devices is deferred, the owner/developer shall pay the City a payment in-lieu of causing the actual design, installation, and/or construction of the devices. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (4570)
10. Street Name Signs. Street name signs shall be placed in all street intersections. The developer shall install signposts and signs per Mesa Standard Details with designs approved by the City Traffic Engineer. (1095,4570,5395)

11. Survey Monuments. Survey monuments conforming to City standards shall be installed at all corners, angle-points, points of curves, and at all street intersections adjacent to the land under development and at such other locations as may be required by the City Engineer. After all improvements have been installed, a registered land surveyor or registered civil engineer shall check the locations of the monuments and mark the brass cap. (1095,4570,5395)

(I) Oversize of Required Public Improvements. The developer may be required to oversize certain public street and utility improvements for the purpose of ensuring that the City of Mesa's public improvement standards for transportation, utility service, and infrastructure are maintained. The City of Mesa may participate in the increased costs of oversize improvements when approved by the Development Services Manager. The City's commitment to participate in these increased costs may be formalized in a development agreement limited to those improvements specifically identified as oversize and executed by the developer and the Development Services Manager. (2907,3105,3766,4570)

9-8-4: MODIFICATIONS: (1095,1656,3105,4570,4606,4771,4777)

(A) Where an individualized assessment reveals the existence of special conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for off-site improvements associated with the proposed development, the City Manager or designee may reduce, defer, or approve alternatives to the requirements and specifications contained in this Chapter based upon a finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (3105,3766,4606,4771)

(B) Where an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors, relating to the impact the development will have on the City's need for the dedication of rights-of-way, the City Manager or designee may eliminate, reduce, defer or approve alternatives to the dedication of rights-of-way requirements contained in this chapter upon finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (4570,4606,4771,4777)
With the approval of, or amendment to, a rezoning to PC District, the City Council may approve modifications to the requirements and specifications required by this Chapter if the City Engineer or City Traffic Engineer recommends approval of the modification. The City Engineer or City Traffic Engineer, in consultation with the Planning Director, may recommend the elimination, reduction, or approval of alternatives to the requirements and specification required by this Chapter. If the City Engineer or City Traffic Engineer recommends approval of such a modification, the recommendation, which may be subject to conditions or stipulations, shall be forwarded to the City Council with the PC district. City Council may approve the modification as recommended. The City Engineer's or City Traffic Engineer's recommendation shall be based upon a finding that the modification:

1. Is consistent with the intent of these regulations; (4771)
2. Will result in an equivalent level of service for health, safety and welfare to the General public; (4771)
3. Will result in improvements that are adequate and meet the City's needs; (4771)
4. Furthers the purposes of the PC District; and (4771)
5. Is not contrary to the public interest. (4771)

To ensure compliance with any elimination, modification, deferral, or alternative, the City Manager or designee may require certain provisions such as protective covenants, bonds, and development agreements. Such provisions may be recorded against the property being developed. (3105,3766,4570,4771,4777)

1. When the deferral of certain right-of-way improvement requirements is authorized by the City Manager or designee for a specific development project, the owner and/or developer shall remit to the City of Mesa a payment in lieu of causing the actual design, installation, and/or construction of said required public improvements. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (3882,4570,4771)

2. The obligation to construct right-of-way improvements or make an in-lieu payment prior to the issuance of permits, including the determination of the amount of the in-lieu payment required, may be deferred to a future date if the developer provides financial assurances acceptable to the City Engineer and the City Attorney, the developer and City enter into a development agreement that provides adequate financial assurance for the future construction of the improvements and/or the future payment of an in-lieu amount, and the City Manager or designee finds that such deferral meets all of the following criteria:

(a) The development is non-residential; and (4777)

(b) The property is zoned as a commercial or industrial district; and (4777)

(c) The deferred right-of-way improvements are not included in this City's Capital Improvement Plan for construction within five (5) years of the deferral; and (4777)

(d) The deferral is in the best interest of the City of Mesa. (4777)
9-8-5: **APPEALS:**

(A) Discretionary decisions of the Development Services Manager may be appealed to the Hearing Office, who shall be appointed by the City Manager, when such decisions involve one (1) or more of the following: (3105,3766)

1. Any requirement that exceeds or is in addition to the minimum development requirements as defined in this Chapter. (3105)

2. Any requirement not specified in the Mesa City Code or other legislative act of the City of Mesa. (3105)

3. Any requirement resulting from a discretionary act of an administrative official of the City of Mesa. (3105)

(B) Appeals to the Hearing Officer may be submitted by the developer or owner of the property proposed for development which is affected by a discretionary decision of the Development Services Manager. The appeal shall be submitted within thirty (30) days of such decision by filing with the Development Services Manager a notice of appeal on a form provided therefor. No fee is required for this appeal. The Development Services Manager shall transmit to the Hearing Officer all the papers constituting the records upon which the decision appealed from was taken. (3105,3766)

(C) The Hearing Officer shall schedule a time for the appeal to be heard, which shall be no later than thirty (30) days from receipt of the appeal. The appellant shall be given at least ten (10) days' prior notice of the date and time set for the hearing. The Hearing Officer shall decide the appeal within five (5) working days from the date the appeal hearing concludes. (3105)

(D) For determination of the appeal, it shall be the responsibility of the City to establish that there is a nexus between the requirement and a legitimate governmental interest and that the requirement is roughly proportional to the impact of the proposed use, improvement, or development. If more than a single parcel is involved, this requirement applies to the entire property that is subject to the approval. (3105)

(E) If the appeal is upheld, the Hearing Officer shall modify or delete the requirement. If the appeal is denied, the appellant may at any time within thirty (30) days of the decision of the Hearing Officer file a complaint for a trial de novo in the Superior Court on the facts and the law regarding the issues of the requirement. (3105)

9-8-6: **PENALTIES:**

(A) It is unlawful to develop land contrary to or in violation of any provisions of this Chapter or of any provision designated as a condition of approval either by the plan review process or through an amendment, variance, or appeal by an office, board, commission, or the City Council as established by this Chapter. (3105)

(B) Any person, firm, or corporation violating any provision of this Chapter and any amendments to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (3105)
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CHAPTER 9

FALCON FIELD AIRPORT

See Title 6, Chapter 3 for Aircraft Regulations

SECTION:

9-9-1: DEFINITIONS
9-9-2: GENERAL RULES AND REGULATIONS
9-9-3: AIRCRAFT OPERATIONS
9-9-4: AIRCRAFT ACCIDENT PROCEDURES
9-9-5: MOTOR VEHICLE REGULATIONS
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9-9-14: RATES AND CHARGES
9-9-15: VIOLATIONS OF THIS CHAPTER

9-9-1: DEFINITIONS:

AIRPORT: The Falcon Field Airport. (1246)

CITY: The City of Mesa. (1246)

COUNCIL: The City Council, City of Mesa. (1246)

DIRECTOR: The Neighborhood Services Manager, Neighborhood Services Department, City of Mesa, or his designee. (1246,3168,3766)

FIELD AREA: That area on the landing area side of the terminal building, including passenger ramp, aircraft parking areas, shops, hangars, gasoline storage areas, runways, taxiways, perimeter roads, and all areas separated from roadways, sidewalks, buildings, and highways by means of fencing, no trespassing signs, or lack of evidence of provisions of proper facilities for convenient, safe, and easy entrance into and around subject land sections and areas or any other specific areas designated by the Director as field areas. (1246)

PUBLIC AREA: That area including the various concessions, rest rooms, terminal building lobby section used for public access, roadways, sidewalks, and parking lots. Office areas and approaches thereto are not public areas. (1246)
9-9-2: GENERAL RULES AND REGULATIONS:

(A) The Director may issue such rules, regulations, orders, and instructions as are necessary in the administration of this Chapter. He may post signs at the airport which state or apply such rules, regulations, orders, or instructions. Each person on the airport shall comply with these orders, regulations, and signs. Each member of the staff of the Director, as a representative of the Director, is empowered to require compliance with the provisions of this Chapter and all orders and regulations issued by the Director. (1246)

(B) The airport shall be conducted as a public air facility for the promotion and accommodation of civil aviation and associated activities. (1246)

(C) The airport shall be open for public use at such hours and subject to such restrictions as may be determined by the City Council. (1246)

(D) The privilege of using the airport and its facilities shall be conditioned on the assumption by the user thereof of full responsibility and risk for such use, and by accepting the use of the airport and its facilities, the user thereof releases and agrees to hold the City and its officers and employees harmless and indemnify them from any liability or loss resulting from such use. The owners and operators of all aircraft based at the airport shall comply with all of the applicable provisions of Title 28, Chapter 12, Arizona Revised Statutes. (1246)

9-9-3: AIRCRAFT OPERATIONS:

(A) No person shall conduct any aircraft operation to, on, from, or over the airport except in conformity with all Federal Aviation Administration regulations; the applicable provisions of Title 28, Chapter 12, Arizona Revised Statutes; this Section; and rules and regulations established by the Director. (1246)

(B) No person shall take off or land an aircraft on the airport except on a hard surface area unless otherwise authorized by the Director. (1246)

(C) All aircraft traffic shall conform to the established traffic pattern as approved by the Director and posted at the airport. (1246)

(D) No person shall park or loiter an aircraft on any runway or taxiway at the airport. (1246)

(E) No person shall park or store an aircraft at the airport except in areas designated by the Director. (1246)

(F) Preventive maintenance work, as defined in Title 14, Part 43, Appendix A(c), Code of Federal Regulations, may be performed at the airport tie-down areas by the owner or operator of the aircraft. Aircraft owners who possess current mechanic ratings such as A & P and A & I may do additional work in the tie-down areas subject to approval of the Director. All other aircraft maintenance, rebuilding, and alterations shall be performed only in areas designated by the Director. (1246)

(G) No person shall conduct experimental flight or ground demonstrations on the airport without prior permission of the Director. (1246)
(H) No person shall take any aircraft from the landing area or hangars or operate such aircraft while under the influence of intoxicating liquor or a dangerous drug. (1246)

(I) No person shall board or disembark from any aircraft on a runway or in the takeoff or landing area except in an emergency or with prior approval of the Director. (1246)

(J) Persons parking transient aircraft shall register their aircraft with the Director or his representative as soon as possible after landing at the airport. (1246)

(K) All owners and operators who desire to base their aircraft at the airport shall register their aircraft with the Director or his representative prior to beginning operations. Any change in ownership of the aircraft shall be reported immediately. (1246)

(L) No person shall leave an aircraft unattended unless it is properly tied down or placed in a hangar. (1246)

(M) No engine in an aircraft shall be started or run without a competent person at the engine controls and unless blocks have been placed in front of the wheels or the aircraft has adequate parking brakes. No aircraft engine shall be operated in such manner as to endanger life or property. (1246)

(N) No aircraft shall be operated in or taxied into or out of a hangar. (1246)

(O) If the Director believes the conditions at the airport or any portion thereof are unfavorable for aircraft operations, he may close the airport or such portions thereof, using applicable FAA procedures as appropriate. (1246)

(P) No aircraft capable of movement on the ground shall be operated on the airport unless it is equipped with wheels and wheel brakes except with permission of the Director. (1246)

(Q) No aircraft shall be permitted to remain on any part of the landing or takeoff areas for the purpose of repairs. (1246)

(R) All aircraft shall be taxied at slow and reasonable speeds and shall not be taxied onto a runway without first stopping and waiting for any approaching aircraft preparing to land. (1246)

(S) No person shall, without the owner’s permission, interfere or tamper with an aircraft parked or stored at the airport. (1246)

(T) No person shall move an aircraft on the airport in a negligent or reckless manner. (1246)

(U) No person shall start or taxi any aircraft on the airport in a place where the air or exhaust blast is likely to cause injuries to persons or property. If the aircraft cannot be taxied without violating this Subsection, the operator must have it towed to the desirable destination. (1246)
(V) No person shall move a rotocraft at a place on the airport while its rotors are turning unless there is a clear area of at least fifty feet (50') from the outer tip of each rotor. (1246)

9-9-4: AIRCRAFT ACCIDENT PROCEDURES:

(A) Persons involved in aircraft accidents occurring at the airport shall make a full report thereof to the Director or his representative within twenty-four (24) hours after such accident. (1246)

(B) Any person damaging property on the airport by means of contact with aircraft shall report such damage to the airport office immediately and shall be fully responsible to the City for costs of repairs. (1246)

(C) Every pilot and aircraft owner shall be responsible for the prompt removal of his disabled aircraft or parts thereof as directed by the Director or his representative, subject to accident investigation requirements. (1246)

9-9-5: MOTOR VEHICLE REGULATIONS: (See Section 10-4-8 for Speed Limits)

(A) No motor vehicle shall be operated on the airport if it is so constructed, equipped, or located as to endanger persons or property. (1246)

(B) Each operator of a motor vehicle involved in an accident between that vehicle and an aircraft or in any other motor vehicle accident on the airport that results in personal injury or in total property damage of more than fifty dollars ($50.00), shall make a full report thereof to the Director as soon as possible after the accident. The report must include the name and address of the person reporting. (1246)

(C) No person shall operate any motor vehicle on the airport in violation of this Chapter or rules promulgated and posted by the Director or the laws of the State of Arizona. (1246)

(D) No person shall operate a motor vehicle on the airport in a negligent or reckless manner or in excess of posted speed limits. (1246)

(E) No motor vehicle shall be permitted on taxiways, runways, or operational areas, except authorized maintenance or service vehicles, without prior permission of the Director. (1246)

(F) No person shall operate a vehicle on, to, or across a runway except when authorized by the Director or his representative. (1246)

(G) Operators of motor vehicles on the field area shall yield the right-of-way to taxiing aircraft. (1246)

(H) All motor vehicles on the field area shall pass to the rear of aircraft whose engines are running. (1246)

(I) When backing gasoline tenders, the driver shall remain in the vehicle and shall not stand on the running board or fender. Gasoline tenders shall at no time be so positioned as to prevent their rapid removal. (1246)

(J) Except as authorized by the Director, no person shall clean or make any repairs to motor vehicles anywhere on the airport other than designated shop areas except those minor repairs necessary to remove such motor vehicle to a proper location. (1246)
(K) Parking. (1246)

1. No person shall park or stand a motor vehicle on the airport except in an area specifically designated therefor. (1246)

2. No person shall park a motor vehicle in any posted area on the airport for a period longer than that prescribed by the City. (1246)

3. No person shall park a vehicle in a restricted or reserved area on the airport unless he displays, in the manner prescribed by the Director, a parking permit issued by the Director for that area. (1246)

4. No person shall double-park a motor vehicle on any road on the airport. (1246)

5. No person shall abandon a motor vehicle on the airport. (1246)

6. No person shall leave a motor vehicle standing unattended or parked on the airport with a key in the ignition switch, the motor running, a key in the door lock, or an open door. (1246)

7. No person shall park or stand a motor vehicle at any place on the airport in violation of any sign posted by the Director. (1246)

8. No person shall park or stand a motor vehicle within fifteen feet (15') of a fire hydrant on the airport or park in such manner as to block any fire gate or entrance. (1246)

9. No person shall park a motor vehicle in any marked space in such manner as to occupy more than one (1) space. (1246)

10. No person shall park a motor vehicle in individual storage hangars or aircraft shelters unless permitted by the owner or lessee of said structure. (1246)

11. The Director or his agent may remove, at the owner’s expense, any motor vehicle which is parked on the airport in violation of this Chapter. The vehicle shall be subject to a lien for the cost of removal. (1246)

9-9-6: TAXICABS:

(A) No person shall operate a vehicle that is carrying passengers for hire from the airport unless he is the holder of a contract authorizing same by the City Council. (1246)

(B) Except for discharging passengers, no person shall park on the airport a vehicle used for the purpose of carrying passengers for hire unless he is the holder of a contract authorizing same by the City Council. (1246)
(C) No person shall, on the airport, solicit or invite any person to ride in a vehicle used for the purpose of carrying passengers for hire, either by driving slowly past a loading entrance to an airport building or by any other act or utterance calculated to induce that person to engage the vehicle, unless said taxicab operator is the holder of a contract authorizing same by the City Council. (1246)

9-9-7: RULES OF CONDUCT:

(A) No person shall commit any act or nuisance on the airport. (1246)

(B) No person shall dispose of garbage, papers, refuse, or other such material on the airport except in receptacles provided for that purpose. (1246)

(C) No person shall destroy, injure, deface, or disturb any building, sign, equipment, marker or other structure, tree, flower, lawn, or other public property on the airport. (1246)

(D) No person shall alter, make additions to, or erect any building or sign or make any excavations on the airport without the permission of the Director, subject to lease provisions. (1246)

(E) No person shall willfully abandon any personal property on the airport. (1246)

(F) No person may ride horseback on the airport without permission of the Director. (1246)

(G) No person shall hunt, pursue, trap, catch, injure, or kill any bird or animal on the airport without authorization of the Director. (1246)

(H) No person, except peace officers, an authorized post officer, air carrier, airport employee, or a member of an armed force of the United States on official duty, shall carry any weapon, explosive, or inflammable material on or about his person, openly or concealed, on the airport without the written permission of the Director. This Section shall not apply to persons carrying firearms in cases, broken down or unloaded, when said firearms are being transported by air. For the purpose of this Section, a weapon includes all those listed in Section 13-3101, Arizona Revised Statutes. (1246)

(I) No person shall solicit fares, alms, or funds for any purpose on the airport without permission of the Director. (1246)

(J) No person shall post, distribute, or display signs, advertisements, circulars, or other printed or written matter in the public area of the airport without permission of the Director. (1246)

(K) No person may enter the airport with a dog or other domestic animal unless the animal is kept restrained by a leash or is confined so as to be completely under control. (1246)

(L) No person shall loiter or loaf on any part of the airport. (1246)
(M) No unauthorized person shall enter any restricted area posted as being closed to the public. (1246)

(N) No person shall use a rest room other than in a clean and sanitary manner. (1246)

(O) No person shall drink alcoholic beverages in the terminal building lobby. (1246)

9-9-8: COMMERCIAL PHOTOGRAPHY:

(A) Except as hereinafter provided, no person shall take a still, motion, or sound picture on the airport for commercial purpose without the permission of the Director. (1246)

(B) The Director may allow any of the following to take pictures on the airport for commercial purposes: (1246)

1. Professional photographers and motion picture cameramen photographing events on the airport as representatives of news concerns or bona fide news publications. (1246)

2. Professional photographers and motion picture cameramen photographing events at the airport, for nonprofit exhibit, to stimulate interest in air commerce or travel, or for nonprofit educational purposes. (1246)

3. Professional photographers photographing scenes on the airport for general artistic purposes. (1246)

9-9-9: USE OF ROADS AND WALKS:

(A) No person shall travel on the airport except on a road, walk, or other place provided for the kind of travel he is doing. (1246)

(B) No person shall occupy or place an object on the road or walk on the airport in a manner that hinders or obstructs its proper use. (1246)

(C) No person shall walk in a picket line as a picket or take part in a labor or other public demonstration on any part of the airport except in a place specifically assigned by the Director for picket lines or other public demonstrations. (1246)

9-9-10: USE OF GATE POSITIONS:

(A) No person shall use an aircraft gate position on the airport unless he has been authorized to use it. (1246)

(B) Except in an emergency, no person shall emplane or deplane passengers on the airport on an area that has not been established for that purpose by the Director. (1246)

(C) No person shall park an aircraft which is carrying explosives or inflammable material, nor shall he load or unload such items on or from such aircraft, other than in areas designated by the Director. (1246)

(D) No person may repair an aircraft while it is parked at the gate position, except for minor adjustments. (1246)
9-9-11: FIRE HAZARDS AND FUELING OPERATIONS:

(A) Fuel Delivery and Dispensing. No person shall transport or deliver aviation fuels, oils, or lubricants on the airport or dispense fuels into aircraft unless he is the holder of a valid permit with the City authorizing such activity. (1246)

(B) Cleaning Fluids. No person shall use a flammable volatile liquid having a flash point of less than one hundred degrees (100°) Fahrenheit to clean an aircraft, aircraft engine, propeller, or appliance in an aircraft hangar or similar type building or within fifty feet (50') of another aircraft, building, or hangar. (1246)

(C) Open-Flame Operations. No open flame, flame-producing device, or other source of ignition shall be permitted in any hangar or similar-type building except in locations approved by the Director. (1246)

(D) Smoking. No person shall smoke on any apron or ramp, in any hangar or shop, in any aircraft, or in any other place on the airport where smoking is specifically prohibited by the Director. (1246)

(E) Storage. (1246)

1. No person shall store or stock material or equipment on the airport in a manner that constitutes a fire hazard. (1246)

2. No person shall store any combustible materials, flammable liquids, or other hazardous materials in an aircraft hangar or other building on the airport except in locations and containers approved by the Mesa Fire Department. (1246)

3. Each lessee of a hangar on the airport shall provide suitable metal receptacles for storing waste, rags, and other rubbish and shall remove all rubbish from its premises each week. (1246)

(F) Apron Surface Areas and Floor Surface. (1246)

1. Each person to whom space on the airport is leased, assigned, or made available for use shall keep the space free and clear of oil, grease, or other foreign materials that could cause a fire hazard or a slippery or otherwise unsafe condition. (1246)

2. No person shall use any material (such as oil absorbents or similar material) that creates an eye hazard when picked up, swirled, or blown about by the blast from an aircraft engine in any passenger loading area or other public area. (1246)

(G) Doping. (1246)

1. No person shall conduct a doping process on the airport except in a properly designed fire-resistant and ventilated room or building in which all lights, wiring, heating, ventilating equipment, switches, outlets, and fixtures are approved for use in such hazardous areas and in which all exit facilities are approved and maintained for such use or except in an open area as designated by the Director. (1246)
2. No person shall enter or work in a dope room while doping processes are being conducted unless he is wearing sparkproof shoes. (1246)

(H) Fueling Operations. (1246)

1. No person shall fuel or defuel an aircraft on the airport while: (1246)

   (a) Its engine is running or is being warmed by applying external heat; (1246)

   (b) It is in a hangar or enclosed space; (1246)

   (c) Passengers are in the aircraft, unless a passenger loading ramp is in place at the cabin door, the door is open, and a cabin attendant is at or near the door. A "No Smoking" sign shall be displayed in the cabin and the rule enforced. (1246)

2. No person shall start the engine of an aircraft on the airport if there is any gasoline or other volatile flammable liquid on the ground beneath it of sufficient quantity to constitute a hazard. (1246)

3. No person shall operate a radio transmitter or receiver or switch electrical appliances on or off in an aircraft on the airport while it is being fueled or defueled. (1246)

4. During the fueling of an aircraft on the airport, the dispensing apparatus and the aircraft shall both be grounded in accordance with orders and instructions of the Director. (1246)

5. Each person engaged in fueling or defueling on the airport shall exercise care to prevent the overflow of fuel and shall have readily accessible and adequate fire extinguishers. (1246)

6. During the fueling or defueling of an aircraft on the airport, no person shall, within fifty feet (50') of that aircraft, smoke or use any material that is likely to cause a spark or be a source of ignition. (1246)

7. Each hose, funnel, or appurtenance used in fueling or defueling an aircraft on the airport shall be maintained in a safe, sound, and nonleaking condition and must be properly grounded to prevent ignition of volatile liquids. (1246)

(I) Mesa Fire Code. All persons shall comply with the provisions of the Mesa Fire Code found in Title 7, Chapter 2 of the Mesa City Code. (1246)

(J) Inspections. The City Fire Chief or his duly authorized representatives shall inspect monthly or as often as may be necessary all buildings and premises for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread or endanger life or property from fire. All orders, notices, or recommendations of the City Fire Chief shall be complied with by all persons without delay. (1246)
**9-9-12: OBLIGATION OF TENANTS:**

(A) Use of Premises. No lessee of airport property shall knowingly allow that property to be used or occupied for any purpose prohibited by this Chapter. (1246)

(B) Trash Containers. (1246)

1. No tenant, lessee, concessionaire, or agent of any of them doing business on the airport shall keep uncovered trash containers on a sidewalk or road or in a public area of the airport. (1246)

2. No person shall operate an uncovered vehicle to haul trash on the airport. (1246)

3. No person shall operate a vehicle for hauling trash, dirt, or any other material on the airport unless it is built to prevent its contents from dropping, sifting, leaking, or otherwise escaping. (1246)

4. No person shall spill dirt or any other material from a vehicle operated on the airport. (1246)

(C) Bulletin Boards. Each lessee of a hangar or other operational area specified by the Director on the airport shall maintain a bulletin board in a conspicuous place in his hangar or area. He shall post on that board current workmen's compensation notices, a list of competent physicians, a list of his liability insurance carriers, a copy of this Chapter, and a copy of each pertinent order or instruction issued under this Chapter. (1246)

(D) Storage of Equipment. No tenant or lessee of a hangar, shop facility, or other operational area specified by the Director on the airport shall store or stack equipment or material in a manner to be a hazard to persons or property. (1246)

(E) Fire Apparatus. Each tenant or lessee of a hangar, shop facility, or other operational area specified by the Director on the airport shall supply and maintain adequate and readily accessible fire extinguishers, approved by Underwriters’ Laboratories for the hazard involved, as the Director considers necessary. (1246)

(F) Right of Inspection. The Director or his authorized representative shall have the right at all reasonable times to inspect all areas under lease to or occupied by tenants. (1246)

**9-9-13: COMMERCIAL OPERATIONS:**

(A) Policy. As the operator and proprietor of the airport, on behalf of the citizens of the City, it is the policy and intent of the City Council: (1246)

1. To operate the airport in a businesslike manner with as little cost as possible to the taxpayer through the imposition of fair and reasonable rentals, fees, and charges. (1246)

2. To provide for both private and commercial aviation at the airport to the extent practicable within physical, economical, and environmental constraint. (1246)
3. To provide for the full range of on-base aeronautical support through private enterprise consistent with the need for the service and the availability of space and physical facilities. (1246)

4. To protect airport patrons and users from unsafe and inadequate aeronautical service and to maintain and preserve all airport facilities in a safe, secure, and orderly condition. (1246)

5. To promote fair competition and not to expose those who have lawfully undertaken to provide commodities and services at the airport to irresponsible, unethical, or unauthorized competition. (1246)

6. To permit and provide adequate facilities for owners of general aviation aircraft to work on and service their own aircraft within such limits as may be imposed by this Section or airport regulation for purposes of safety, preservation of airport facilities, and protection of the public interest. (1246)

7. To promote the utility, educational, and recreational aspects of general aviation. (1246)

(B) Prohibition. No person shall engage in any business or commercial activity on the airport without a lease approved by the City Council or a sublease from a duly authorized master lessee. For the purpose of this Section, a "person" means any individual or group of individuals, including a company, partnership, corporation, or other association. This prohibition shall apply to persons who use the airport as a base for conducting their activity but whose office or other place of business is not situated on the airport. This prohibition does not apply to:

1. Aircraft operations in which the flight originates and terminates elsewhere and the Falcon Field Airport is utilized as a temporary stopping place for such purposes as landings, refueling, or other aeronautical service or the embarking or debarking of passengers, except in the case of charter or air taxi airlines. (1246)

2. Company- or corporate-owned aircraft where personnel or products are transported free of charge, the trip being merely incidental to the company’s principal business and not, in itself, a major enterprise for profit. (1246)

3. Casual or isolated transactions such as sales by the owner. (1246)

(C) Definition. For the purpose of this Section, a "business or commercial activity" includes the following types of activities when done for hire, compensation, or reward: (1246)

1. Retail sales of any goods, wares, merchandise, or services. (1246)

2. Pilot training and flight instruction. (1246)

3. Sale, rental, or charter of aircraft. (1246)

4. Air carrier and air taxi operations. (1246)

5. Sale of aviation petroleum products. (1246)
6. Sale or service of aircraft parts, avionics, instruments, or other aircraft equipment. (1246)

7. Repair, maintenance, rebuilding, alteration, or exchange of aircraft and aircraft engines, components, or other parts. (1246)

8. Flying clubs. (1246)

9-9-14: **RATES AND CHARGES:**
A schedule of rates and charges for use of the airport and its facilities shall be established by the City Council, and each person or organization subject to said rates and charges shall promptly pay the amounts due. A copy of such schedule shall be posted in the office of the Director. (1246)

9-9-15: **VIOLATIONS OF THIS CHAPTER:**

(A) Any person who shall violate any of the provisions of Title 9, Chapter 9 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (1501,2466)

(B) In addition to the penalties set forth in the above paragraph, violations of this Chapter or of any rule, regulation, order, or instruction issued by the Director may result in withdrawal of permission by the Director to use the airport. (1501)
CHAPTER 10

DISPOSITION OF UNNECESSARY ROADWAY AND EASEMENTS

SECTION:

9-10-1: DISPOSITION OF ROADWAYS

Pursuant to the provisions of Title 28, Chapter 20, Article 8, of the Arizona Revised Statutes, the City Council may dispose of unnecessary public roadways, upon application being made to the Real Estate Services offices on forms prepared by that office and upon paying an application fee for each application in accordance with the following schedule: (1843, 4202, 4703)

<table>
<thead>
<tr>
<th>Land Type</th>
<th>Fee Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Residential Land</td>
<td>$350 plus value of the land</td>
</tr>
<tr>
<td>All Other Land</td>
<td>$750 plus value of the land</td>
</tr>
<tr>
<td>Residential Alley Roadways</td>
<td>$0</td>
</tr>
</tbody>
</table>

9-10-2: EXTINGUISHMENT OF EASEMENTS

Pursuant to the provisions of Title 28, Chapter 20, Article 8 of the Arizona Revised Statutes, the City Council may extinguish easements no longer needed by the City upon application being made to the Real Estate Services offices on forms prepared by that office and upon paying an application fee for each application in accordance with the following schedule: (1843, 4202)

<table>
<thead>
<tr>
<th>Land Type</th>
<th>Fee Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Single Lot</td>
<td>$350</td>
</tr>
<tr>
<td>Undeveloped Subdivision</td>
<td>$750</td>
</tr>
<tr>
<td>Commercial and all other land</td>
<td>$750</td>
</tr>
</tbody>
</table>

9-10-3: RESERVATION OF EASEMENTS

In the event there are existing public utility lines in any unneeded public roadway that is to be abandoned or if in the sole discretion of the City it is probable that there will be a need for a public utility easement, the City shall retain an easement or easements for such purposes and of such size as the City may determine. (1843)

9-10-4: LEGAL DESCRIPTION

A legal description of the unnecessary public roadway to be abandoned or unnecessary easements to be extinguished shall accompany the application. (1843)

9-10-5: APPLICATION FEE NOT TO BE REFUNDED

In the event the City Council denies the application for vacation of a public roadway or any portion thereof or extinguishment of an easement or any portion therefore, no portion of the application fee shall be refunded to the applicant. (1843)
CHAPTER 11

FLOODPLAIN REGULATIONS
(2396, 2466, 2597, 2906, 3405, 4455, 4961, 5298)

SECTION:

9-11-1: PURPOSE AND STATUTORY AUTHORITY
In accordance with Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes, the City of Mesa elects not to assume the responsibility of Floodplain Management from the Flood Control District of Maricopa County as provided for in A.R.S. §§ 48-3609, 3610; and development within areas designated as Flood Hazard Zones located within city limits shall be subject to such rules and regulations as may be established by the State and the Flood Control District of Maricopa County in conformance with the National Flood Insurance Program requirements and the provisions of Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes and conformance to such rules and regulations shall be in addition to any other applicable Mesa code requirements. (4961, 5298)

9-11-2: FLOODPLAIN ADMINISTRATOR:
The City Engineer is appointed and designated as the Floodplain Administrator for the City of Mesa and will serve as the community point of contact on National Flood Insurance Program issues for County, State and Federal officials. The Floodplain Administrator will be responsible for (1) coordinating with County Flood Control District staff regarding floodplain management and (2) verifying that the community’s participation in the National Flood Insurance Program is maintained and remains in good standing through adoption and enforcement of these regulations. (4961, 5298)

9-11-3: ELEVATION CERTIFICATE
The Floodplain Administrator shall also be, at a minimum, responsible for the following:

1. Keep and maintain current flood insurance studies and flood insurance rate map(s) applicable to the community. (5298)

2. Keep and maintain copies of the most current version of the “Floodplain Regulations for Maricopa County” at the office of the Mesa City Clerk. (5298)

3. Keep and maintain elevation certificates (or acceptable records of lowest flood elevations) for all structures within the Special Flood Hazard areas; and (5298)

4. Repeal or modify all existing local ordinances that conflict with these regulations. (5298)
Duties of the Floodplain Administrator shall also include: (4455, 4961, 5298)

(A) Establishment of procedures to ensure that all requests for permits for floodplain development will be promptly forwarded to the Flood Control District of Maricopa County and that no permits will be issued by any agent of the City until a valid Floodplain Use Permit is obtained by the applicant. (4961)

(B) Delineating and assisting the Federal Insurance Administrator, at his request, in delineating the limits of the areas having special flood hazards on available local maps of sufficient scale to identify the location of building sites. (4961)

(C) Providing such information to the Federal Insurance Administrator as he may request concerning present uses and occupancy of the floodplain areas within city limits. (4961)

(D) Cooperation with federal, state and local agencies and private firms which undertake to study, survey, map and identify floodplain areas, and cooperate with neighboring communities with respect to management of adjoining floodplain areas in order to prevent aggravation of any existing hazards. (4961)

(E) Submission of reports and information, as needed, to the Federal Insurance Administrator on floodplain management. (4961)

9-11-3 ELEVATION CERTIFICATE:
No Certificate of Occupancy, Certificate of Completion, or Temporary Certificate of Occupancy shall be issued by the City until the applicant provides to the City an Elevation Certificate approved by the Flood Control District of Maricopa County. (4961)

9-11-4 FLOODPLAIN MANAGEMENT REGULATIONS:
That certain public document entitled “Floodplain Management Regulations for Maricopa County” dated and amended on June 25, 2014 as may be amended from time to time, a copy of which shall be kept on file in the Office of the City Clerk, is hereby adopted as the legal basis for implementing floodplain management in the City of Mesa. (4455, 4961, 5298)

9-11-5: SPECIAL FLOOD HAZARD AREAS:
Those certain public documents entitled “Flood Insurance Study for Maricopa County, Arizona, and Incorporated Areas” dated October 16, 2013 with accompanying “Flood Insurance Rate Maps” dated October 16, 2013, as each may be amended from time to time, a copy of each shall be kept on file in the Office of the City Clerk, are hereby adopted by reference and are referred to herein as the “Flood Study” and “Rate Maps.” The Flood Study and Rate Maps are the basis for establishing the Special Flood Hazard Areas for floodplain management in the City of Mesa. The Special Flood Hazard Areas documented in the Flood Study and Rate Maps are the minimum area of applicability of the Floodplain Management Regulations. These Special Flood Hazard Areas may be changed and supplemented by amendments to the Flood Study and Rate Maps and by studies for other areas as allowed in the Floodplain Management Regulations. (4961, 5298)
9-11-6: VIOLATIONS AND PENALTIES:

It shall be a violation of this Chapter to develop land contrary to or in violation of any provision of this Chapter, to violate any provision or requirement of this Chapter, or to fail to comply with the Floodplain Management Regulations. (4961)

(A) A person who violates this Chapter is guilty of a Class 2 Misdemeanor. (4961)

(B) In addition to the penalties set forth in the above paragraph, if the Floodplain Administrator determines that there has been a violation of this Chapter, the Building Safety Director is authorized to issue a stop work order, or to withhold, suspend or revoke a Certificate of Occupancy, Certificate of Completion, or Temporary Certificate of Occupancy issued under the provision of Title 4 of the Mesa City Code. (4961, 5298)

(C) A violation of this Chapter shall also be deemed to be a violation of Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes and is subject to penalties described in A.R.S. §48-3615; and the City shall be entitled to seek injunctive and all other applicable legal and equitable remedies as provided by law for any development that diverts, retards or obstructs the flow of waters in a watercourse or Special Flood Hazard Area without the written authorization of the Flood Control District of Maricopa County. (4961)

(D) Nothing in this Chapter precludes any private or public right of action by any person or entity damaged by another’s unauthorized diversion, retardation or obstruction of a watercourse. (4961)

9-11-7: WARNING AND DISCLAIMER OF LIABILITY:

The degree of flood protection required by this Chapter and applicable state and county regulations is considered reasonable for regulatory purposes. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City or any officer or employee thereof. (4961)

CHAPTER 12

CUSTOMER RESPONSIBILITIES IN THE MESA PUBLIC LIBRARY (3038)

(Repealed by 3803)
CHAPTER 13
FOREIGN TRADE ZONE

SECTION:

9-13-1: PURPOSE
9-13-2: DEFINITIONS
9-13-3: CREATION OF FOREIGN TRADE ZONE
9-13-4: APPLICATION FOR FOREIGN TRADE ZONE
9-13-5: ACTIVATION AND DEACTIVATION
9-13-6: FEES SCHEDULE
9-13-7: PROCEDURES
9-13-8: APPEALS
9-13-9: PENALTY

9-13-1: PURPOSE:
The purpose of this Chapter is to promote economic development through the creation of a foreign trade zone ("FTZ"). (3404)

9-13-2: DEFINITIONS:
Unless the context requires otherwise, the following words and phrases shall have the following meanings: (3404)


(B) BOARD: The Foreign Trade Zones Board ("FTZB") created by the Act to carry out the provisions thereof. The FTZB consists of the Secretary of the Department of Commerce (Chairman) and the Secretary of the Treasury, or their designated alternates. (15 CFR §400.2[D]). (3404, 5194)

(C) FOREIGN TRADE ZONES (FTZ or Zone): Restricted-access sites in or near ports of entry that are licensed by the Foreign Trade Zones Board and operated under the supervision of U.S. Customs & Border Protection. To the extent Zones are “activated” under U.S. Customs and Border Protection (CBP) procedures in 19 CFR Part 146, and only for the purposes specified in the Act (19 U.S.C. 81C), Zones are treated for purposes of the Tariff Laws and Customs Entry Procedures as being outside the customs territory of the United States. Under Zone Procedures, foreign and domestic merchandise may be admitted into Zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs Entry Procedures and payment of duties, unless and until the foreign merchandise enters customs territory for domestic consumption. (3404, 5194)

(D) GRANTEE: The grantee of Foreign Trade Zone No. 221 is the City of Mesa, Arizona, an organization to which the privilege of establishing, operating, and maintaining a foreign trade zone has been granted by Order 883 and Order 1538 of the Foreign Trade Zones Board. (3404, 5194)

(E) PORT DIRECTOR, U.S. CUSTOMS: The Port Director of U.S. Customs & Border Protection (CBP) located in Phoenix, Arizona, or representative. (3404, 5194)

(F) SUBZONE: A site (or group of sites) established for a specific use. (3404, 5194)
ZONE OPERATOR: The City of Mesa or an organization, corporation, partnership, or person that operates within FTZ No. 221 under the terms of an agreement with the City of Mesa, with concurrence of U.S. Customs & Border Protection. (3404, 5194)

ZONE PARTICIPANT: A current or prospective zone operator, zone user, or property owner. (5194)

ZONE SCHEDULE: The grantee’s rules, regulations and policies for the zone including all rates or charges assessed by or on behalf of the grantee and information regarding any operator which has an agreement with the grantee to offer services to the public, including the operator’s rates or charges for all zone-specific services offered. The zone schedule may be updated from time to time by the City of Mesa Economic Development Department. (5194)

ZONE SITE (SITE): The physical location of a zone or subzone. (5194)

ZONE USER: A party using a zone under agreement with a zone operator. (3404, 5194)

9-13-3: CREATION OF FOREIGN TRADE ZONE:
FTZ No. 221 was granted by the Foreign Trade Zones Board to the City of Mesa, Arizona on April 25, 1997 (Board Order #883). FTZ No. 221 was reorganized and expanded on January 7, 2008 (Board Order #1538). (5194)

The City may assist those businesses that request trade assistance outside of the FTZ No. 221 boundaries through modification of the general purpose zone boundaries (major or minor) or through sponsorship of a subzone. (3404, 5194)

9-13-4: APPLICATION FOR FOREIGN TRADE ZONE:

(A) Requests for an activation, expansion or subzone must be made to the City of Mesa Office of Economic Development. (5194)

(B) Agreements to operate within a zone site must be entered into with City of Mesa and approved by the City Council. (3404, 5194)

(C) All applicable fees shall be received by the City prior to granting authorization to establish or operate in a Mesa-approved general-purpose zone or subzone site. (3404, 5194)

(D) Arizona offers a property tax benefit for activated zone sites under A.R.S. 42-12006. Approval of a zone site by the FTZB does not, in and of itself, convey the Arizona property tax benefit to any zone participant (operator, user or property owner). The City of Mesa will not sponsor any zone site seeking property tax reclassification without a written explanation of the tax impact and the necessary concurrence or non-objection letter from the applicable local taxing authority. (5194)

9-13-5: ACTIVATION AND DEACTIVATION:

(A) The Port Director of U.S. Customs & Border Protection, with concurrence from the grantee, may approve activation of all or a portion of a zone site based on a written activation application submitted to the Customs Port Director by a proposed zone operator pursuant to 19 CFR Part 146. (3404, 5194)

(B) An activated zone operator may file a request with the Customs Port Director to deactivate all or a portion of an existing activated general purpose zone or subzone and shall thereafter cease to admit merchandise into the zone site in zone status. Final action and disposition of the zone merchandise must be made with the concurrence of the Port Director. (3404, 5194)
9-13-6: FEE SCHEDULE:

(A) The following list of fees is adopted: (3404, 5194)

1. Application Fee: (3404, 5194)

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boundary Modification</td>
<td>$ 1,000.00</td>
</tr>
<tr>
<td>Expansion Application</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>Subzone Application</td>
<td>$ 5,000.00</td>
</tr>
</tbody>
</table>

Fees are payable within ten (10) days after City of Mesa Council approval of application and prior to submission of application to the Foreign Trade Zones Board. Balance due within ten (10) days after filing of application with Foreign Trade Zones Board. (3404, 5194)

2. Activation Fee: (3404, 5194)

The City of Mesa charges a fee to cover the costs of reviewing and processing the necessary grantee documentation for FTZ activation applications to CBP. (5194)

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activation Fee</td>
<td>$ 1,000.00</td>
</tr>
</tbody>
</table>

The activation fee is due within ten (10) days after execution of an operating agreement and prior to issuance of grantee’s activation concurrence letter. (3404, 5194)

3. Annual Fee: (3404, 5194)

The City of Mesa charges an annual fee that is due at the end of each calendar year. (5194)

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Owners (non-activated site)</td>
<td>No Fee Charged</td>
</tr>
<tr>
<td>General-Purpose Zone Operators</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>Subzone Operators</td>
<td>$ 5,000.00</td>
</tr>
</tbody>
</table>

9-13-7: PROCEDURES:

(A) Agreements. All zone operators and property owners must enter into an agreement with the City of Mesa, the zone grantee. Zone users who are not also zone operators must enter into a user agreement with a zone operator. If there is a conflict between an agreement between the City of Mesa and an operator and the zone schedule, the agreement will prevail. If there is a conflict between a user agreement and the zone schedule, the zone schedule will prevail unless the City of Mesa agrees in writing to such terms. (3404, 5194)

(B) Independent Contractor Status. Zone grantee, zone operator, zone user and zone property owner are not and shall not be considered as joint ventures, partners, or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in any written agreements. Zone grantee, zone operator, zone user and zone property owner agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another except as set forth in any written agreements. (3404, 5194)
(C) Exemption from Grantee Liability. The City of Mesa will not undertake detailed operational oversight of or direction to zone participants. Pursuant to CFR § 400.46 grantee liability, as may be amended from time to time, the City of Mesa shall not be liable for violations of any laws by zone participants. (5194)

(D) No Grantee Warranties. The City makes no warranties or representations regarding the benefits that may or may not be realized through participation in the FTZ program by property owners, zone operators or zone users. (5194)

(E) For Foreign Trade Zones Board annual reporting purposes, the zone year is a calendar year. For U.S. Customs & Border Protection annual reconciliation purposes, each zone operator may choose its own operating zone year. Each zone operator shall provide an annual report to the City of Mesa each calendar year or at such other time as set forth in the zone schedule or operator agreement. (5194)

9-13-8: APPEALS:

Any determination made by any official of the City charged with the administration of any part of this Chapter may be appealed to the City Manager, or his designee. All appeals must include a written notice of appeal that contains an explanation of why the appellant feels that the determination was in error. The notice of appeal must be filed with the Office of Economic Development within thirty (30) days of the determination for which the appeal is being filed. The determination of the City Manager, or his designee, shall be final. (5194)

9-13-9: PENALTY:

(A) Violations of this Chapter are civil under the City of Mesa authority and may also be subject to a federal action under the provisions and regulations of U.S. Customs & Border Protection and the Foreign Trade Zones Board. Violations can result in the loss of foreign trade zone privileges other remedies including merchandise seizure, fines, penalties and criminal sanctions may be applicable as provided by laws and regulations. (3404, 5194)

(B) Termination-Conviction/Abandonment. Foreign trade zone privileges may be terminated if:

1. Zone participant shall be convicted under any law of a felony as defined by such law; (5194)

2. If the Foreign Trade Zones Board or U.S. Customs & Border Protection suspends or terminates zone participant or the activated status of the zone; (5194)

3. If the zone participant voluntarily abandons, deserts, or vacates the premises or discontinues its operations; (5194)

4. If zone participant fails to immediately provide all records and reports required to be prepared or maintained by zone participant under applicable law or regulation to zone grantee, the Foreign Trade Zones Board, and U.S. Customs & Border Protection upon request of one of those entities. (3404, 5194)

5. If zone participant violates or fails to comply with any of the provisions or requirements of this Title 9 Chapter 13 of the Mesa City Code, the zone schedule, or its operator agreement with the City of Mesa. (5194)
CHAPTER 14

TELECOMMUNICATIONS SERVICE (3602)

SECTION:

9-14-1: DEFINITIONS
9-14-2: LICENSE REQUIRED
9-14-2: LICENSE PROPOSAL

9-14-1: DEFINITIONS:
In this Chapter, unless the context otherwise requires: (3602)

“CABLE SERVICES” and “CABLE SYSTEM” shall have the same meaning as defined in Chapter 7, Title 9, Mesa City Code. (3602)

“CITY” means the City of Mesa, Maricopa County, Arizona. (3602)

“COMMERCIAL MOBILE RADIO SERVICE” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code Section 157. (3602)

“FACILITIES” means the plant, equipment, and property, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways and not owned by the City in the provision of telecommunications services. (3602)

“PUBLIC HIGHWAY” or “HIGHWAY” means all roads, streets, and alleys and all of the dedicated public rights-of-way and public utility easements of the City. (3602)

“TELECOMMUNICATIONS” means the transmission, between or among points specified by the user of information of the user’s choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services, or cable services. (3602)

“TELECOMMUNICATIONS CORPORATION” means any public service corporation to the extent that it provides telecommunications services in this State. (3602)

“TELECOMMUNICATIONS SERVICES” means the offering of telecommunications for a fee directly to the public, or to such users to be effectively available directly to the public, regardless of the facilities used. (3602)

9-14-2: LICENSE REQUIRED:

(A) No telecommunications corporation shall install, maintain, construct, or operate telecommunications facilities in any public highway in the City, or provide telecommunications service by means of such facilities unless a license to provide telecommunications services has first been granted by the City under this Chapter. (3602)
(B) Notwithstanding Subsection (A), any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 31, 1997 pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that State grant, until the State grant is lawfully repealed, revoked, or amended, and need not obtain any further authorization from the City to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in Title 9, Chapter 5, Article 7, Arizona Revised Statutes. (3602)

(C) Nothing in this Chapter shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the City prior to October 31, 1997, or to release any party from its obligations thereunder. Those franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. The City Manager, with the consent of the City Council, may enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement. (3602)

(D) A license to any telecommunications corporation to use the highways to install, maintain, construct, or operate telecommunications facilities, or to provide telecommunications services under this Chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license, or permit that authorizes the use of the highways for such other service; nor shall the fact that an entity holds a franchise, license, or permit to make any other use of the highway or to provide any other service authorize installation, maintenance, construction, or operation of telecommunications facilities in any highway in the City, or permit such entity to provide telecommunications services by means of such facilities without obtaining a license hereunder. (3602)

(E) Any license granted shall not be exclusive. (3602)

9-14-3: LICENSE PROPOSAL:

(A) A telecommunications corporation desiring a license to occupy the streets and other highways of the City to provide telecommunications service shall file a proposal with the Development Services Manager in the form prescribed by such Manager, and shall pay a fee determined by the Development Services Manager. The amount of the fee shall be reasonably related to the cost directly incurred by the City relating to the granting or administration of the license and can be appealed to the City Manager. (3602, 3766)

(B) Each application shall, at a minimum, (1) show where the facilities the applicant will use will be located, or contain such other information as the City may deem necessary in order to ensure that the applicant will comply with the requirements for use of the highways; (2) identify the applicant, its name, current address, and telephone number; (3) contain a description of the services to be provided; and (4) set out a description of any agreement with any other entity that would permit such entity to use the facilities. (3602)

(C) Upon receiving an application for a license that satisfies the conditions of Section (B), the City shall promptly offer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the offered license, the applicant’s request shall be approved. Notwithstanding the foregoing, the City need not issue or renew a license if the applicant has previously had a license or permit revoked, or for any other reason permitted under Arizona law. (3602)
(D) As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the City may require that: (3602)

1. The applicant show that it has received a Certificate of Public Convenience and Necessity from the Arizona Corporation Commission; (3602)

2. The applicant agrees to comply with the highway use requirements that the City may establish from time to time; (3602)

3. The applicant agrees to provide and maintain accurate maps showing the location of all the facilities it will use in the highways within the City, and to comply with such other mapping requirements as the City may establish from time to time. (3602)

4. The applicant obtains the insurance, and provides proof of insurance, as required by the City; posts the performance bonds and security fund required by the City; agrees to fully indemnify the City, its Mayor and Councilmembers, officers, agents, boards, and commissions, in a form satisfactory to the City; and agrees that it shall have no recourse against the City for monetary damages as a result of any damage that may result from the City’s exercise of its rights under the license, or applicable provisions of law. (3602)

5. The applicant agrees to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the City which may include: (3602)

   (a) Provisions covering assignment; (3602)

   (b) The right to inspect records to determine compliance by the licensee; (3602)

   (c) Provisions for renewal; (3602)

   (d) Fees and charges contemplated by A.R.S. §9-582(C) may be charged by the City as allowed by law. (3602)

(E) Any license granted by the City pursuant to this Chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be for a term of five (5) years, and subject to the conditions and restrictions provided in the instrument and this Chapter. (3602)

(F) Every licensee shall be subject to the City’s exercise of such police, regulatory, and other powers as the City now has or may later obtain, and a license may not waive the application of the same, and must be exercised in strict conformity therewith. Every license shall be subject to revocation if the licensee fails to comply with the terms and conditions of the license or applicable law. Provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the City finds that the defect in performance is due to intentional misconduct, or is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the licensee requests a hearing. (3602)

(G) The issuance of a license by the City is not a representation or warranty that such license is a legally sufficient substitute for a franchise and is not a representation or warranty that a franchise is not required. (3602)
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CHAPTER 1

BICYCLES AND SKATEBOARDS

SECTION:

10-1-1: DEFINITIONS
For the purposes of this Chapter, a bicycle is defined as any two- (2-) wheeled vehicle having a tandem arrangement of the wheels and having cranks, levers, or pedals for its propulsion by the feet. (227)

For the purposes of this Chapter, a skateboard is defined as a platform mounted on wheels that is propelled by human power, and skateboarding is defined as the use of a skateboard. (2547)

For the purposes of this Chapter, a motorized skateboard is defined as a self-propelled device which has a motor, a deck on which a person may ride, and has at least two (2) wheels in contact with the ground and which is not otherwise defined in Arizona Revised Statutes, Title 28, as amended, as a "motor vehicle," "motorcycle," "motor-driven cycle," or "motorized wheelchair." (3688)

The term owner shall mean any person who holds legal title to a bicycle; or if the bicycle is the subject of a lease or an agreement for the conditional sale thereof, with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee; or if a mortgagor of a vehicle is entitled to possession, then such lessee, conditional vendee, or mortgagor shall be deemed the owner. (227)
10-1-2: REGISTRATION OF BICYCLES:
Every owner of a bicycle, before the same shall be operated on any of the public thoroughfares of the Municipality, and every purchaser of a bicycle obtained from a City auction, shall apply for the registration thereof. Registration shall be accomplished through utilization of the Mesa Police Department’s operation I.D. procedures. (227,1665)

10-1-3: FEES:
No fees shall be required for the registration of bicycles. (357,1665)

10-1-4: DATE OF REGISTERING BICYCLE:
Before January 1 of each year, all bicycles must be registered in compliance with this Chapter, and all persons becoming the owners of a new or rebuilt bicycle must immediately after acquiring such ownership comply with the provisions hereof. (227,1665)

10-1-5: RENTAL AGENCIES:
A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate is attached thereto as provided herein and such bicycle is equipped with the lamps and other equipment required in this Chapter. (227,1665)

10-1-6: BICYCLE DEALERS:
Every person engaged in the business of buying or selling new or secondhand bicycles shall make a report to the Chief of Police of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name or make, the frame number thereof, and the number of license plate, if any, found thereon. (227,1665)

10-1-7: TRAFFIC LAWS APPLICABLE TO PERSONS RIDING BICYCLES:
Every person riding a bicycle upon a roadway in the City shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State declaring rules of the road applicable to vehicles or by the traffic laws of this City applicable to the driver of a vehicle except as to special regulations herein and except as to those provisions of law which by their nature can have no application. (227,1665)

10-1-8: OBEDIENCE TO TRAFFIC-CONTROL DEVICES:
Any person operating a bicycle shall obey the instructions of official traffic-control signals, signs, and other control devices applicable to vehicles unless otherwise directed by a Police officer. (227,1665)

Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make such turn, in which event such person shall then obey the regulations applicable to pedestrians. (227,1665)

10-1-9: RIDING ON ROADWAYS AND BICYCLE PATHS:
Every person operating a bicycle upon a roadway shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. (227,1665)

Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. (227, 1665)
10-1-10: **SPEED:**
No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (227,1665)

10-1-11: **EMERGING FROM ALLEY OR DRIVEWAY:**
The operator of a bicycle emerging from an alley, driveway, or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area and upon entering the roadway, shall yield the right-of-way to all vehicles approaching on said roadway. (227,1665)

10-1-12: **CLINGING TO VEHICLES:**
No person riding upon any bicycle shall attach the same or himself to any vehicle upon a roadway. (227,1665)

10-1-13: **CARRYING ARTICLES:**
No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one (1) hand upon the handlebars. (227,1665)

10-1-14: **PARKING:**
No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb in such manner as to afford the least obstruction to pedestrian traffic. (227,1665)

10-1-15: **RIDING ON SIDEWALKS:**
When signs are erected giving notice thereof, no person shall ride a bicycle, skateboard, motorized skateboard, or scooter upon a sidewalk within a Pedestrian Overlay Area (POA). The City Traffic Engineer is authorized to erect signs on any sidewalk within a POA prohibiting the riding of bicycles, skateboards, motorized skateboards, or scooters thereon by any person. The boundaries of the POA are the east side of Country Club Drive to the west side of Centennial Way, the south side of 1st Street to the north side of 1st Avenue. The centerline of the aforementioned streets shall be construed to be the boundaries. (227,1286,1665,1968,3847,5024)

10-1-16: **LAMPS AND OTHER EQUIPMENT ON BICYCLES:**
Every bicycle, when in use at nighttime, shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet (500') to the front and with a red reflector on the rear of a type which shall be visible from all distances from fifty feet (50') to three hundred feet (300') to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet (500') to the rear may be used in addition to the red reflector. (227,1665)

No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle. (860,1665)

Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement. (227,1665)
10-1-17:  **SKATEBOARDING:**
Skateboarding is prohibited upon the stairways, handicap access ramps, and other appurtenances of the Mesa City Council Chambers, the City Hall (Municipal) Building, and all other municipal buildings within the City. (2547)

10-1-18:  **MOTORIZED SKATEBOARDS:**

(A)  **Obedience to Traffic Laws:** (3688)

1. Except as to those provisions of law which by their nature can have no application, any person operating a motorized skateboard on a roadway or on any shoulder adjoining a roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle by both: (3688)

   (a) The laws of this State declaring rules of the road applicable to vehicles; and (3688)

   (b) The traffic laws of the City applicable to the driver of a vehicle. (3688)

2. This Section shall not be construed to require the licensing or registration of motorized skateboards; the licensing of motorized skateboard operators or the carrying of insurance covering accidents involving motorized skateboards. (3688)

(B)  **Responsibilities of Parents, Guardians, and Custodians:** (3688)

1. The parent, guardian, or legal custodian of any minor or ward shall not authorize or knowingly permit such minor or ward to violate any of the provisions of this Article. (3688)

2. No minor shall operate a motorized skateboard on any City right-of-way, including streets, roadways, and alley ways, unless the minor possesses at all times while operating the motorized skateboard a written consent of the minor's parent or legal guardian. The written consent shall be signed by the parent or legal guardian, whose signature shall be notarized, and shall contain the following: (3688)

   (a) The name and date of birth of the minor. (3688)

   (b) The residence address of the minor and parent/guardian. (3688)

   (c) The residence and work telephone number of the parent/guardian. (3688)

   (d) The following statement: (3688)

   I am the parent/guardian of the minor named herein and hereby authorize said minor to operate a motorized skateboard in the City of Mesa. I have read and discussed with said minor the applicable laws of the State of Arizona and of this City regarding the operation of motorized skateboards and have assured myself that said minor understands these regulations. (3688)
(C) Operation Prohibited in Certain Areas and at Certain Times: (3688)

1. No person shall operate a motorized skateboard on any sidewalk except for use in crossing such sidewalk to gain access to any public or private road or driveway. (3688)

2. No person shall operate a motorized skateboard in any City parking structure or City park, except for use on public roadways within such park on which a motorized skateboard is otherwise allowed. (3688)

3. No person shall operate a motorized skateboard on any public property that has been posted or designated by the owner of such property as an area in which the operation of motorized skateboards is prohibited. (3688)

4. No person shall operate a motorized skateboard on any private property of another, or any public property which is not held open to the public for vehicle use, without the written permission of the owner, or the owner's authorized agent. (3688)

5. No person shall operate a motorized skateboard on any public roadway having a speed limit established greater than thirty (30) miles per hour. (3688)

6. No person shall operate a skateboard on a City right-of-way, including streets, roadways, and alley ways, except during daylight and in no event before seven (7:00) A.M. or after eight (8:00) P.M. (3688)

(D) General Operating Restrictions: (3688)

1. No child under the age of fourteen (14) shall operate a motorized skateboard. (3688)

2. No person shall operate a motorized skateboard in excess of the posted speed limit or at a speed greater than is reasonable and prudent under the circumstances then existing. (3688)

3. A person operating a motorized skateboard, approaching a sidewalk, bicycle path, bicycle lane, or multiuse path in order to cross such, shall yield the right-of-way to all other users. (3688)

4. No person operating a motorized skateboard shall allow passengers when the motorized skateboard is in operation or motion. (3688)

5. No person operating or riding upon a motorized skateboard shall attach themselves or the motorized skateboard in any manner to any other vehicle. (3688)

6. No person shall operate a motorized skateboard while carrying any package, bundle, or article which prevents the operator from keeping both hands upon the steering mechanism at all times. (3688)

7. No person operating a motorized skateboard shall transport extra fuel in a separate container or alter the fuel reservoir from the original manufacturer's design. This includes the prohibition of physically attaching fuel packs or containers to the operator's person. (3688)
8. No person shall operate a motorized skateboard in a manner causing excessive, unnecessary, or offensive noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to a reasonable person of normal sensitivity. (3688)

(E) Required Safety Equipment: (3688)

1. No person shall operate a motorized skateboard at any time when there is not sufficient light to render clearly discernible persons and vehicles at a distance of five hundred feet (500’) ahead. (3688)

2. No person shall operate a motorized skateboard unless it is equipped with a brake which enables the operator to make a braked wheel(s) skid on pavement. (3688)

3. A person under the age of eighteen (18) years operating a motorized skateboard on a roadway shall at all times wear a protective helmet on his or her head in an appropriate and safely secured manner. The helmet shall meet minimum standards of testing and safety inspection as approved by the bicycle industry. (3688)

4. No person shall operate a motorized skateboard without wearing footwear. The footwear must have a sole and completely cover the feet and toes. (3688)

5. A person operating a motorized skateboard shall wear, at all times, protective glasses or goggles or a transparent face shield of a type approved for motorcycle or motor-drive cycle use. (3688)

10-1-19: VIOLATION OF PROVISION OF CHAPTER; FAILURE OR REFUSAL TO DO OR PERFORM REQUIRED ACT:
No person shall fail to register any bicycle owned by such persons, and no person shall violate any of the provisions of Title 10, Chapter 1 of the Mesa City Code providing for registration and regulation of all bicycles operated in the Municipality. (227,1665,1771,3688)

10-1-20: PARENT OR GUARDIAN LIABILITY: (3688)
The parent of any minor or the guardian having custody or control of any minor shall not authorize or knowingly permit the minor to violate any of the provisions of this Chapter. If a fine is imposed upon a minor who is found to be in violation of this Ordinance (3688, pertaining to motorized skateboards), the parents or legal guardian having custody or control of the minor shall be jointly and severally liable with the minor for payment of the fine whether or not the parents or guardian knew of, or anticipated, a violation of this Ordinance. (3688)

10-1-21: PENALTY:
A violation of any provision of this Chapter of the Mesa City Code shall be a civil traffic offense punishable by a fine not to exceed three hundred dollars ($300.00). (2547,3688)

CHAPTER 2

PARKING METERS

(REPEALED BY 5024)
CHAPTER 3

TRAFFIC

SECTION:

10-3-1: DEFINITIONS
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10-3-3: RECORDS OF TRAFFIC VIOLATIONS
10-3-4: TRAFFIC ACCIDENT STUDIES
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10-3-1: DEFINITIONS:
The following words and phrases, when used in this Chapter, shall for the purpose of this Chapter have the meanings respectively ascribed to them in this Section. Whenever any words and phrases used herein are not defined herein but are defined in the State laws regulating the operation of vehicles, any such definition therein shall be deemed to apply to such words and phrases used herein: (Reso. 990)

ALLEYS: Lanes or passageways for use in unloading merchandise, Fire Department convenience, and generally as a means of reaching the rear end of lots or buildings, and not in any way to be considered a thoroughfare. (Reso. 990)

AUTHORIZED EMERGENCY VEHICLE: Vehicles of the Fire Department, Police vehicles, and such ambulances and emergency vehicles of City of Mesa departments or public service corporations as are designed or authorized by the State Highway Commission. (Reso. 990)
**BICYCLE**: Every device propelled by human power upon which any person may ride, having two (2) tandem wheels, either of which is over sixteen inches (16") in diameter, and including any device generally recognized as a bicycle though equipped with two (2) front or two (2) rear wheels. (380, Reso. 990)

**BUSINESS DISTRICT**: The territory contiguous to and including a roadway when within any six hundred feet (600') along such roadway there are buildings in use for business or industrial purposes, including but not limited to, hotels, banks or office buildings, railroad stations, and public buildings which occupy at least three hundred feet (300') of frontage on one (1) side or three hundred feet (300') collectively on both sides of the roadway. (Reso. 990)

**CITY TRANSPORTATION FACILITY**: Any City street, sidewalk, bicycle lane, equestrian, bicycle, pedestrian or multi-use path, special use trail, alley, highway, transit stop or station, or similar public way. (5050)

**CROSSWALK**: (Reso. 990)

(A) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highways measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway. (Reso. 990)

(B) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (Reso. 990)

**CURB LOADING ZONE**: A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials. (Reso. 990)

**DRIVER**: Every person who drives or is in actual physical control of a vehicle. (Reso. 990)

**FREIGHT CURB LOADING ZONE**: A space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight (or passengers). (Reso. 990)

**INTERSESSIONS**: (Reso. 990)

(A) The area embraced with the prolongation or connection of the lateral curb lines or if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. (Reso. 990)

(B) Where a highway includes two (2) roadways thirty feet (30') or more apart, then every crossing of each roadway of such dividing highway by an intersecting highway shall be regarded as a separated intersection. In the event such intersecting highway also includes two (2) roadways thirty feet (30') or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection. (Reso. 990)

**LANED ROADWAY**: A roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic. (Reso. 990)

**LIMITED-ACCESS HIGHWAY**: Every highway, street, or roadway in respect to which owners or occupants of abutting property of lands and other persons have no legal right of access to or from the same, except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway. (Reso. 990)
MOTOR VEHICLE: Every vehicle which is self-propelled. (Reso. 990)

MOTORCYCLE: Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor. (Reso. 990,1074)

OFFICIAL TRAFFIC-CONTROL DEVICES: All signs, signals, markings, and devices not inconsistent with this Chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, and guiding traffic. (Reso. 990)

PARK: When prohibited, means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading. (Reso. 990)

PASSENGER CURB LOADING ZONE: A place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers. (Reso. 990)

PEDESTRIAN: Any person afoot. (Reso. 990)

POLICE OFFICER: Every officer of the City of Mesa Police Department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. (Reso. 990)

PRIVATE ROAD OR DRIVEWAY: Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons. (Reso. 990)

RAILROAD: A carrier of persons or property upon cars, other than street cars, operated upon stationary rails. (Reso. 990)

RAILROAD TRAIN: A steam engine, electric, or other motor, with or without cars coupled thereto, operated upon rails, except street cars. (Reso. 990)

RESIDENCE DISTRICT: The territory contiguous to and including a highway and comprising a business district when the property on such highway for a distance of three hundred feet (300') or more is in the main improved with dwellings or dwellings and buildings in use for business. (Reso. 990)

RIGHT-OF-WAY: The privilege of the immediate use of the roadway. (Reso. 990)

ROADWAY: That portion of a street or highway improved, designed, or ordinarily used for vehicular travel. In the event a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively. (Reso. 990)

SAFETY ZONE: The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. (Reso. 990)

SERVICE VEHICLE: A licensed vehicle used in the construction, operation or maintenance of a municipal, utility or other similar facility or infrastructure, or in the provision of service for a municipal, utility or other similar service. (5050)
SIDEWALK: That portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians. (Reso. 990)

STOP: When required, means complete cessation of movement. (Reso. 990)

STOP, STOPPING, OR STANDING: When prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control signal or sign. (Reso. 990)

STREET OR HIGHWAY: 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. (Reso. 990)

THROUGH ROADWAY: Every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this act. (Reso. 990)

TRAFFIC: Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any street for purpose of travel. (Reso. 990)

TRAFFIC-CONTROL SIGNAL: Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed. (Reso. 990)

TRAFFIC DIVISION: The traffic division of the Police Department of the City or in the event a traffic division is not established, then said term whenever used herein shall be deemed to refer to the Police Department of the City. (Reso. 990)

VEHICLE: Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (Reso. 990)

10-3-2: DUTY OF POLICE DEPARTMENT: It shall be the duty of the Police Department to enforce the street traffic regulations of the City and all of the State vehicle laws applicable to street traffic in the City, to make arrests for State of Arizona criminal traffic violations, to investigate accidents and to assist in developing ways and means to improve traffic conditions, and to carry out all duties specially imposed upon said Department by this Chapter. (Reso. 990,1771)

10-3-3: RECORDS OF TRAFFIC VIOLATIONS: The Police Department shall keep a record of all violations of the traffic laws of the City or of the State vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five- (5-) year period, and from that time on, the record shall be maintained complete for at least the most recent five- (5-) year period. All forms for records of violations and notices of violations shall be serially numbered. For each month and year, a written report shall be kept available to the public showing the disposal of all such forms. All records and reports shall be public records. (Reso. 990)

10-3-4: TRAFFIC ACCIDENT STUDIES: Whenever the accidents at any particular location become numerous, the City Traffic Engineer shall conduct studies of such accidents and determine remedial measures. (Reso. 990,1074,1771,3766,5024)
10-3-5:  **TRAFFIC ACCIDENT REPORTS:**

(A) The Police Department shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. (reso. 990)

(B) The Police Department shall receive and properly file all accident reports made to it under State law or under any law of the City, but all such accident reports made by drivers shall be for the confidential use of the Police Department and no such report shall be admissible in any civil or criminal proceeding other than upon request of any person making such report or upon request of the court having jurisdiction to prove a compliance with the laws requiring the making of any such report. (Reso. 990)

10-3-6:  **POLICE DEPARTMENT TO SUBMIT ANNUAL TRAFFIC SAFETY REPORT:**

The Police Department shall annually prepare a traffic report which shall be filed with the City Clerk. Such report shall contain information on traffic matters in the City as follows: (Reso. 990,1771)

(A) The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data. (Reso. 990, 1771)

(B) The number of traffic accidents investigated and other pertinent data on the safety activities of the Police. (Reso. 990, 1771)

(C) The plans and recommendations of the division for future traffic safety activities. (Reso. 990, 1771)

10-3-7:  **DUTIES OF OFFICERS OF POLICE AND FIRE DEPARTMENTS:**

(A) It shall be the duty of the officers of the Police Department or such officers as are assigned by the Chief of Police to enforce all street traffic laws of the City and all of the State vehicle laws applicable to street traffic. (Reso. 990,1771)

(B) Officers of the Police Department or such officers as are assigned by the Chief of Police are hereby authorized to direct all traffic by voice, hand, or signal, provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require. (Reso. 990, 1771)

(C) Officers of the Fire Department, when at the scene of a fire, may direct or assist the Police in directing traffic thereat or in the immediate vicinity. (Reso. 990,1771)

10-3-8:  **OBEEDIENCE TO TRAFFIC REGULATIONS:**

No person shall do any act forbidden or fail to perform any act required herein. (Reso. 990,1771)

10-3-9:  **PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC REGULATIONS:**

Every person propelling any pushcart or driving any animal-drawn vehicle or riding an animal upon a roadway shall be subject to the provisions of this Chapter applicable to the driver of any vehicle, except those provisions which by their very own nature can have no application. (Reso. 990,1771)

10-3-10:  **COASTERS, ROLLER SKATES, AND SIMILAR DEVICES:**

No person upon roller skates or riding any coaster, toy vehicle, or similar device shall go upon any roadway except while crossing a street on a crosswalk, and when crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. (Reso. 990,1771)
10-3-11: **PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS:**

The provisions of this Chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, County, or Municipality, and no such driver shall violate any of the provisions of this Chapter, except as otherwise permitted by State Statute. (Reso. 990,1771)

10-3-12: **EXEMPTIONS TO AUTHORIZED EMERGENCY OR SERVICE VEHICLES:**

(A) The provisions of this Chapter regulating the operation, parking, and standing of vehicles shall apply to authorized emergency vehicles, as defined in this Chapter, except as follows: (Reso. 990, 1771, 5050)

1. A driver, when operating any such vehicle in an emergency, except when otherwise directed by a Police officer, may: (Reso. 990, 1771, 5050)

   (a) Park or stand notwithstanding the provisions of this Chapter. (Reso. 990, 1771, 5050)

   (b) Proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation. (Reso. 990, 1771, 5050)

   (c) Exceed the speed limits so long as he does not endanger life or property. (Reso. 990, 1771, 5050)

   (d) Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property. (Reso. 990, 1771, 5050)

2. The exemptions granted in Subsection (A)(1) of this Section in reference to the movement of an authorized emergency vehicle shall apply when the driver of said vehicle displays at least one (1) lighted lamp exhibiting a red or red-and-blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet (500') to the front of the vehicle, other than a Police vehicle when operated as an authorized emergency vehicle and when the driver is giving audible signal by siren, exhaust whistle, or bell. An authorized emergency vehicle operated as a Police vehicle need not be equipped with or display the red or red-and-blue light or lens visible from in front of the vehicle. (Reso. 990, 1771, 5050)

(B) The provisions of this Chapter regulating the parking and standing of vehicles shall apply to authorized service vehicles except as follows: (5050)

1. A driver, when operating any such vehicle and engaged in official duties, except when otherwise directed by a police officer, may park or stand notwithstanding the provisions of this Chapter. (5050)

2. The exemption granted in Subsection (B)(1) of this Section shall apply when such parking or standing is to carry out official duties, does not endanger life or property, and temporary traffic control measures as required by applicable City regulations are in place. (5050)

10-3-13: **TRAFFIC-CONTROL DEVICES:**

(A) Authority to Install Traffic-Control Devices. The City Traffic Engineer shall place and maintain traffic-control devices, signs, and signals when and as required under the traffic regulations of the City of Mesa to make effective the provisions of said regulations and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic laws of the City or under State law or to guide or warn traffic. (Reso. 990,1286,1440,1771,3766,5024)
(B) Specifications for Traffic-Control Devices. All traffic-control signs, signals, and devices shall conform to the approved specifications. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic-control devices so erected and not inconsistent with the provisions of this Chapter shall be official traffic-control devices. (Reso. 990,1286,1771)

(C) Obedience to Traffic-Control Devices. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the traffic regulations of the City, unless otherwise directed by a Police officer, subject to the exceptions granted the driver of an authorized emergency vehicle. (Reso. 990,1286,1771)

(D) When Traffic-Control Devices are Required for Enforcement Purposes. No provisions of this Chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Section does not state that signs are required, such Section shall be effective even though no signs are erected or in place. (Reso. 990,1286,1771)

(E) Traffic-Control Signal Legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights successively one (1) at a time, the following colors only shall be used, and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows: (Reso. 990,1286,1336,1771)

1. Circular Green. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign, pavement marking, or arrow signal prohibits any particular movement. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited. (Reso. 990,1286,1336,1771)

Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk. (Reso. 990,1286,1336,1771)

2. Circular Yellow. Vehicular traffic facing the signal is thereby warned that the red signal will be exhibited immediately thereafter and such vehicular traffic shall not enter the intersection when the red signal is exhibited. (Reso. 990,1286,1336,1771)

No pedestrian facing the signal shall enter the roadway until the green is shown, unless authorized to do so by a pedestrian "walk" or a symbolic "walking man" signal. (Reso. 990,1286,1336,1771)

3. Circular Red. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until green is shown alone. (Reso. 990,1286,1336,1771)

No pedestrian facing such signal shall enter the roadway until the green is shown alone, unless authorized so to do by a pedestrian "walk" or a symbolic "walking man" signal. (Reso. 990,1286,1336,1771)

The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of an intersection, or if there is no crosswalk, then at the entrance to the intersection in obedience to a red signal, may make a right turn but shall yield the right-of-way to the pedestrian and other traffic proceeding as directed by the signal, excepting at such intersections as shall, by an appropriate sign, indicate that no right turn can be made against the red signal. (1286,1336,1771)
4. Green, Yellow, and Red Arrows. (1286,1336,1771)

(a) Green Arrow. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. (1286,1336,1771)

(b) Yellow Arrow. Vehicular traffic facing the signal is thereby warned that the related green arrow movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection. (1286,1336,1771)

(c) Red Arrow. Vehicular traffic facing a steady red arrow signal shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and will remain standing until an indication to proceed is shown. (1286,1336,1771)

(F) Traffic-Control Signal at a Place Other Than an Intersection. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this Chapter shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such signs or marking, the stop shall be made at the signal. (1286,1771)

(G) Pedestrian "Walk" and "Don't Walk" or Symbolic "Walking Man" and "Hand" Signals. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" or the symbolic "Walking Man" and "Hand" signals are in place, such signals shall indicate as follows: (Reso. 990,1286,1336,1771)

1. "Walk" or Symbolic "Walking Man." Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the driver of all vehicles. (Reso. 990,1286,1336,1771)

2. "Don't Walk" or Symbolic "Hand." No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "Walk" or symbolic "walking man" signal shall proceed to a sidewalk or safety zone while the "Don't Walk" or symbolic "Hand" signal is showing. (Reso. 990,1286,1336,1771)

(H) Flashing Signals. Whenever flashing red or yellow signals are used, they shall require obedience by vehicular traffic as follows: (Reso. 990,1286,1771)

1. Flashing Red (Stop Signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. (Reso. 990,1286,1771)

2. Flashing Yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. (Reso. 990, 1286,1771)
(I) Display of Unauthorized Signs, Signals, or Markers. No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to the highways of signs giving useful directional information and of a type that cannot be mistaken for official signs. (Reso. 990,1286,1771)

Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. (Reso. 990,1286,1771)

(J) Interference With Official Traffic-Control Devices or Railroad Signs or Signals. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control signal device or any railroad sign or any inscription, shield, or insignia thereon or any part thereof. (Reso. 990,1286,1771)

(K) Authority to Close Streets for Block Parties. The City Traffic Engineer or his designee is hereby authorized to grant temporary street closures for block parties. (Reso. 990,1074,1286,1440,1771,3766, Ord. 4577,5024)

(L) City Traffic Engineer to Designate Crosswalks, Establish Safety Zones, and Mark Traffic Lanes. The City Traffic Engineer is hereby authorized: (Reso. 990,1074,1286,1440,1771,3766,5024)

1. To designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway and at such other places as he may deem necessary. (Reso. 990,1074,1286,1440,1771)

2. To establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians. (Reso. 990,1074,1286,1440,1771)

3. To mark lanes for traffic on street pavements at such places as he may deem advisable, consistent with the traffic laws of the City. (Reso. 990,1074,1286,1440,1771)

(M) Authority to Install Yield Right-of-Way Signs. The City Traffic Engineer shall place and maintain yield right-of-way signs when and as required under the traffic regulations of the City and may place and maintain such additional yield right-of-way signs as he may deem necessary to regulate traffic under the traffic laws of the City or under State law or to guide or warn traffic. After the erection of such yield right-of-way signs, the driver of a vehicle about to enter or cross a highway or street from another highway or street shall, whenever a yield right-of-way sign is posted at the intersection thereof, yield the right-of-way to all closely approaching vehicles on the highway or street said driver is about to enter. (1074,1286,1440, 1771,3766,5024)

(N) Experimental Traffic Control. The City Traffic Engineer, with the approval of the City Manager is authorized to test traffic-control devices under actual conditions of traffic. This testing shall consist of conducting research and tests on current devices and traffic control devices not presently included in the Manual on Uniform Traffic Control Devices. (1440,1771,3766,5024)

(O) Authority to Install Restricted Entry Signs. Where necessary to preserve the public safety and welfare, the City Traffic Engineer is authorized to post signs restricting entry to a street, alley, driveway, or portion thereof. When authorized signs are erected indicating that entry is restricted, the directions of such sign shall be obeyed. (1771, 2294, 3766, 5024, 5053)
10-3-14: TURNING MOVEMENTS:

(A) Required Position and Method of Turning at Intersections. The driver of a vehicle intending to turn at an intersection shall do as follows: (Reso. 990,1771)

1. Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway. (Reso. 990,1771)

2. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof, and after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. (Reso. 990,1771)

3. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection. (Reso. 990,1771)

4. Where both streets or roadways are one-way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway. (Reso. 990,1771)

(B) Authority to Place and Obedience to Turning Markers. (Reso. 990,1074,1771,5024)

1. The City Traffic Engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law. (Reso. 990,1074,1771,3766,5024)

2. When authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereof, no driver of a vehicle shall disobey the directions of such indications. (Reso. 990,1074,1771)

(C) Authority to Place Restricted Turn Signs. The City Traffic Engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left, or U turn and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted. (Reso. 990,1074,1771,3766,5024)

(D) Obedience to No Turn Signs. Whenever authorized signs are erected indicating that no right, left, or U turn is permitted, no driver of a vehicle shall disobey the directions of any such sign. (Reso. 990,1771)

(E) Limitations on Turning Around. The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic. (Reso. 990,1771)
10-3-15: **PROHIBITING TURNS FROM DRIVEWAYS:**

(A) Authority to Place Signs Prohibiting Turns from Driveways. The City Traffic Engineer is authorized to determine those driveways from which left, right or all turns onto streets shall be prohibited at all times, prohibited during specific hours, or prohibited at other certain times, and shall place proper signs at such driveways. (1074,1771,3766,4926,5024)

(B) Obedience to No Turns Signs at Driveways. When authorized signs are erected indicating that left, right, or all turns are prohibited, no driver of a vehicle shall disobey the directions of any such sign. (1771,5024)

10-3-16: **ONE-WAY STREETS, ALLEYS, AND DRIVEWAYS:**

(A) Authority to Sign One-Way Streets, Alleys, and Driveways. The City Traffic Engineer shall determine those streets, alleys, or driveways that shall be designated as one-way, and shall place and maintain signs giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement or traffic in the opposite direction is prohibited. (Reso. 990,1074,1440,1771,3766,5024)

10-3-17: **SPECIAL STOPS REQUIRED:**

(A) Authority to Designate Through Streets. The City Traffic Engineer shall determine those streets to be designated as through streets, and place and maintain a traffic-control device on each and every street intersecting such through street or intersecting that portion thereof designated as such, except where two through streets intersect, in which case the City Traffic Engineer shall determine on which street traffic-control devices shall be placed. When signs are erected giving notice thereof, drivers of vehicles shall stop at every intersection before entering any of the streets or parts of streets so designated and indicated by a traffic-control device. (Reso. 990,1771,5024)

(B) Intersections Where Stop Required. The City Traffic Engineer is hereby authorized to determine and designate intersections where a particular hazard exists upon other than through streets and to determine whether vehicles shall stop at one (1) or more entrances to any such stop intersection, and shall erect a traffic-control device at every such place where a stop is required. (Reso. 990,1074,1440,1771,3766,5024)

(C) Stop Signs. If the traffic-control device is a stop sign, every such stop sign erected pursuant to this Chapter shall bear the word "Stop" in letters not less than six inches (6") in height and such sign shall be reflectorized. Every such stop sign shall be located as near as practical to the stop line. (Reso. 990,1074,1771,5024)

(D) Vehicles to Stop at Traffic-Control Devices. When traffic-control devices are erected as herein provided at or near the entrance to any intersection, every driver of a vehicle shall stop such vehicle at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, except when directed to proceed by a Police officer or traffic-control signal. No driver shall drive upon or through any private property such as an oil station, vacant lot, or similar property to avoid obedience to any regulations regarding this Section. (Reso. 990,1771,5024)
(E) Emerging From Alley or Private Driveway. The driver of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway. (Reso. 990,1771,5024)

(F) Stop When Traffic Obstructed. No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (Reso. 990,1771,5024)

(G) Obedience to Signal Indicating Approach of Railroad Train. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this Section, the driver of such vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when: (Reso. 990,1771,5024)

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train. (Reso. 990,1771)

2. A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach of a railroad train. (Reso. 990,1771)

3. A railroad train approaching within approximately one thousand five hundred feet (1,500') of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard. (Reso. 990,1771)

4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing. (Reso. 990,1771)

No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or is being opened or closed. (Reso. 990,1771)

10-3-18: MISCELLANEOUS RULES:

(A) Following Fire Apparatus Prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet (500') or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (Reso. 990,1771)

(B) Crossing Fire Hose. No vehicle shall be driven over any unprotected hose of a Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire without the consent of the Fire Department in command. (Reso. 990,1771)

(C) Driving Through Funeral or Other Procession. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this Chapter. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or Police officers. (Reso. 990,1771)
Drivers in a Procession. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe. (Reso. 990,1771)

Funeral Processions to be Identified. A funeral procession composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the Chief of Police. (Reso. 990,1771)

When Permits Required for Parades and Processions. No procession or parade, except funeral processions, shall be held without first securing a permit from the Chief of Police, and all such requests for permits shall state the time, place of formation, proposed line of march, destination, and other regulations as the Chief of Police may set forth therein. (Reso. 990,1771)

Driving on Sidewalk. A person shall not drive a vehicle on a sidewalk area except on a permanent or duly authorized temporary driveway. A person driving an authorized service vehicle engaged in official duties may drive within a sidewalk area at a location other than a driveway. (Reso. 990, 1771, 5050)

Limitations on Backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic. (Reso. 990,1771)

Riding on Motorcycles. A person operating a motorcycle or motor scooter shall not ride other than upon the permanent and regular seat attached thereto or carry any other person other than upon a firmly attached seat to the rear or side of the operator. (Reso. 990,1771)

Clinging to Moving Vehicles. Any person riding upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicles shall not attach the same or himself to any moving vehicle upon any roadway. (Reso. 990,1771)

Restricted Access. No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority. (372,Reso. 990,1771)

Railroad Trains Not to Block Streets. An engineer, conductor, or other employee or officer of a railroad company who permits a locomotive or cars to be or remain upon the crossing of a public highway over such railway so as to obstruct travel over the crossing for a period exceeding fifteen (15) minutes, except in cases of unavoidable accident, is guilty of a misdemeanor. (745,Reso. 990,1771)

Regulations for House-moving Vehicles. No driver of a vehicle involved in moving a house or other building shall drive or operate said vehicle on any street or public way within the limits of the City without first securing a permit from the City Manager or designee and all requests for permits shall state the time, the proposed route, and destination of the vehicle. No such house-moving vehicle so involved shall be driven or operated on any street or public way within the City without having in attendance a suitable escort and without having the vehicles marked plainly with the legend "wide load" both in the front and in the rear. The permit to be issued by the City Manager or designee shall be prominently displayed on the house or building being moved, and no permit shall be issued without a fee of two dollars ($2.00) first being paid by the applicant to the City Manager or designee. In the event that it becomes necessary for any department of the City to move any utility lines, traffic signals, street lights or other City facilities to permit the passage of said house or building, then the applicant for a building permit shall pay to the City the actual cost of time and materials used in moving such utilities, traffic signals, street lights or other City facilities. In the event any damage is done to any City utility lines, traffic signals, streetlights, pavement, or other City facilities in connection with any such moving project, the applicant for such permit shall likewise pay to the City the cost of the time and materials for repairing any such City installation. (372,1771,5024)
(N) Driving Upon Certain Real Property. No person may operate a motor vehicle upon real property situated in the City other than on a street or highway; provided, that this Subsection shall not be deemed to prohibit the operation of a motor vehicle upon real property under the following circumstances: (1771)

1. Operation of licensed or unlicensed motor vehicles by the property owner, his immediate family, lessee, or invitee which does not violate other applicable laws; (1771)

2. Lawn and garden maintenance equipment; (1771)

3. Motor vehicles customary and incidental to farming or ranching activities when the operation of such vehicles is conducted on property properly zoned and used for such activities; (1771)

4. Temporary construction motor vehicles whose activities are reasonably necessary for the development, repair, or maintenance of property; (1771)

5. Governmental vehicles when reasonably operated to perform a governmental function; (1771)

6. Vehicles of an electric power, natural gas, telephone, or other utility company when reasonably operated to facilitate the delivery of utility services. (1771)

(O) Commercial Vehicles Restricted On Certain Streets. (2256,5024)

1. When authorized signs are erected, commercial vehicles having a manufacturer’s rating of one and one-half (1-1/2) tons or more or any commercial vehicle having a length of twenty-two feet (22’) or more, inclusive of front and rear bumpers, or a commercial vehicle coupled to a trailer or semi-trailer having a length of twenty-two feet (22’) or more, inclusive of the front and rear bumpers, may not operate on those portions of streets so posted except for the delivery and pickup of merchandise, materials, or equipment going to or from a specific location requiring travel on streets so posted. The commercial vehicle must use the shortest and most direct route on such streets. (2256)

2. Signs prohibiting commercial vehicle traffic may be posted at specific locations where deemed necessary to preserve the public peace and welfare by the City Traffic Engineer. (2256,3766,5024)

(P) Preferential Lanes. (3490,5024)

The City Traffic Engineer is hereby authorized to designate preferential lanes by posting signs restricting the use of traffic lanes to certain classes of vehicles or movements. The restricted use of the lanes may be full or part time. Whenever authorized signs are erected indicating a preferential use, no driver shall operate other classes of vehicles or make other movements within that lane. (3490,3766,5024)

(Q) Maximum Allowable Vehicle Weight on Certain Streets (5258)

1. The City Traffic Engineer is hereby authorized to determine and designate gross vehicle weight limits on portions of streets where such limits are necessary to preserve the public peace and welfare or to protect public assets from damage by vehicles above a specified weight. (5258)

2. Whenever authorized signs are erected indicating a gross vehicle weight limit, no driver shall operate a vehicle exceeding the indicated gross weight, except as indicated below. (5258)
3. Unless the authorized signs state “No Exceptions,” a driver may operate a vehicle exceeding the indicated gross weight for the delivery and pickup of merchandise, materials, or equipment going to or from a specific location requiring travel on streets so posted. Such drivers must use the shortest and most direct route on such streets. (5258)

4. Unless otherwise posted, the gross weight limit does not apply to: (5258)

(a) Public transportation and school buses (5258)

(b) Public and private emergency vehicles (5258)

(c) Public and private utility company vehicles going to or from a specific location requiring travel on streets so posted (5258)

(d) City vehicles or any other vehicle used in providing services including but not limited to contract services and waste collection at locations requiring travel on streets so posted. (5258)

10-3-19: PEDESTRIAN’S RIGHTS AND DUTIES:

(A) Pedestrians Subject to Traffic-Control Signals. Pedestrians shall be subject to traffic-control signals as heretofore declared in this Chapter, but at all other places, pedestrians shall be granted those rights and be subject to the restrictions stated herein. (Reso. 990,1771)

(B) Pedestrian’s Right-Of-Way in Crosswalks. When traffic-control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. A pedestrian’s right-of-way in a crosswalk is modified under the condition and as stated hereinafter. (Reso. 990,1771)

Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Reso. 990,1771)

(C) Pedestrians to Use Right Half of Crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (Reso. 990,1771)

(D) Crossing at Right Angles. No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk. (Reso. 990,1771)

(E) When Pedestrian Shall Yield. (Reso. 990,1771)

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway. (Reso. 990,1771)

2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway. (Reso. 990,1771)

3. The foregoing rules in this Section have no application under the conditions stated hereinafter when pedestrians are prohibited from crossing at certain designated places. (Reso. 990,1771)
(F) Prohibited Crossing. Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a crosswalk, and no pedestrian shall cross a roadway other than in a crosswalk in any business district. (Reso. 990,1771)

(G) Pedestrians Walking Along Roadways. (Reso. 990,1771)

1. Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. (Reso. 990,1771)

2. Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. (Reso. 990,1771)

3. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle. (Reso. 990,1771)

(H) Drivers to Exercise Due Care. Notwithstanding the foregoing provisions of this Chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (Reso. 990,1771)

(I) Pedestrians Soliciting/Distributing. It shall be unlawful for any person to enter upon or remain on any median or traveled portion of any street or highway to solicit an occupant of a vehicle for employment, business, or contributions; or for distribution of advertisements, merchandise, or other property; or to offer any services. (3271)

10-3-20: METHOD OF PARKING:

(A) Standing or Parking Close to Curb. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within eighteen inches (18") of the curb or edge of the roadway except as otherwise provided herein. (Reso. 990,1771)

(B) Signs or Markings Indicating Angle Parking. The City Traffic Engineer shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets. (Reso. 990,1286,1440,1771,3766,5024)

Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street. (Reso. 990,1286,1440,1771)

(C) Obedience to Angle-Parking Signs or Markings. Upon those streets which have been signed or marked by the City Traffic Engineer for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings. (Reso. 990,1286,1440,1771,3766,5024)

(D) Permit for Loading or Unloading at an Angle to the Curb. The Chief of Police is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized herein, and it shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit. (Reso. 990,1771)
(E) Lights on Parked Vehicles. (Reso. 990,1771)

1. Whenever a vehicle is lawfully parked at nighttime upon any street within a business or residence district, no lights need be displayed upon such parked vehicle. (Reso. 990,1771)

2. Whenever a vehicle is parked upon a street or highway outside of a business or residence district during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, such vehicle shall be equipped with one (1) or more lamps which shall exhibit a white light on the roadway side visible from a distance of five hundred feet (500') to the front of the vehicle and a red light visible from a distance of five hundred feet (500') to the rear. (Reso. 990,1771)

3. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed. (Reso. 990,1771)

(F) Backing Into a Parking Space. Vehicles parked on any street, highway, or roadway or in any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City shall not be parked with the rear of the vehicle backed or otherwise placed in the front portion of the parking space. If a parking space in a lot or garage is marked or designated so that two (2) vehicles can be parked end to end in two (2) separate spaces, a vehicle parked therein shall be parked with the rear of the vehicle at the end of the space which is adjacent to the aisle or open area upon which a vehicle may be driven. (1771,2189)

(G) Reparking Within Three Hundred Feet (300'). If a vehicle has been parked in an area on any street or in any public or private lot or in any public or private garage where parking is limited or restricted to a specified period of time by official signs posted at that location, it is prohibited and a violation of this Section for the said vehicle to be reparked for a period of twenty-four (24) hours within three hundred feet (300') of the location where the said vehicle was first parked. (1771,2189)

10-3-21: STOPPING, STANDING, OR PARKING PROHIBITED IN SPECIFIED PLACES:

(A) The City Traffic Engineer is hereby authorized to determine the locations of parking prohibitions on public streets and alleys and shall have the authority to place and maintain curb markings and/or appropriate signs indicating these prohibitions and the days and hours during which these prohibitions are applicable. (4811)

1. This authority includes but is not limited to the authority to:

   (a) Place, maintain or remove traffic signs, curb painting, or other permanent or temporary parking control devices. (4811)

   (b) Establish zones where only certain types of motor vehicles may park, for example motorcycles, recreational vehicles and compact vehicles. (4811)

   (c) Establish zones where parking is prohibited at certain times on certain days. (4811)
2. The City Traffic Engineer shall consider the following circumstances when determining the location of parking prohibitions:

   (a) Traffic safety concerns such as sight distances and obstructions for drivers approaching or exiting driveways, side streets and intersections. (4811)

   (b) Alleviation of traffic congestion caused by circumstances such as streets that are too narrow to accommodate parking and two directions of through traffic, striping pattern that does not allow space for parking, or streets with exclusive bike lanes adjacent to curbs. (4811)

   (c) Significant burdens to public safety caused by situations such as solid waste receptacles that are blocked by parked vehicles; parking patterns that facilitate criminal activities such as vandalism or lewd activities; and heavy parking volume that disrupts the quiet enjoyment of residents located near assembly activities such as schools, parks, churches, and businesses. (4811)

(B) Stopping, Standing, or Parking Prohibited; Whether or Not Official Signs are Posted or Markings in Place. No person may stop, stand, or park a vehicle, except when necessary to avoid conflict with the traffic or in compliance with law or the directions of a Police officer or a traffic-control device, in any of the following places: (Ord 4811 / Reso. 990,1286,1440,1771)

1. On a sidewalk. (Reso. 990,1286,1440,1771)

2. In front of a public or private driveway. (Reso. 990,1286,1440,1771)

3. Within an intersection. (Reso. 990,1286,1440,1771)

4. Within fifteen feet (15') of a fire hydrant. (Reso. 990,1286,1440,1771)

5. On a crosswalk. (Reso. 990,1286,1440,1771)

6. Within twenty feet (20') of a crosswalk at an intersection, unless the City Traffic Engineer has indicated a different length by signs or markings. (Ord 4811 / Reso. 990,1286,1440,1771,3766)

7. Within thirty feet (30') upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of the roadway. (Reso. 990,1286,1440,1771)

8. Between a safety zone and the adjacent curb or within thirty feet (30') of points on the curb immediately opposite the ends of a safety zone, unless the City Traffic Engineer has indicated a different length by signs and markings. (Ord 4811 / Reso. 990,1286,1440,1771,3766)

9. Within fifty feet (50') of the nearest rail of a railroad crossing. (Reso. 990,1286,1440,1771)

10. Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75’) of said entrance when properly sign-posted. (Reso. 990,1286,1440,1771)
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic. (Reso. 990,1286,1440,1771)

12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street. (Reso. 990,1286,1440,1771)

13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel. (Reso. 990,1286,1440,1771)

14. At any place where the curb is painted red. (1771,2888)

15. In that area between a curb and a sidewalk. (1996,2888)

16. In any unpaved portion of the public right-of-way behind and adjacent to the curb. (2014,2888)

17. Upon any street or highway for a period in excess of seventy-two (72) consecutive hours. (2032,2888)

(C) Moving Vehicle. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful. (Ord. 4811/Reso. 990,1771)

(D) Parking Not to Obstruct Traffic. No person may park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet (10') of the width of the roadway for free movement of vehicular traffic. (Ord. 4811/Reso. 990,1771)

(E) Parking in Alleys. No operator may park a vehicle within an alley except for the loading or unloading of materials and not then unless such loading or unloading can be accomplished without blocking the alley to the free movement of vehicular traffic. (Ord. 4811/Reso. 990,1771)

(F) Deleted. (3770)

(G) Parking for Certain Purposes Prohibited. No person may park a vehicle upon any roadway for the principal purpose of: (Ord. 4811/Reso. 990,1771)

1. Displaying such vehicle for sale. (Reso. 990,1771)

2. Washing, greasing, or repairing such vehicle except repairs necessitated by any emergency. (Reso. 990,1771)

3. Displaying advertising. (Reso. 990,1771)

4. Displaying commercial exhibits. (Reso. 990,1771)

(H) Parking Adjacent to Schools. The City Traffic Engineer is hereby authorized to erect signs indicating no parking upon that side of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation. (Ord. 4811/Reso. 990,1286,1440,1771,3766)

When official signs are erected indicating no parking upon that side of the street adjacent to any school property, no person may park a vehicle in any such designated place. (Ord. 4811/Reso. 990,1286,1440,1771)
(I) Standing or Parking on One-Way Streets. The City Traffic Engineer is authorized to erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign. (Ord. 4811 / Reso. 990,1286,1440,1771,3766)

(J) Standing or Parking on One-Way Roadways. In the event a highway includes two (2) or more separate roadways and traffic is restricted to one direction upon such roadway, no person may stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The City Traffic Engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof. (Ord. 4811 / Reso. 990,1286,1440,1771,3766)

(K) No Stopping, Standing, or Parking Near Hazardous or Congested Places. The City Traffic Engineer is hereby authorized to determine and designate by proper signs places in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic. When official signs are erected at hazardous or congested places authorized herein, no person may stop, stand, or park a vehicle in any such designated place. (Ord. 4811 / Reso. 990,1286,1440,1771,3766)

(L) Parking Prohibited in Spaces Reserved for the Physically Disabled. (1705,1771,1889,4811)

1. Except as provided in paragraph 3 of this Subsection, no person may stop, stand, or park any motor vehicle within any parking place designated and marked pursuant to the provisions of Title 28, Chapter 3, Article 14, Arizona Revised Statutes, unless the motor vehicle is transporting a person who has been issued a valid placard or international symbol of access special plates and either:

   (a) The motor vehicle displays the valid permanently disabled or temporarily disabled removable windshield placard or (1705,1771,1889,3770)

   (b) The motor vehicle displays international symbol of access special plates that are currently registered to the vehicle. (1705,1771,1889,3770)

2. If a Police officer, or a duly authorized agent employed by the City, finds a motor vehicle in violation of this Section, such person shall issue a complaint to the operator or other person in charge of the motor vehicle for a civil traffic violation. The court shall impose the minimum civil sanction of fifty dollars ($50.00) plus the penalty assessments prescribed by statute on a person who violates any provision of this Subsection. (1705,1889,2434)

3. Any person who is chauffeuring a physically disabled person shall be allowed, without a distinguishing insignia placard or number plates bearing the international wheelchair symbol, to park momentarily in any such parking space for the purpose of loading or unloading such disabled person, and no complaint shall be issued to the driver for such momentary parking. (1889)

4. Parking spaces marked in the manner provided in Title 28, Chapter 3, Article 14, Arizona Revised Statutes, may be designated on privately owned property. The designation of such parking spaces as provided herein shall authorize Police officers and other duly authorized agents to enforce the provisions of this Subsection (K) and shall constitute a waiver of any objection by the owner or person in possession of such property to the enforcement of this Subsection. (1889,3770)
5. The Court or Civil Traffic Hearing Officer may dismiss citations under this subparagraph (K) at the arraignment if the person cited satisfies both of the following conditions: (3770)

(a) Declares and affirms that the vehicle was being used on the date the citation was issued to transport a person who was eligible to be issued a valid placard or international symbol of access special plates; and (3770)

(b) Presents a valid placard indicating that the person is permanently or temporarily disabled that was issued pursuant to State law or in accordance with the laws of a nonresident's jurisdiction, or provides proof of current registration for the vehicle that includes the international symbol of access special plates. (3770)

(M) No Stopping, Standing, or Parking Near School Crosswalks. The City Traffic Engineer is authorized to erect signs prohibiting stopping, standing, or parking between the fifteen (15) mile per hour speed limit signs of an official school crosswalk while the speed limit signs are in place. Such signs shall state that the prohibition against stopping, standing, or parking is in effect only during specified hours on school days. When such signs are in place, no person may stop, stand, or park a vehicle in any such designated place during the prohibited hours. (2061, 3770, 4811)

(N) Obstructing a Fire Lane. The required width of access roadways shall not be obstructed in any manner. No person shall stop, stand, or park any vehicle within a fire lane, whether on public or private property, provided that appropriate signs and other markings, as approved by the Fire Chief, shall be erected and maintained in order for this regulation to be effective. (3530, 4811)

(O) On-street decal parking shall be permitted in the business districts located in the area bounded by the University Drive centerline to the south, the Mesa Drive centerline to the west, the Broadway Road centerline to the north, and the Country Club Drive centerline to the east. This area shall be referred to as the decal area. The City Traffic Engineer may designate certain streets or locations in the decal area for parking of vehicles only with approved parking decals. (4492, 4811)

1. Parking may be restricted in the decal area during certain hours or weekends and holidays if signs are posted specifying the hours or days that a decal is required. (4492)

2. The City Traffic Engineer, or city retained parking contractor is authorized to issue parking decals for parking in the decal area. (4492, 4811)

3. The definition of a business district shall be as defined in section 10-3-1 of the City of Mesa's Municipal Code. (4492)

10-3-22: COMMERCIAL VEHICLE PARKING TIMERESTRICTED:

No person may park any commercial vehicle having a gross vehicle weight rating (GVWR) exceeding thirteen thousand (13,000) pounds or having dual rear wheels exceeding seventeen inches (17") in diameter or park any commercial vehicle having the length of twenty-two feet (22') or more, inclusive of the front and rear bumpers, or park a commercial vehicle coupled to a trailer or semi-trailer having the length of twenty-two feet (22') or more, inclusive of front and rear bumpers, in any residential area of the City or on any street, alley, or other public right-of-way at any time for a period of time longer than two (2) hours except when such parking is necessarily required while actually carrying out a lawful commercial purpose. For the purposes of this Section, "residential area" shall mean any area in the City zoned for residential purposes. (750, 1771, 2123, 2901)
10-3-22.1: **PARKING OF SPECIFIED VEHICLES RESTRICTED:**
Trailers or semi-trailers designed or intended to be drawn behind a motor vehicle shall not be parked upon a street, alley, or other public right-of-way for a period of time longer than two (2) hours, except commercial vehicles may be parked for a longer period of time only when such parking is necessarily required while actually carrying out a lawful commercial purpose. The provisions of this Section shall not apply to recreational vehicles defined in Chapter 17 of Title 11 of the Mesa City Code. (2901)

10-3-23: **STOPPING FOR LOADING OR UNLOADING ONLY:**

(A) City Traffic Engineer to Designate Curb Loading Zones. The City Traffic Engineer is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain curb markings and/or appropriate signs indicating the same and stating the hours during which the provisions of this Section are applicable. (Ord 4811 / Reso. 990,1074,1440,1771,3766)

(B) Standing in Passenger Curb Loading Zone. No person may stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective and then only for a period of time not to exceed three (3) minutes. (Ord 4811 / Reso. 990,1771)

(C) Standing in Freight Curb Loading Zone. No person may stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zone are in effect. In no case shall the stop for loading and unloading for materials exceed twenty (20) minutes. (Ord 4811 / Reso. 990,1771)

(D) City Traffic Engineer to Designate Public Carrier Stands. The City Traffic Engineer, is hereby authorized and required to establish bus stops and taxicab stands and stands for other passenger common carrier motor vehicles in such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every such bus stop, taxicab stand, or other stand shall be designated by appropriate signs. (Ord 4811 / Reso. 990,1074,1440,1771,3766)

(E) Parking of Buses and Taxicabs Regulated. The driver of a bus or taxicab may not park upon any street in any business district at any place other than at a bus stop or taxicab stand respectively, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers. (Ord 4811 / Reso. 990,1771)

(F) Restricted Use of Bus and Taxicab Stands. No person shall stand, stop, or park a vehicle other than a bus in a bus stop or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while engaged in loading and unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter the same. (Ord 4811 / Reso. 990,1771)

(G) City Traffic Engineer to Designate School Bus Loading Zones. The City Traffic Engineer, is authorized and required to establish school bus loading zones in such public streets, in such places, and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every school bus loading zone shall be designated by appropriate signs. (2164,3766,4811)

(H) Restricted Use of School Bus Loading Zones. No person shall stand, stop, or park a vehicle, other than a school bus, in a school bus loading zone when such zone has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while engaged in loading and unloading passengers when such stopping does not interfere with any school bus waiting to enter or about to enter said loading zone. (2164,4811)
10-3-24: STOPPING, STANDING, OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS:

(A) Application. The provisions of this Chapter prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a Police officer or official traffic-control device. (Reso. 990,1771)

(B) Violation of Laws of City. No person may allow, permit, or suffer any vehicle registered in his name to stand or park in any street in the City in violation of any of the laws of the City regulating the standing or parking of vehicles. (Reso. 990,1771)

(C) Regulations Not Exclusive. The provisions of this Chapter imposing a time limit on parking shall not relieve any person from the duty to observe the other and more restrictive provisions prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times. (Reso. 990,1771)

(D) Parking Prohibited at Certain Times on Certain Streets. The City Traffic Engineer may determine locations where stopping, standing or parking is prohibited at all times or at certain times and/or on certain days. (Ord 4811 / Reso. 990,1771)

1. In accordance with the rules and regulations herein contained and when signs are erected giving notice thereof, or the curb is painted red under direction of the City Traffic Engineer, no person may at any time stop, stand or park a vehicle upon a portion of any street or alley so designated. (4811)

2. In accordance with the rules and regulations herein contained and when, under the direction of the City Traffic Engineer, signs are erected giving notice that parking is prohibited at certain times and/or on certain days, no person may stop, stand or park a vehicle upon a portion of any street or alley so designated during the specified times and/or days. (4811)

3. The City Traffic Engineer shall keep a record of all locations where the City Traffic Engineer, Transportation Advisory Board or City Council establishes permanent stopping, standing or parking prohibitions. The City Traffic Engineer shall also keep a record of any temporary stopping, standing or parking prohibitions established where the restrictions are expected to remain longer than 90 days. (4811)

(E) Parking Time Limited on Certain Streets. When signs are erected giving notice thereof, parking of a vehicle is limited to a period of time no longer than two (2) hours between the hours of eight (8:00) A.M. and five (5:00) P.M. of any day, except Saturdays, Sundays, and City holidays, upon any of the streets or parts of streets within the City. (Reso. 990,1771,2188)

(F) Parking Signs Required. Whenever by this or any other laws or regulations of the City any parking time limit is imposed or parking is prohibited on designated streets, it shall be the duty of the City Traffic Engineer to erect appropriate signs giving notice thereof, and no such regulations shall be effective unless said signs are erected and in place at the time of any alleged offense. (Ord 4811 / Reso. 990,1286,1771,3766)

(G) Stopping, standing, or parking at all times on any street is prohibited if official signs are erected and in place giving notice thereof that stopping, standing, or parking is prohibited. (2888)
10-3-25: PARKING VIOLATIONS; LIABILITY AND ENFORCEMENT:

A) Parking a Civil Traffic Violation; Definition. Violation of any City ordinance or provision of this Code which regulates the time, place, or method of parking is a civil traffic violation. "Parking" means the standing of a vehicle, whether occupied or not. (2188)

B) Parking Violations; Persons Liable. (2188)

1. It is unlawful for a vehicle to be parked in violation of any City ordinance or provision of this Code regulating the time, place, or method of parking. Violations of any City ordinance or provision of this Code regulating the time, place, or method of parking which are continuous in nature shall constitute a separate and distinct violation for each full hour thereof. (2188)

2. Whenever a vehicle is parked in violation of a City ordinance or provision of this Code regulating the time, place, or method of parking, the owner or owners of the vehicle, the registered owner or owners of the vehicle, and the person who parked or placed the vehicle where the violation occurred shall be jointly and individually liable for the violation and for the civil sanction prescribed herein. (2188)

3. A vehicle parked in contrary to or inconsistent with any City ordinance or provision of this Code regulating the time, place, or method of parking which provides that "no person" may stop, stand, or park a vehicle at a designated location or contrary to any limitations, restrictions, or other provision regulating the time, place, or method of parking is deemed to be parked in violation of said ordinance or provision of this Code. (2188)

4. Whenever a motor vehicle is parked upon the public right-of-way or other property in violation of this Code and the vehicle has previously been the subject of five (5) or more violations of the parking provisions of the Code within a twelve- (12-) month period but the civil sanctions prescribed under the Mesa City Code for those violations have not been satisfied, then the vehicle shall be deemed to constitute a public nuisance and the owner of the vehicle consents to immobilization, towing, and impoundment of the vehicle pursuant to Title 10 of the Mesa City Code. A possessory lien is hereby created and attached to such vehicle for the payment, in cash or its equivalent, of all current and accumulated parking tickets and for reasonable costs associated with immobilization, towing, and impoundment. (2434)

C) Parking Notice; Issuance. (2188)

1. In an action involving unlawful parking, a copy of the notice need not be personally served upon the owner or operator of the vehicle but may be served by attaching a copy to the vehicle. These notices may be issued by a municipally hired police parking monitor or authorized private contractor approved by the Chief of Police. (2188,4693)

2. The notice shall include the date, time, and location of the violation; the state license number of the vehicle unlawfully parked; reference to the City ordinance or Code provision violated; and notice that within seven (7) calendar days from the day on which the notice was issued the sanction for the violation must be paid and received by the City or a request made and received by the City for a hearing to contest the alleged violation. (1771,2188,4444)

3. The notice, or copy thereof, shall constitute prima facie evidence of the parking infraction. (3770)
(D) Response to Parking Notice. (2188)

1. Within seven (7) calendar days from the day on which the notice was issued, the person or persons liable for
the parking violation shall respond to the notice by one of the following methods: (2188,4444)

(a) By appearing in person, by representation, by deposit in a City collection box, or by mail to the City
within said seven (7) calendar day period, admitting responsibility for the violation and paying the civil
sanction prescribed for the violation. (2188,4444)

(b) By contacting the City in person, by representation, by telephone, by mail, or by deposit in a City
collection box within said seven (7) calendar day period and requesting a hearing to contest the alleged
violation. (2188,4444)

(c) By appearing in person at the City Court and requesting an initial appearance before a Hearing Officer to
explain the circumstances of the alleged violation. The Hearing Officer at the initial appearance may
accept the defendant’s explanation and dismiss the notice of violation or shall inform the defendant that
the civil sanction must be paid or a request must be made for a civil traffic hearing to contest the alleged
violation. (2188)

(d) A request for a hearing or payment of the civil sanction will be considered received by the City if it is
actually delivered to the City Court, deposited in a City collection box, or postmarked within seven (7)
calendar days after the date the notice of violation was issued. A request for a hearing made by telephone
will be considered received the day it is made if it is received by a City Court employee between the hours
of eight (8:00) A.M. and five (5:00) P.M. of any day, except on Saturday, Sunday, or a City holiday. (2188,4444)

(E) Schedule of Sanctions. The sanctions listed in the following schedule are the minimum sanctions that may
be imposed for violations of the Sections of the Mesa City Code listed therein. Any vehicle parked in
violation of a City ordinance or other provision of this Code other than those in the following schedule
shall cause the person or persons liable for the violation to be assessed a minimum sanction of fifteen
dollars ($15.00). (2188,2434,2573,4444)

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(2188,2434,2573,3530,4444,5024)
(F) Failure to Respond to a Notice; Increased Sanction for Failure to Make a Timely Response. (Reso. 990, 1771, 2188)

1. If the person or persons liable for a parking violation fail to respond by one of the methods prescribed in Subsection (D) within seven (7) calendar days from the day the notice was issued, the sanction for the violation shall automatically be increased to twice the minimum sanction. If the sanction is not paid within thirty (30) days after the date of the violation and the person or persons liable for the violation have failed to make a timely response pursuant to Subsection (D), the sanction shall be increased automatically to four (4) times the minimum sanction which is due and payable at that time. (2188, 4444)

2. The list of violations and sanctions provided for in Subsection (E) are the minimum sanctions that may be imposed when the defendant responds to the notice in a timely manner. The civil sanctions prescribed herein shall not be suspended or reduced except as provided herein. (2188)

3. A City Magistrate or a civil traffic Hearing Officer may suspend the payment of an increased sanction or late penalty for the failure to respond to a parking notice; however, a City Magistrate or civil traffic Hearing Officer cannot suspend the payment of the minimum sanction as provided in the schedule in Subsection (E). (2188)

(G) Civil Traffic Complaints; Hearings. (2188)

1. If a defendant has made a timely request for a hearing pursuant to Subsection (D)1(b) or (D)1(c) or has failed to timely respond to the notice and has not paid the civil sanction as required by Subsection (D)1(a), a civil traffic complaint and summons will be issued by the City Court unless the City Prosecutor determines that a complaint shall not be requested. (2188)

2. Failure to respond to a civil traffic complaint and summons will result in a default judgment for the amount of the civil sanction. (2188)

3. A civil traffic hearing for a parking violation may be heard by a civil traffic Hearing Officer pursuant to applicable State statutes and the Arizona Supreme Court Rules of Procedure in Civil Traffic Violation Cases. The Hearing Officer may make such orders as may be necessary and proper to dispose of such cases. (2188)

(H) Judgments; Collection. The City may contract with a private person or entity for the collection of civil judgments in parking cases. (2188)

(I) Courtesy Citations. Courtesy citations may be given for time violation and parking without a required permit/decal at the discretion of the authorized private contractor, parking enforcement officer or a Police Officer. No fine or sanction will be incurred for a courtesy citation. No more than two (2) courtesy citations may be given to the same person or vehicle within a period of seven (7) days. A third violation will result in the issuance of a parking notice of a violation. (2188, 2573, 4693)

(J) Time calculation. If the seventh (7th) calendar day as set forth herein is a Saturday, Sunday or Legal Holiday, then payment shall be due on the next day that is not a Saturday, Sunday, or Legal Holiday. (4444)
10-3-26: WHEN VEHICLES MAY BE IMPOUNDED:

(A) Authority to Impound Vehicles. Members of the Police Department are hereby authorized to remove any vehicle from any street, highway, or publicly or privately owned property, parking lot, or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a contract, lease, or agreement with the City or duly posted private property as defined in paragraph 5 of this Subsection (A) to the nearest garage or towing company lot designated or maintained by the Police Department or otherwise maintained by the City under the circumstances hereinafter enumerated: (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188,2434)

1. When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where such vehicle constitutes an obstruction to traffic. (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

2. When a vehicle upon a street or highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal. (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

3. When any vehicle is left unattended upon a street in an unlawful manner and is so parked as to constitute a definite hazard or obstruction to the normal movement of traffic or is parked in front of a public or private driveway. (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

4. When any vehicle is left parked upon a street for a period in excess of forty-eight (48) hours. For the purposes of this paragraph the words "left parked" shall mean being left upon a street for a period of time in excess of forty-eight (48) hours without the vehicle having been moved at least three hundred feet (300'). (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

5. When any vehicle is advertised or offered for sale from a vacant property or unauthorized vehicle sales lot without the express written permission of the property owner when such property has been duly posted by the City to prohibit the parking or sale of such vehicles. Any property owner within the City may make application to the City Manager or designee to authorize the City to post signs indicating that the advertising, offering for sale, or sale of any vehicle is prohibited on the applicant’s property and further authorizing the City to act as the agent of the property owner to gain compliance with the provisions of this Section. Such application shall be made on a form prescribed by the City Manager or designee. The City Manager or designee shall thereupon cause the applicant’s property to be posted with an appropriate sign or signs stating that the advertising, offering for sale, or sale of any vehicle is prohibited thereon. When such property has been so posted, it shall be the duly posted private property. (1142,1669,1771,1849,1974,2122,2188,5024)

6. When a vehicle is parked in a fire lane in violation of the provisions of Section 7-2-2(M) of the Mesa City Code. (1849,1974,2122,2188)

7. When a vehicle is parked, stopped, or standing in violation of any provision contained in Title X, Chapters 2, 3, or 5 of this Code or when signs are erected giving notice that vehicles parked in violation of the parking restrictions may be towed at the owner’s expense. (1974,2122,2188)
(B) Unoccupied Vehicle Violating Laws Declared Nuisance. Any unoccupied vehicle of any kind or description found under the circumstances enumerated in paragraph numbers 1 through 7, inclusive, of Subsection (A) of this Section is hereby declared to be a nuisance and a menace to the safe and proper regulation of traffic. Such vehicle shall be taken in charge by any Police officer and removed from the street, public parking lot or garage, private parking lot or garage, or duly posted private property and kept in custody upon the direction of the Chief of Police. Such vehicle may be recovered by the owner when he has furnished evidence of his identity and ownership and signed a receipt. The owner of such vehicle shall be liable for all towing and storage charges in connection with the removal and storage thereof. The payment of such removal and storage charges shall not release the owner or driver of such vehicle from any other penalty imposed for violation of the traffic laws of the City. (1142,1669,1771,1849,1974,2188)

(C) Notice of Removal to Owner. Whenever an officer removes a vehicle from a street, public parking lot or garage, private parking lot or garage, or duly posted private property as authorized in this Section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage. (Reso. 990,1142,1669,1974,2188)

(D) Unidentifiable Vehicles. Whenever an officer removes a vehicle from a street, public parking lot or garage, private parking lot or garage, or duly posted private property under this Section and does not know and is not able to ascertain the name of the owner or for any reason is unable to give notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three (3) days, then and in that event the officer shall immediately send or cause to be sent a written report of such removal by mail to the Motor Vehicle Department, whose duty it is to register motor vehicles, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reasons for such removal, and the name of the garage or place where the vehicle is stored. (Reso. 990, 1142,1669,1974,2188)

(E) Thirty-Day Impoundment. Pursuant to ARS §28-3511, a vehicle shall be immobilized or impounded for thirty (30) days for the following reasons:

1. The driver's driving privilege is revoked for any reason; (4659)

2. The driver's driving privilege is suspended; (4659)

3. The driver has never been issued a driver license or permit and does not produce evidence of a driver license by another jurisdiction; or (4659)

4. A Peace Officer has probable cause to arrest the driver for a violation of ARS §§ 4-244, 28-1382, or 28-1383. (4659)

(F) Thirty-Day Impoundment Fee Pursuant to ARS §28-3513. (4659)

1. If a vehicle is properly impounded, a $150.00 administrative fee will be charged, relating to the removal, immobilization, impoundment, storage or release of a vehicle. The administrative charge is in addition to any other immobilization, impoundment, or storage charges. (4659)

2. The administrative fee will be waived upon proof that the vehicle is stolen and the theft was reported. (4659)

3. If the theft was reported, the operator of the vehicle at the time of immobilization or impoundment is responsible for all towing, immobilization, and storage charges. (4659)
10-3-27: EXCESS LOADS; CIVIL SANCTIONS AND PENALTIES FOR VIOLATION:

(A) Single Axle Load Limit and Gross Weight of Vehicles and Loads. The gross weight imposed by the wheels of any one axle of a motor vehicle and the total gross vehicle weight of any motor vehicle operated upon any City street shall not exceed the weights set forth in ARS §28-1008, §28-1009, and §28-1009.01, and the provisions of said Sections, together with the tables and formulas set forth therein, are incorporated herein by reference and made a part hereof as though fully set forth herein. (1910)

(B) Violation; Classification; Prima Facie Evidence. (1910)

1. A person who violates any of the provisions of this Section is subject to a civil sanction except as otherwise set forth herein. (1910)

2. A second violation of this Section within six (6) months of a judgment for a first violation is a Class 2 misdemeanor. A second conviction as a misdemeanor for violation of Subsection (A) of this Section within one (1) year is a Class 1 misdemeanor. In addition to any term of imprisonment which may be imposed for a second or subsequent violation, the Court shall fine a person the amount which is set forth in the following table: (1910)

<table>
<thead>
<tr>
<th>If the Excess Weight is:</th>
<th>The Minimum Fine or Civil Sanction is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sanction</td>
</tr>
<tr>
<td>1,001 to 1,250 Pounds</td>
<td>$50.00</td>
</tr>
<tr>
<td>1,251 to 1,500</td>
<td>$100.00</td>
</tr>
<tr>
<td>1,501 to 2,000</td>
<td>$150.00</td>
</tr>
<tr>
<td>2,001 to 2,500</td>
<td>$200.00</td>
</tr>
<tr>
<td>2,501 to 3,000</td>
<td></td>
</tr>
<tr>
<td>3,001 to 3,500</td>
<td></td>
</tr>
<tr>
<td>3,501 to 4,000</td>
<td></td>
</tr>
<tr>
<td>4,001 to 4,500</td>
<td></td>
</tr>
<tr>
<td>4,501 to 4,750</td>
<td></td>
</tr>
<tr>
<td>4,751 and Over</td>
<td></td>
</tr>
</tbody>
</table>
3. Notwithstanding any of the provisions of Subsection 2 of this Section, a conviction for a violation of this Section in which the excess weight is over two thousand five hundred one pounds (2,501) or greater is a Class 1 misdemeanor. (1910)

4. If the officer finds that the person has violated only the axle weight limitation and not the total weight limitation, the officer shall request a driver to reload the vehicle to comply with the axle weight limitation. If the driver does not comply with the request of the officer to reload, the driver is subject to a civil sanction. (1910)

5. A weight certificate or other document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods stating the gross weight of the vehicle with a load which is in excess of the prescribed maximum weight set forth in this Section is prima facie evidence that the weight of a vehicle and load is unlawful. (1910)

6. If the commodity being carried is sold by weight, a weight certificate or other document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods stating the gross weight of the vehicle with a load which is not in excess of the prescribed maximum weight limitation permitted by this Section is prima facie evidence that the weight of a vehicle and load is lawful. (1910)
CHAPTER 4

SPEED LIMITS

SECTION:

10-4-1: SPEEDS OF 55 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-2: SPEEDS OF 50 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-3: SPEEDS OF 45 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-4: SPEEDS OF 40 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-5: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-6: SPEEDS OF 30 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-7: SPEEDS OF 25 MILES PER HOUR PERMITTED ON CERTAIN STREETS

10-4-7.1: SPEEDS OF 15 MILES PER HOUR PERMITTED ON ALLEYS

10-4-7.2: SPEEDS OF 15 MILES PER HOUR PERMITTED ON CERTAIN STREETS (REPEALED BY 2865)

10-4-8: FALCON FIELD RESTRICTIONS

10-4-9: EMERGENCY, CONSTRUCTION OR CONTINGENT SPEED LIMITS

10-4-10: PENALTY FOR EXCEEDING THE MAXIMUM SPEED LIMIT

10-4-11: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS DURING CERTAIN HOURS

10-4-1: SPEEDS OF 55 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of fifty-five (55) miles per hour on the following portions of the following streets: (990, 1771, 2002, 4594)

(Repealed by 4594)

10-4-2: SPEEDS OF 50 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of fifty (50) miles per hour on the following portions of the following streets: (990, 1771, 4594, 5140)

| Ellsworth Road | From Elliot Road to the south City limits; (5140) |

10-4-3: SPEEDS OF 45 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of forty-five (45) miles per hour on the following portions of the following streets: (990, 1771, 5140)

<p>| Alma School Road | From Baseline Road south to the City limits; (3221) |
| Baseline Road | From 8th Street to the north City limits; (3456) |
| Broadway Road, East | From the west City limits to the east City limits; (3131,3903) |
| Broadway Road, West | From Mulberry to the west City limits; |
| Brown Road | From Stapley Drive to the east City limits; (3784) |
| Center, North | From Brown Road to McKellips Road; |
| Country Club Drive | From Brown Road to the north City limits; |
| Crisman Road | From north City limits to Elliot Road; (2689,3639,3784,5432) |
| Dobson Road, South | From Base line Road to the south City limits; (3221) |
| Elliot Road | From the west City limits to the east City limits; (3784,4477) |
| Ellsworth Road | From north City limits to Elliot Road; (4017,4068,4594,5140) |
| Germann Road | From the west city limits to the east city limits; (4918) |</p>
<table>
<thead>
<tr>
<th>Street Name</th>
<th>Description</th>
<th>Speed Limit (Mph)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gilbert Road</td>
<td>From the west leg of Lockwood Street to the south City limits; (4004)</td>
<td></td>
</tr>
<tr>
<td>Greenfield Road</td>
<td>From the north City limits to the south City limits; (3538,4066)</td>
<td></td>
</tr>
<tr>
<td>Guadalupe</td>
<td>From the west City limits to the east City limits; (3784)</td>
<td></td>
</tr>
<tr>
<td>Hawes Road</td>
<td>From Loop 202/Santan Freeway to Ray Road; (5009)</td>
<td></td>
</tr>
<tr>
<td>Higley Road</td>
<td>From Thomas Road to the south City limits; (2330,4017,4066)</td>
<td></td>
</tr>
<tr>
<td>Lindsay Road</td>
<td>From the north City limits to the south City limits; (3784)</td>
<td></td>
</tr>
<tr>
<td>Main Street</td>
<td>From a point two hundred eleven feet (211') east of Gilbert Road to the east City limits; (3221,4823)</td>
<td></td>
</tr>
<tr>
<td>McDowell Road</td>
<td>From 26th Street to the east City limits; (4004,4017)</td>
<td></td>
</tr>
<tr>
<td>McKellips Road</td>
<td>From the west City limits to the east City limits; (4017)</td>
<td></td>
</tr>
<tr>
<td>Mesa Drive, North</td>
<td>From East Brown Road to East McKellips Road;</td>
<td></td>
</tr>
<tr>
<td>Mountain Road</td>
<td>From Pecos Road to Williams Field Road; (2565)</td>
<td></td>
</tr>
<tr>
<td>Pecos Road</td>
<td>From the west City limits to Mountain Road; (2565,4279,4882)</td>
<td></td>
</tr>
<tr>
<td>Power Road</td>
<td>From the Superstition Freeway (U.S. 60) to the north City limits; (3784,4017)</td>
<td></td>
</tr>
<tr>
<td>Ray Road</td>
<td>From Baseline Road to the south City limits; (5013)</td>
<td></td>
</tr>
<tr>
<td>Recker Road</td>
<td>From Adobe Street to the Red Mountain Freeway (Loop 202) (3816,4456)</td>
<td></td>
</tr>
<tr>
<td>Signal Butte Road</td>
<td>From Broadway Road to Guadalupe Road; (2689,3585,5128,5307)</td>
<td></td>
</tr>
<tr>
<td>Sossaman Road</td>
<td>From Elliot Road to the north City limits; (3221,4594)</td>
<td></td>
</tr>
<tr>
<td>Southern Avenue</td>
<td>From Alma School Road to the east City limits; (3784)</td>
<td></td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Southern Avenue to the south City limits; (3771)</td>
<td></td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From Brown Road to June Street; (3816);</td>
<td></td>
</tr>
<tr>
<td>University Drive,</td>
<td>Higley Road to Recker Road; (4099)</td>
<td></td>
</tr>
<tr>
<td>East</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Usery Pass Road</td>
<td>From McDowell Road to the north City limits; (4017)</td>
<td></td>
</tr>
<tr>
<td>Val Vista Drive</td>
<td>From Pomegranate to the south City limits. (2664,3475)</td>
<td></td>
</tr>
<tr>
<td>Warner Road</td>
<td>From Signal Butte Road to Meridian Road; (3944,4795)</td>
<td></td>
</tr>
</tbody>
</table>

**10-4-4:** **SPEEDS OF 40 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**

A person shall not exceed a speed of forty (40) miles per hour on the following portions of the following streets: (990,1771,4980,5098,5200)

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Description</th>
<th>Speed Limit (Mph)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alma School Road</td>
<td>From 8th street to Baseline Road (3154,3456,3221)</td>
<td></td>
</tr>
<tr>
<td>Broadway Road</td>
<td>From Gilbert Road to Mulberry; (5098)</td>
<td></td>
</tr>
<tr>
<td>Brown Road</td>
<td>From North Country Club Drive to North Stapley Drive;</td>
<td></td>
</tr>
<tr>
<td>Center Street</td>
<td>From University Drive to Brown Road; (5098)</td>
<td></td>
</tr>
<tr>
<td>Country Club Drive</td>
<td>From Baseline Road to Brown Road (3221,4774,5098)</td>
<td></td>
</tr>
<tr>
<td>Dobson Road</td>
<td>From Baseline Road to a point one thousand six hundred feet (1,600') north of 8th Street; (3154,3221)</td>
<td></td>
</tr>
<tr>
<td>Extension Road,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South</td>
<td>From West Southern Avenue to West Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>Gilbert Road</td>
<td>From the west leg of Lockwood Street to the north City limits; (4004)</td>
<td></td>
</tr>
<tr>
<td>Hawes Road</td>
<td>From Baseline Road to Guadalupe Road; (3443)</td>
<td></td>
</tr>
<tr>
<td>Extension Road,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South</td>
<td>From Broadway Road to a point one thousand two hundred seventy-five feet (1,275') south of Southern Avenue; (5009)</td>
<td></td>
</tr>
<tr>
<td>Main Street</td>
<td>From a point fifty-three feet (53') west of South Allen Street to a point two hundred eleven feet (211') east of Gilbert Road; (4823)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>From the west City limits to Alma School Road; (4823)</td>
<td></td>
</tr>
<tr>
<td>Street Name</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>McDowell Road, East</td>
<td>From North 26th Street to the west City limits;</td>
<td></td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From Brown Road to the south City limits; (5098)</td>
<td></td>
</tr>
<tr>
<td>Power Road</td>
<td>From the Superstition Freeway (S.R. 360) to Baseline Road; (4456)</td>
<td></td>
</tr>
<tr>
<td>Recker Road</td>
<td>From Thomas Road to the Red Mountain Freeway (Loop 202);</td>
<td></td>
</tr>
<tr>
<td>Signal Butte Road</td>
<td>From the north City limits to a point one thousand two hundred thirty-seven feet (1,237') south of Main Street; (5128)</td>
<td></td>
</tr>
<tr>
<td>Power Road</td>
<td>From Guadalupe Road to a point four hundred fifty feet (450’) south of Elliot Road; (4980,5307)</td>
<td></td>
</tr>
<tr>
<td>Southern Avenue, West</td>
<td>From Alma School Road to the west City limits;</td>
<td></td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Brown Road to Southern Avenue; (3297, 3771,5098)</td>
<td></td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From Recker Road to Power Road; (3992,4018,4099)</td>
<td></td>
</tr>
<tr>
<td>University Drive</td>
<td>From Gilbert Road to the west City limits; (5098)</td>
<td></td>
</tr>
<tr>
<td>Val Vista Drive</td>
<td>From Pomegranate to the north City limits; (2664,3475)</td>
<td></td>
</tr>
<tr>
<td>Williams Field Road</td>
<td>From the west City limits to Innovation Way; (5200)</td>
<td></td>
</tr>
<tr>
<td>8th Street</td>
<td>From Decatur Street to the west City limits. (3446)</td>
<td></td>
</tr>
</tbody>
</table>

### 10-4-5: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of thirty-five (35) miles per hour on the following portions of the following streets: (990,1771,2002,4980,5067,5098,5200)

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adobe road</td>
<td>From Power Road to 80th Street;</td>
</tr>
<tr>
<td>Alta Mesa Drive, North</td>
<td>Between East Adobe and East McKellips Road; (2002)</td>
</tr>
<tr>
<td>Cadence Parkway</td>
<td>From Ellsworth Road to a point one thousand and two hundred feet (1,200’) east of Ellsworth Road; (5431)</td>
</tr>
<tr>
<td>Center</td>
<td>From McKellips Road to Lehi Road; (3406)</td>
</tr>
<tr>
<td>Center Street</td>
<td>From 1st Street to University Drive; (5098)</td>
</tr>
<tr>
<td>Center, South</td>
<td>From Broadway Road to 8th Avenue;</td>
</tr>
<tr>
<td>Clearview Avenue</td>
<td>From Southern Avenue to Superstition Springs Boulevard; (2591)</td>
</tr>
<tr>
<td>Crismon Road</td>
<td>From Ray Road to Williams Field Road; (5432)</td>
</tr>
<tr>
<td>Dobson Road</td>
<td>From a point one thousand six hundred feet (1,600’) north of 8th Street to the Red Mountain Freeway (S.R. 202); (3103,3154)</td>
</tr>
<tr>
<td>Eagle Crest Drive</td>
<td>From Power Road to Ridgecrest; (3154)</td>
</tr>
<tr>
<td>Eastmark Parkway</td>
<td>From the north City limits to the south City limits; (5200)</td>
</tr>
<tr>
<td>Extension Road</td>
<td>From West University Drive to West Southern Avenue;</td>
</tr>
<tr>
<td>Hampton Avenue</td>
<td>From Power Road to Sossaman Road;</td>
</tr>
<tr>
<td>Harris Drive, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
</tr>
<tr>
<td>Hawes Road</td>
<td>From McKellips Road to Hermosa Vista Drive; (3015)</td>
</tr>
<tr>
<td>Higley Road</td>
<td>From Guadalupe Road to Elliot Road; (3506)</td>
</tr>
<tr>
<td>Horne Street</td>
<td>From Brown Road to Lehi Road; (3167,3188,3222)</td>
</tr>
<tr>
<td>Insperian Parkway</td>
<td>From Elliot Road to Ray Road (5425)</td>
</tr>
<tr>
<td>Inverness Avenue</td>
<td>From a point four hundred feet (400’) east of Higley Road to Sunview; (5128)</td>
</tr>
<tr>
<td>Lehi, East</td>
<td>From the east City limits to McDowell Road; (3304)</td>
</tr>
<tr>
<td>Longbow Parkway</td>
<td>From Higley Road to Recker Road; Parkway(4099)</td>
</tr>
<tr>
<td>Longmore, South</td>
<td>From West Southern Avenue to the Superstition Freeway (S.R. 360);</td>
</tr>
<tr>
<td>Macdonald Street, South</td>
<td>From West 1st Avenue to West Broadway Road;</td>
</tr>
<tr>
<td>Main Street</td>
<td>From a point fifty-three feet (53’) west of South Udall Street to a point fifty-three feet (53’) west of Allen Street; (4823)</td>
</tr>
<tr>
<td></td>
<td>From Alma School Road to Country Club Drive; (4823)</td>
</tr>
<tr>
<td>Street Name</td>
<td>Description</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>McLellan Road, West</td>
<td>From the 400 block west to the west City limits;</td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From McKellips Road to Lehi Road; (3562,3986,5067,5098)</td>
</tr>
<tr>
<td>Mesquite Street</td>
<td>From Mountain Road to Meridian Road; (4922)</td>
</tr>
<tr>
<td>Mountain Road</td>
<td>From Elliot Road to Mesquite Street (4477,5177)</td>
</tr>
<tr>
<td>Pecos Road</td>
<td>From Mountain Road to the east City limits; (4882)</td>
</tr>
<tr>
<td>Point Twenty-two Boulevard</td>
<td>From Ellsworth Road to Signal Butte Road; (5200)</td>
</tr>
<tr>
<td>Recker Road, North</td>
<td>From Main Street to a point one-eighth (1/8) mile north of Main Street;</td>
</tr>
<tr>
<td>Recker Road, South</td>
<td>From East Main Street to Broadway Road; (2565)</td>
</tr>
<tr>
<td>Ridgecrest</td>
<td>From Eagle Crest Drive to McDowell Road; (3154)</td>
</tr>
<tr>
<td>Sossaman Road</td>
<td>From Ray Road to a point two thousand eight hundred feet (2,800’) north of Pecos Road; (3639,4279,5350)</td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From McKellips Road to June Street; (3816,5098)</td>
</tr>
<tr>
<td>Sunvalley Boulevard</td>
<td>From Main Street to Brown Road;</td>
</tr>
<tr>
<td>Superstition Springs Boulevard</td>
<td>From Southern Avenue to Sossaman Road; (3538)</td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From a point three thousand six hundred seventy-three feet (3,673’) west of Val Vista Drive to the South Canal; (4922)</td>
</tr>
<tr>
<td>8th Avenue, West</td>
<td>From Country Club Drive to Alma School Road;</td>
</tr>
<tr>
<td>8th Street</td>
<td>From Country Club Drive to Decatur Street; (3446)</td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
</tr>
<tr>
<td></td>
<td>From Elliot Road to Paloma Avenue; (3389)</td>
</tr>
</tbody>
</table>

### 10-4-6: SPEEDS OF 30 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of thirty (30) miles per hour on the following portions of the following streets: (990,1771)

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adobe</td>
<td>From Lindsay Road to Higley Road; (2503)</td>
</tr>
<tr>
<td>Allred Avenue, East</td>
<td>From South Windsor to South Lindsay Road;</td>
</tr>
<tr>
<td>Arbor Avenue, East</td>
<td>From Recker Road to 63rd Street;</td>
</tr>
<tr>
<td>Baldwin</td>
<td>From Monterey Avenue to Baseline Road; (3605)</td>
</tr>
<tr>
<td>Baywood Avenue, East</td>
<td>From 63rd Street to Power Road;</td>
</tr>
<tr>
<td>Billings Street</td>
<td>From 75th Street to Sossaman Road;</td>
</tr>
<tr>
<td>Boise</td>
<td>From Sunvalley Boulevard to 75th Street;</td>
</tr>
<tr>
<td>Brown Road, West</td>
<td>From North Country Club Drive to North Date Street;</td>
</tr>
<tr>
<td>Cadence Parkway</td>
<td>From a point one thousand and two hundred feet (1,200’) east of Ellsworth Road to Williams Field Road; (5431)</td>
</tr>
<tr>
<td>Center</td>
<td>From 1st Street to Broadway Road;</td>
</tr>
<tr>
<td>Date Street, North</td>
<td>From West 8th Street to West Brown Road;</td>
</tr>
<tr>
<td>Emerald Avenue, West</td>
<td>From South Alma School Road to South Longmore;</td>
</tr>
<tr>
<td>Extension Road</td>
<td>From Baseline Road to the south City limits;</td>
</tr>
<tr>
<td>Falcon Drive</td>
<td>From McKellips Road to Higley Road;</td>
</tr>
<tr>
<td>Farnsworth Drive</td>
<td>From Baseline Road to the south City limits;</td>
</tr>
<tr>
<td>Grove Avenue</td>
<td>From Alma School Road to Extension Road;</td>
</tr>
<tr>
<td>Road Name</td>
<td>From</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Hampton Avenue</td>
<td>From 48th Street to Higley Road; (3275)</td>
</tr>
<tr>
<td></td>
<td>From Crismon Road to Signal Butte Road; (4004,4904)</td>
</tr>
<tr>
<td>Hobson Street, North</td>
<td>From East Main Street to East University Drive;</td>
</tr>
<tr>
<td>Holmes Avenue</td>
<td>From Alma School Road to Westwood;</td>
</tr>
<tr>
<td></td>
<td>From Greenfield Road to 48th Street; (3275)</td>
</tr>
<tr>
<td>Horne Street</td>
<td>From Lehi Road to the north City limits; (3167,3188,3222)</td>
</tr>
<tr>
<td></td>
<td>From Brown Road to Southern Avenue; (3167,3188)</td>
</tr>
<tr>
<td>Inverness Avenue, East</td>
<td>From South Val Vista Drive to South 39th Street;</td>
</tr>
<tr>
<td>Isabella, West</td>
<td>From South Longmore Street to South Alma School Road;</td>
</tr>
<tr>
<td>Ivy Street, East</td>
<td>From 48th Street to North Greenfield Road;</td>
</tr>
<tr>
<td>Javelina Avenue, West</td>
<td>From South Alma School Road to South Longmore;</td>
</tr>
<tr>
<td>Jensen Street, East</td>
<td>From Power Road to Sterling;</td>
</tr>
<tr>
<td>Keating Avenue, West</td>
<td>From South Dobson Road to West Nido Avenue;</td>
</tr>
<tr>
<td></td>
<td>From West Nido Avenue to the west City limits;</td>
</tr>
<tr>
<td>Lansing</td>
<td>From Ellsworth Road to Neville Avenue; (3605)</td>
</tr>
<tr>
<td>Lehi Road</td>
<td>From Center to Gilbert Road; (3304)</td>
</tr>
<tr>
<td>Lindner Avenue, West</td>
<td>From West Kilarea Avenue to South Don Carlos Avenue;</td>
</tr>
<tr>
<td>Longmore</td>
<td>From the Superstition Freeway (S.R. 360) to Baseline Road;</td>
</tr>
<tr>
<td>Longmore, South</td>
<td>From Pueblo to Southern Avenue;</td>
</tr>
<tr>
<td>Los Lagos Vista Avenue, West</td>
<td>From South Dobson Road to Laguna Azul Avenue;</td>
</tr>
<tr>
<td>Main Street, East</td>
<td>From Centennial Way/Sirrine to a point fifty-three feet (53') west of South Udall Street; (5356)</td>
</tr>
<tr>
<td>McLellan Road</td>
<td>From Country Club Drive to Center; (3222)</td>
</tr>
<tr>
<td></td>
<td>From Greenfield Road to the east City limits; (2728,3222,5339)</td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From Lehi Road to the north City limits (5067);</td>
</tr>
<tr>
<td>Monterey Avenue</td>
<td>From Power Road to Sossaman Road; (2887)</td>
</tr>
<tr>
<td>Mountain Ridge</td>
<td>From Eagle Crest Drive to Ridgecrest; (3154)</td>
</tr>
<tr>
<td>Neville Avenue</td>
<td>From Lansing to Monterey Avenue; (3605)</td>
</tr>
<tr>
<td>Patterson Avenue, South</td>
<td>From West Nido Avenue to West Kilarea Avenue;</td>
</tr>
<tr>
<td>Pierpoint</td>
<td>From 48th Street to Baseline Road; (4791)</td>
</tr>
<tr>
<td>Pueblo Avenue, East</td>
<td>From South Gilbert Road to South Lindsay Road;</td>
</tr>
<tr>
<td>Recker Road, North</td>
<td>From Thomas Road to Viewmont; (2330)</td>
</tr>
<tr>
<td>Recker Road, South</td>
<td>From the Superstition Freeway (S.R. 360) to the south City limits; (2565)</td>
</tr>
<tr>
<td>Redmont Drive</td>
<td>From Power Road to Recker Road;</td>
</tr>
<tr>
<td>Red Mountain</td>
<td>From Eagle Crest Drive to Ridgecrest; (5128)</td>
</tr>
<tr>
<td>Saddleback Street</td>
<td>From Eagle Crest Drive to Mountain Ridge; (3154)</td>
</tr>
<tr>
<td>Saratoga, South</td>
<td>From West Nido Avenue to South Don Carlos Avenue;</td>
</tr>
<tr>
<td>Springwood Blvd.</td>
<td>From Baseline Road to the south City limits; (5067)</td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Lehi Road to McDowell Road; (3103)</td>
</tr>
<tr>
<td>Sterling</td>
<td>From Jensen to Brown Road;</td>
</tr>
<tr>
<td>Westwood</td>
<td>From Southern Avenue to Holmes Avenue;</td>
</tr>
<tr>
<td>Williams Street, South</td>
<td>From East Broadway Road to East 8th Avenue;</td>
</tr>
<tr>
<td>Windsor, South</td>
<td>From East Main Street to East Broadway Road;</td>
</tr>
</tbody>
</table>
10-4-6

<table>
<thead>
<tr>
<th>Avenue</th>
<th>From Country Club Drive to Mesa Drive; (4017)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Avenue</td>
<td>From Country Club Drive to Mesa Drive; (4344)</td>
</tr>
<tr>
<td>8th Avenue</td>
<td>From Stapley Road to Gilbert Road;</td>
</tr>
<tr>
<td>8th Street, East</td>
<td>From North Center to North Mesa Drive;</td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Broadway Road to East Southern Avenue;</td>
</tr>
<tr>
<td>32nd Street, North</td>
<td>From McKellips Road to McDowell Road;</td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From Southern Avenue to Broadway Road; (2719)</td>
</tr>
<tr>
<td>40th Street</td>
<td>From Main Street to Broadway Road; (3222)</td>
</tr>
<tr>
<td>48th Street</td>
<td>From Ivy Street to McKellips Road;</td>
</tr>
<tr>
<td></td>
<td>From East Adobe Road to East McLellan Road;</td>
</tr>
<tr>
<td></td>
<td>From Hampton Avenue to Pierpont; (4791)</td>
</tr>
<tr>
<td>56th Street, South</td>
<td>From East Main Street to East Broadway Road;</td>
</tr>
<tr>
<td>64th Street, North</td>
<td>From Evergreen to McKellips Road; (2330)</td>
</tr>
<tr>
<td>70th Street</td>
<td>From Southern Avenue to Hampton Avenue; (2591)</td>
</tr>
<tr>
<td>72nd Street</td>
<td>From Superstition Springs Boulevard to Monterey Avenue; (2887)</td>
</tr>
<tr>
<td>74th Street</td>
<td>From Main Street to Boise Street;</td>
</tr>
<tr>
<td>75th Street</td>
<td>From Boise Street to University Drive.</td>
</tr>
</tbody>
</table>

10-4-7:  **SPEEDS OF 25 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
A person shall not exceed a speed of twenty-five (25) miles per hour on any public street within the City limits, except within the areas of those certain streets designated in Section 10-4-1 through Section 10-4-6 inclusive. (1771)

10-4-7.1: **SPEEDS OF 15 MILES PER HOUR PERMITTED IN ALLEYS:**
A person shall not exceed a speed of fifteen (15) miles per hour on any public alley within the City limits. (2330)

10-4-7.2: **SPEEDS OF 15 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
(Repealed by 2865)

10-4-8: **FALCON FIELD RESTRICTIONS:**
A person shall not exceed a speed of twenty-five (25) miles per hour on any roadway in Falcon Field, except where otherwise posted. (1771)

10-4-9: **EMERGENCY, CONSTRUCTION OR CONTINGENT SPEED LIMITS:**
The City Traffic Engineer is authorized to fix speed limits less than the designated speed limits in this Chapter when construction conditions, congested traffic, or other conditions require such reduced speed limits for public safety. Such reduced speed limits shall become effective when signs are erected giving notice thereof, and such reduced speed limits shall remain in effect until the signs are removed. (840, 3766, 5258)

10-4-10: **PENALTY FOR EXCEEDING THE MAXIMUM SPEED LIMIT:**
The provisions of A.R.S. Sections 28-701.02 and 28-702.01 shall be applicable in all instances when a person exceeds the maximum speed limit set forth in either of those Sections. (1771)

10-4-11: **SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS DURING CERTAIN HOURS:** (3784)
The City Traffic Engineer is hereby authorized to fix speed limits and to reduce the speed limit to thirty-five (35) miles per hour on streets immediately adjacent to any elementary, junior high, or high school property for portions of the day when children are on their way to or from school. After consultation with school officials, the City Traffic Engineer or his designee will determine the length along each street where the reduced speed limit will be in effect and the effective hours of the reduced speed limit. The City Traffic Engineer or his designee shall cause signs to be erected giving notice of the times and specified location of the reduced speed limit. (2257, 3639, 3713, 3766, 3784, 5258)
CHAPTER 5
PARKING LOTS AND GARAGES

SECTION:

10-5-1: PARKING RESTRICTED OR PROHIBITED
10-5-2: VIOLATIONS
10-5-3: SIGNS OR MARKINGS REQUIRED FOR ENFORCEMENT
10-5-4: RENTAL; LEASES AND PERMITS; ADMINISTRATION
10-5-5: AUTHORITY TO IMPOUND VEHICLES
10-5-6: AUTHORITY TO ATTACH A RESTRAINING DEVICE

10-5-1: PARKING RESTRICTED OR PROHIBITED:

(A) Installation of and Obedience to Signs and Markings. In a publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, the City Traffic Engineer may have signs or markings installed that prohibit, limit, restrict, or regulate the time, place, or method of parking. When such signs or markings are in place, a vehicle shall not be parked in violation of the prohibition, limitation, restriction, method of parking, or regulation designated by said signs or markings. It shall be unlawful to park any vehicle in any parking lot or garage described above except within a parking stall as designated by official markings. It shall be unlawful to park any vehicle in any parking lot or garage described in this Section in such a position that it shall not be within the space designated by official lines or markings. (1073,1771,2189,4882)

(B) In any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, all or certain portions of said lots or garages may be designated for parking of vehicles with permits or decals. Parking may be permitted in said lots, garages, or portions thereof during certain hours or on weekends and holidays if signs are posted which specify the hours or days that a permit or decal is required. Vehicles without a permit or decal may be parked in said lots or garages at any other time. (2189,4882)

1. Parking in the above-described lots, garages, or portions thereof is prohibited during the hours or days that a permit or decal is required by official signs posted therein, except for vehicles that are displaying a current and valid permit or decal. A permit or decal is invalid if it is expired or has been cancelled because of a contract violation, such as nonpayment of the monthly rent or lease fee. (2189,3833)

2. Vehicles parked in the above-described lots, garages, or portions thereof shall have a properly displayed permit or decal in the left rear lower corner of the rear window or other conspicuous location as approved by the City and in accordance with the provisions of this Section. A properly displayed permit or decal must be visible from the rear of the vehicle. (2189,3833)

(C) Compact Car Parking. In any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, certain portions of said lots or garages may have parking spaces which are designated for compact cars. Vehicles which exceed fifteen feet (15') in length shall not be parked in areas designated for compact cars. (2189,4882)

(D) Parking of motor vehicles is prohibited in the field area of Falcon Field Airport as defined in Title 9, Chapter 9, except for motor vehicles parked thereon pursuant to authority expressly granted by the Airport Director under Title 9, Chapter 9 of the Mesa City Code. (2434,3833,4882)
(E) In all publicly or privately owned parking lots or garages that are operated or managed by the City or by a private person or entity pursuant to an agreement with the City, persons shall use the lots and garages only for the parking of vehicles or for other uses expressly approved in advance by the City. It shall be unlawful for any person using such property for unauthorized purposes to refuse or fail to leave such property upon being requested to do so by the owner, operator, or agent thereof. (2584,4882)

(F) The City Manager or his designee may cause any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, to be reserved to accommodate event parking, i.e., for concerts, plays, athletics, and other events. A fee may be assessed for the use of these lot(s) and/or garage(s) for daily parking. A fee may be assessed for the use of these lot(s) and/or garage(s) for event parking. The fees for daily parking and event parking shall be as approved by City Council Resolution. The City Manager or his designee shall determine if the event parking fee should be assessed for specific events. The City Council may authorize the City Manager to enter into licenses, leases, or other agreements that modify or waive daily and event parking fees. (4394,4882,4908)

10-5-2: VIOLATIONS:
When signs or markings are in place giving notice thereof, it is unlawful and a violation of this Section for a vehicle to be parked in any location designated in Section 10-5-1 of this Chapter unless the vehicle is parked consistent with and in accordance with all restrictions, limitations, times, hours, days, manner, and other requirements in this Chapter and in compliance with any City ordinance or provision of this Code which regulates the time, place, or method of parking. Any violation of this Chapter is a civil traffic violation and shall be enforced by the Police Chief of the City pursuant to the provisions of Section 10-3-25 of the Mesa City Code. (2189,3833,4882)

10-5-3: SIGNS OR MARKINGS REQUIRED FOR ENFORCEMENT:
The City Traffic Engineer may install appropriate signs or markings giving notice of parking restrictions, prohibitions, and method of parking in this Chapter and violations shall not be enforced unless appropriate signs or markings are installed and in place at the time of the violation. (2189,3766,4882)

10-5-4: RENTAL; LEASES AND PERMITS; ADMINISTRATION:
(A) The City may contract with a private person or entity for the management of privately owned and public parking lots and garages. (2189)

(B) The City or a private person or entity acting pursuant to a contract with the City may manage or lease publicly and privately owned parking lots and may enter into agreements whereby parking rights or privileges in privately owned lots or garages and public lots or garages are rented or leased to individuals. (2189)

(C) The City or a private person or entity acting pursuant to a contract with the City shall issue permits or decals showing the lot or garages rented or leased and shall provide for appropriate display of the permits or decals. Permits or decals shall be issued only for vehicles for which the rent or lease has been paid. (2189)

10-5-5: AUTHORITY TO IMPOUND VEHICLES:
Vehicles parked in violation of this Chapter may be impounded pursuant to the provisions of Section 10-3-26 of the Mesa City Code. (1771,2189)

10-5-6: AUTHORITY TO ATTACH A RESTRAINING DEVICE:
(A) Members of the Police Department are hereby authorized to attach a restraining device (boot) to any vehicle parked in violation of any provision of this Chapter where the vehicle is deemed to constitute a public nuisance under Title 10 of the Mesa City Code. (2189,2434)
Whenever a restraining device is used under this Section, a notice shall be conspicuously attached to the vehicle indicating that the vehicle has been immobilized for failure to satisfy outstanding sanctions for five (5) or more prior parking violations; that release from such immobilization may be obtained at a designated place; that unless arrangements are made for release of the vehicle within seventy-two (72) hours, the vehicle shall be deemed abandoned under, and shall be disposed of pursuant to, Title 28, Chapter 8, Article 5 of the Arizona Revised Statutes; and that any person who tampers with, defaces, removes, or attempts to remove a restraining device without Police Department permission is subject to criminal prosecution. Reasonable charges may be assessed for removing the restraining device from the vehicle and for towing and impounding the vehicle. (2434)

It shall be a misdemeanor for any person to tamper with, deface, remove, or attempt to remove a restraining device that has been attached to a vehicle pursuant to this Section without Police Department authority. (2434)

The owner or driver of a vehicle immobilized under this Section shall be entitled, upon request, to a hearing in the Mesa City Court to contest the immobilization. Such request for a hearing shall be made in writing to the Clerk of the Mesa City Court within seventy-two (72) hours of the immobilization. If a timely request for a hearing is made under this Subsection, a hearing shall be held within forty-eight (48) hours of the receipt of the request unless the owner or driver of the immobilized vehicle requests or agrees to a hearing at a later time. (2434)

Whenever the owner or driver of a vehicle immobilized under this Section requests a hearing before the Mesa City Court to contest the immobilization, the owner or driver may obtain the immediate release of the vehicle pending the hearing by depositing with the City the sum of two hundred dollars ($200.00) in cash or its equivalent or by posting a secured appearance bond or other form of security in the amount of, or having a value of, two hundred dollars ($200.00). The secured appearance bond or other form of security shall reflect the undertaking by the owner, driver, or surety, to bind himself or themselves to pay the full amount of the bond to the City of Mesa or otherwise to forfeit their security if the owner or driver fails to appear before the City Court to contest the immobilization. (2434)

The person who parked or placed a vehicle in violation of Title 10 of the Mesa City Code, the owner or owners of the vehicle, and the registered owner or owners of the vehicle are individually and jointly responsible for the violations, the prescribed civil sanctions, and for payment of any applicable immobilization, towing, or impoundment charges. (2434)

Vehicles immobilized or impounded under this Section shall promptly be released upon payment, in cash or its equivalent, of all current and accumulated sanctions and payment of all charges associated with immobilization and impoundment of the vehicle. (2189, 2434)

Whenever a vehicle is towed and impounded under this Section as an abandoned vehicle, notice shall be provided in accordance with Title 28, Chapter 8, Article 5 of the Arizona Revised Statutes. (2434)

CHAPTER 6

OFF-STREET PARKING AREAS

(Repealed by 2189)
CHAPTER 7

CIVIL TRAFFIC VIOLATIONS

SECTION:

10-7-1: CIVIL TRAFFIC VIOLATIONS

Any violation of or failure or refusal to do or perform any act required by Chapters 1 through 7 of Title 10 of the Mesa City Code constitutes a civil traffic violation except as otherwise provided. Civil traffic violations are subject to the provisions of Title 28, Chapter 6, Articles 20 and 21, Arizona Revised Statutes, and amendments thereto. (1771)

10-7-2: AUTHORITY TO DETAIN PERSONS TO SERVE TRAFFIC COMPLAINT

Any Police officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this Title and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this Title. (1771)

10-7-3: HEARING OFFICERS (REPEALED BY 4027)

10-7-4: HABITUAL OFFENDERS

(A) Any person who commits a civil traffic violation of this Title 10 of the Mesa City Code after previously having been found responsible for three (3) or more civil traffic violations of Title 10 of the Mesa City Code within a twenty-four- (24-) month period, whether by default or by judgment after hearing, and who has not paid the civil sanctions required by the Court for those offenses (underlying offenses) shall be guilty of a misdemeanor. For purposes of calculating the twenty-four- (24-) month period under this paragraph, the dates of the commission of the offenses are the determining factor. (2434,3117)

(B) The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. (3117)

(C) The payment of the civil sanctions due on an underlying offense, when such payments are made after the issuance of a summons and complaint on a charge of being a habitual offender, shall not be a defense to the habitual offender charge. (3117)

(D) Upon conviction of a violation of this Section, the Court may impose a sentence of incarceration not to exceed six (6) months in jail or a fine not to exceed two thousand five hundred dollars ($2,500.00), exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than two hundred fifty dollars ($250.00) for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided for in this Subsection. (2434,2466,3117)

(E) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (2434,3117)
CHAPTER 8

PENALTY FOR REFUSAL TO FURNISH INFORMATION OR SIGN CIVIL TRAFFIC CITATION

SECTION:

10-8-1: REFUSAL TO FURNISH INFORMATION OR SIGN CITATION

10-8-2: PENALTY

10-8-1: REFUSAL TO FURNISH INFORMATION OR SIGN CITATION:
Any person who fails to furnish the citing officer or his designate the information required for completion of a civil traffic citation or who, after request by the citing officer, refuses to sign a civil traffic citation shall be guilty of a misdemeanor. (1771)

10-8-2: PENALTY:
Any person who shall violate any of the provisions of Section 10-8-1 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (1771,2466)

CHAPTER 9

PRIVATE PARKING AREAS

SECTION:

10-9-1: PARKING IN PRIVATE PARKING AREAS

10-9-2: CONSENT AND NOTICE TO POLICE AND RELEASE OF VEHICLE

10-9-1: PARKING IN PRIVATE PARKING AREAS:

(A) No person shall park a vehicle in any private parking area without the express or implied consent of the owner or the agent of the owner of such property. (1862)

(B) The owner or the agent of the owner of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this Section which are clearly visible and readable from any point within the parking area and at each entrance thereto. The signs shall contain the following information: (1862)

1. Restrictions on parking. (1862)
2. That violator’s vehicle will be towed away at violator’s expense. (1862)

3. Telephone number of Mesa Police Department. (1862)

4. Each sign shall state "Mesa City Code, Title 10, Chapter 9." (1862)

10-9-2: CONSENT AND NOTICE TO POLICE AND RELEASE OF VEHICLE:

(A) No person shall tow or transport a vehicle from a private parking area without the permission of the owner or operator of the vehicle, unless requested to do so by a law enforcement agency or upon a written towing order signed by the real property owner or his agent specifying the vehicle to be towed. The signed towing request must be in the possession of the person towing or transporting the vehicle. (1862)

(B) No person shall hold or attempt to hold any vehicle towed from a private parking area without the consent of the vehicle owner or operator as security for accrued towing and/or storage fees. A vehicle owner or agent of a vehicle owner may recover the towed vehicle from the tow driver or tow company upon providing reliable identification such as a driver's license or other evidence of name and address of the registered owner or driver for assistance in billing and collection of towing and/or storage charges. (This Subsection shall not apply to vehicles deemed to constitute a public nuisance pursuant to Mesa City Code Section 10-3-25[B]4.) (2576)

(C) Any person towing or transporting any vehicle from any private parking area without the express permission of the vehicle owner or operator shall notify the City of Mesa Police Department immediately upon the taking of such action and provide the following information: (1862,2576)

1. Name and address of the owner of the vehicle, if known. (1862,2576)

2. The vehicle license number and description. (1862,2576)

3. Reason the vehicle was moved without the permission of the owner or operator. (1862,2576)

4. Location from which the vehicle was taken. (2576)

5. Location to which the vehicle was taken. (1862,2576)

6. Name, address, and telephone number of the person or company that towed or transported the vehicle. (1862,2576)

(D) Penalty. Any person who violates or fails to comply with any of the provisions of Section 10-9-2 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. (1862,2576)
CHAPTER 10

TEMPORARY TRAFFIC CONTROL MANUAL (5053/RESO. 9892, 5068, 5415)

SECTION:

10-10-1: TEMPORARY TRAFFIC CONTROL MANUAL (5415)

(A) City Temporary Traffic Control Manual. The City Traffic Engineer shall develop, publish, and revise from time to time as needed, a manual on procedures and practices necessary to establish temporary control measures to be used in conjunction with partial and full restrictions of all City streets, sidewalks, bicycle lanes, equestrian, bicycle, pedestrian or multi-use paths, special use trails, alleys, highways, transit stops or other facilities, hereinafter referred to as “City transportation facilities,” to be used in conjunction with any work, construction, maintenance, or other use of City rights-of-way or easements. Such City Temporary Traffic Control Manual may consist of a manual or manuals, in whole or in part, developed and published by other cities, states or the federal government, along with modifications, amendments, or a supplement specific to the City of Mesa. The City Temporary Traffic Control Manual shall be adopted by City Council resolution. (5053/Reso.9892, 5415)

1. Clarifications and Corrections. The City Traffic Engineer is authorized to publish clarifications and corrections to the City Temporary Traffic Control Manual as needed to provide clarification, additional explanation or illustration of any provision of the City Temporary Traffic Control Manual, or to correct typographical or other similar errors. Such clarifications and corrections shall be in writing and filed with the City Clerk. (5068, 5415)

(B) The City Traffic Engineer or designee, is authorized to approve or disapprove barricading utilized on any City transportation facility, and to take those actions necessary, in his professional judgment and in accordance with the City Temporary Traffic Control Manual, to promote, preserve and protect public health, safety and welfare on such City transportation facilities with respect to barricading and temporary traffic control. (5053/Reso.9892, 5415)

(C) It is unlawful for any person to restrict any portion of a City transportation facility, City right-of-way or easement in a manner that is not in compliance with the City Temporary Traffic Control Manual unless approved by the City Traffic Engineer or designee. (5053/Reso.9892, 5415)

10-10-2: AUTHORITY TO APPROVE OR DENY RESTRICTIONS AND ISSUE PERMITS (5053/RESO. 9892)

(A) Authority to approve or deny restrictions. The City Traffic Engineer or a designee shall have the authority to approve or deny all partial and full restrictions of City transportation facilities in conjunction with any work, construction, maintenance, or other use of City rights-of-way or easements to promote, preserve or protect public health, safety and welfare by minimizing impact on the traveling public and gaining compliance with temporary traffic control standards with respect to such restrictions. (5053/Reso.9892)
(B) City Traffic Engineer to establish procedures, rules and issue permits. The City Traffic Engineer shall develop, publish and revise from time to time as needed, procedures and rules, hereinafter referred to as the rules, for applying for permission to restrict any portion of a City transportation facility, City right-of-way, or easement, and is authorized to issue or cause to be issued a Temporary Traffic Control Permit for all such requests that are approved. The rules may include blanket exceptions for certain types of work or specific types of restrictions for which a Temporary Traffic Control Permit is not necessary. Each Temporary Traffic Control Permit shall include general and special conditions as determined necessary by the City Traffic Engineer or designee for the permit holder’s temporary use of the right-of-way to promote, preserve or protect public health, safety and welfare by minimizing impact on the traveling public and gaining compliance with temporary traffic control standards with respect to such restrictions. (5053/Reso.9892)

(C) Permit required. No person shall restrict any portion of any City transportation facility, City right-of-way or easement without first obtaining a valid Temporary Traffic Control Permit from the Transportation Department unless otherwise provided for in the rules. (5053/Reso.9892)

(D) Temporary Traffic Control Permit Modification, Suspension or Revocation. The City Traffic Engineer or designee may modify any condition of a permit, or suspend or revoke such Temporary Traffic Control Permit at any time when necessary, in his sole discretion, to promote, preserve or protect public health, safety and welfare. Such permit may also be suspended or revoked if the permit holder fails to follow the Temporary Traffic Control Manual, applicable laws, or any general or special conditions of the permit. (5053/Reso.9892, 5415)

(E) Fees. Temporary traffic control fees must be paid at the time of issuance of a Right-of-Way or non-City Utility Permit, and renewal fees, if any, must be paid in advance according to the Schedule of Fees and Charges and the rules except as provided in Subsection (F) below. (5053/Reso.9892)

(F) Fees not Required. Temporary traffic control fees are not required for restrictions for neighborhood block parties, for restrictions in connection with activities conducted by City employees in the course of their City duties, or activities being carried out by others under direct contract to the City or under subcontract to another who is under direct contract to the City, or in any instance where the City Manager or his designee determines that it is in the City’s best interest to waive temporary traffic control fees. (5053/Reso.9892)

10-10-3 VIOLATIONS AND ENFORCEMENT (5053/ RESO. 9892)

(A) The City Traffic Engineer or designee, is authorized to enforce the provisions of this Chapter as follows:

1. Seeking voluntary compliance through information and education; (5053/Reso.9892)

2. Issuing corrective action or violation notices and warnings; (5053/Reso.9892)

3. Other informal means designed to achieve compliance in the most efficient and effective manner; (5053/Reso.9892)

4. In cooperation with the Engineering Department, issuing stop work notices; (5053/Reso.9892)

5. Suspending or revoking Temporary Traffic Control Permits; (5053/Reso.9892)

6. In cooperation with the Development Services Division, placing a hold on issuance of new Right-of-Way and/or Temporary Traffic Control Permits for the same company or individual; (5053/Reso.9892)

7. Issuing a civil citation for civil sanctions under this Chapter; (5053/Reso.9892)
(B) Remedies not Exclusive. Violations of this Chapter are in addition to any other violation established by law, and this Section shall not be interpreted as limiting the penalties, actions or abatement procedures which may be taken by the City or other persons under the law, ordinances, or rules. (5053/Reso.9892)

(C) Responsible Parties:

1. Any person or his agent who causes, permits, facilitates, aids or abets any violation of this Chapter, or who fails to perform any act or duty required pursuant to this Section, is subject to the enforcement provisions of this Chapter. The person and his agent may be found to be individually responsible for the violations, the prescribed civil sanctions, and the abatement of the violations. (5053/Reso.9892)

2. Any person, firm, or agency conducting work in the public right-of-way or easement is responsible for assuring that all related activities comply with the provisions of this Chapter. Contracting with another person, firm or agency (subcontractor) for temporary traffic control services does not relieve the person, firm or agency conducting the work of the obligation to comply with the provisions of this Chapter. (5053/Reso.9892)

(D) Civil violations and procedure:

1. Violation of any portion of this Chapter shall be a civil offense and shall be commenced and adjudicated pursuant to the Arizona Rules of Procedure in civil traffic and civil boating violation cases. Violations will be filed with the Mesa Municipal Court. (5053/Reso.9892, 5068)

2. Complaints for violations of this Chapter may be issued by Transportation Department employees working under the authority of the City Traffic Engineer or designee, and shall be in a form substantially similar to the Arizona Traffic Ticket and Complaint as approved by the City Traffic Engineer or designee. (5053/Reso.9892, 5068)

(E) Penalties. Upon a finding or admission of responsibility, a violator is subject to the following sanctions: (5068)

1. Any act, error, or omission within the right-of-way that creates an imminent risk of death or injury; Civil Sanction: $1,500.00 (5068)

2. Restricting the right-of-way or easement without a required Temporary Traffic Control Permit; Civil Sanction: $1,000.00 (5068)

3. Restricting traffic during peak traffic hours as described in the Temporary Traffic Control Manual without authorization; Civil Sanction: $1,000.00 (5068, 5415)

4. Failing to correct or cure a violation of the Temporary Traffic Control Manual within the time period stated on the Notice of Violation; Civil Sanction: $1,000.00 (5068, 5415)

5. Restricting the right-of-way at an intersection with traffic signals without any work being conducted for which the restriction is necessary for a period of one continuous hour unless otherwise approved; Civil Sanction: $1,000.00 (5068)
6. Improperly closing a sidewalk or closing a sidewalk without first obtaining a required Traffic Control Permit; Civil Sanction: $500.00 (5068)

7. Failing to comply with the conditions, restrictions, limits, times, or location of a Temporary Traffic Control Permit; Civil Sanction: $500.00 (5068)

8. Failing to install advance warning signs or failing to install advance warning signs that comply with the Temporary Traffic Control Manual; Civil Sanction: $500.00 (5068, 5415)

9. Failing to install traffic barricades or channelizing devices or failing to install traffic barricades or channelizing devices that comply with the Temporary Traffic Control Manual; Civil Sanction: $500.00 (5068, 5415)

10. Failing to remove an advance warning sign leaving the sign facing traffic after the traffic restriction has been removed; Civil Sanction: $250.00 (5068)

11. Failing to remove traffic control devices from the right-of-way within twenty-four hours after expiration of the Temporary Traffic Control Permit; Civil Sanction: $250.00 (5068)

12. Failing to install and maintain traffic control devices that meet the quality requirements described in the Temporary Traffic Control Manual; Civil Sanction: $250.00 (5068, 5415)

13. Rendering a bus stop inaccessible without relocating it or making other approved accommodations; Civil Sanction: $250.00 (5068)

14. Failure to comply with any other provision of the Temporary Traffic Control Manual or this Chapter whether or not a Temporary Traffic Control Permit is required; Civil Sanction: $250.00 (5068, 5415)
CHAPTER 1

GENERAL REGULATIONS RELATING TO PUBLIC TRANSIT VEHICLES
(4889)

SECTION:

12-1-1: DEFINITIONS
12-1-2: POWERS AND DUTIES OF ENFORCEMENT AGENT
12-1-3: VIOLATIONS
12-1-4: USE RESTRICTIONS
12-1-5: CIVIL VIOLATIONS/PROCEDURE
12-1-6: PENALTIES

12-1-1: DEFINITIONS: (4889)

1. For purposes of this section, unless the context otherwise requires:

FARE: compensation paid for a light rail, bus boarding or other transit vehicle ticket from a vending machine or other source. (4889)

FARE INSPECTOR: a person authorized to enforce this section. (4889)

GUIDEWAY: an area where light rail vehicles will operate and includes the light rail track, overhead catenary system and the entire area extending seven (7) feet out from the track centerline, or within the prolonged curb lines adjoining the light rail tracks. (4889)

IDENTIFICATION: any government issued document that contains a photograph, date of birth and physical description, including but not limited to, height, weight, eye color, sex, origin and hair color of the person presenting the identification. (4889)

METRO: the light rail transit system operated by Valley Metro Rail, Inc. (4889)

PAID ZONE: the inside of a transit vehicle, light rail station platform or other areas as designated by appropriate signage or markings. (4889)

PASSENGER: any person occupying, riding or using any transit vehicle, boarding or alighting from such a vehicle, or waiting within a designated paid zone waiting area at a light rail station. (4889)

PROOF OF FARE PAYMENT: a valid METRO pass or transit fare media valid for the time and day of use. (4889)

TRANSIT COMPLAINT: a complaint whereby the passenger is charged with violating this Chapter. (4889)

TRANSIT ENFORCEMENT AIDE: an employee of the police department or an employee of a private entity which has entered into a contract with either the city, police department or a transit provider on behalf of the City. (4889)

TRANSIT VEHICLE: a light rail train, public bus, trolley or shuttle or Valley Metro vehicle used to transport passengers. (4889)
VALLEY METRO: motor buses and facilities operated by Phoenix Public Transit Department, City of Tempe, City of Mesa or other local jurisdictions that operate bus transit service as part of Valley Metro, private contractors, and the Regional Public Transportation Authority. (4889)

12-1-2: POWERS AND DUTIES OF ENFORCEMENT AGENTS: (4889)

(A) A police officer or a transit enforcement aide is authorized to enforce the provisions of this Chapter. (4889)

(B) The presentation of any citation to the violator shall be considered sufficient and appropriate service. (4889)

(C) Nothing in this Chapter is intended to limit the authority of the City or its police officers from enforcing concurrently, or in the alternative, other remedies applicable at law, including those related to the crimes of theft of services and/or trespass. (4889)

(D) A person who refuses to provide proof of fare payment when required, or otherwise violates any lawful regulation of this Chapter, may be removed from the transit vehicle by a fare inspector at any transit facility or usual stopping place. (4889)

12-1-3: SPECIFIED UNLAWFUL ACTIVITIES: (4889)

(A) Fare violations

1. It is unlawful for any person to:

   (a) Occupy or ride in any transit vehicle that requires a fare without payment of the applicable fare;

   (b) Fail to exhibit proof of fare payment upon request of a fare inspector when occupying or disembarking from a transit vehicle;

   (c) Refuse to disembark a transit vehicle or transit facility upon demand of a fare inspector;

   (d) Fail to provide his or her true name and address or identification to a fare inspector when being served with a transit complaint, or;

   (e) Fail to exhibit proof of fare payment upon request of a fare inspector while waiting in a designated paid zone waiting area. (4889)

(B) Conduct violations

1. It is unlawful for any person to:

   (a) Transport any item that blocks the aisle or the areas of the transit vehicle reserved for passengers in wheelchairs or who use mobility aids;

   (b) Possess an open container of or consume an alcoholic beverage in a transit vehicle or on transit property;

   (c) Carry onto or aboard a transit vehicle or transit property any flammable or explosive substance or hazardous materials;

   (d) Hang onto or attach his or her body in any manner to any exterior part of a transit vehicle or touch a moving transit vehicle;
(e) Walk between coupled light-rail vehicles;

(f) Enter upon, occupy or remain upon the guideway except as necessary to board or alight a transit vehicle unless authorized by a valid permit;

(g) Throw an object at or from any transit vehicle or at any person or thing on or in any transit vehicle, or on transit property;

(h) Travel in any mode, including but not limited to, motor vehicle, pedestrian, bicycle, equestrian, roller skate, rollerblade, upon or across any guideway, or light rail station platform, except within a marked crosswalk at a signalized intersection;

(i) Place any object on any portion of the guideway;

(j) Interfere with the operation of a transit vehicle, transit facility or ticket vending machine;

(k) Interfere with the ingress or egress of any passenger on transit vehicle or transit property;

(l) Use tobacco products, or carry any lighted or smoldering substance, in any form, aboard a transit vehicle or within any space where posted signage prohibits smoking;

(m) Operate a sound-emitting device, unless the only sound produced by such item is emitted by a personal-listening attachment (earphone or headphone) audible only to the person carrying the device producing the sound, except a peace officer, firefighter, transit employee, or emergency response professional, in the course of employment;

(n) Light a flashlight, scope light, laser light or object that projects a flashing light or beams of light while inside a transit vehicle or towards a transit vehicle, except in an emergency;

(o) Place feet on or lie down on the seat of a transit vehicle or place any article on the seat which would leave grease, oil, paint, dirt or any other substance on the seat;

(p) Expectorate, defecate, urinate or litter in or upon a transit vehicle, transit property or transit facility;

(q) Light or detonate sparklers, firecrackers or other types of pyrotechnic devices in or upon a transit vehicle, transit property or transit facility;

(r) Injure, mutilate, deface, alter, change, displace, remove or destroy any sign, notice or advertisement on or in any transit vehicle or transit property;

(s) Disobey the instructions of any traffic signal, security notice, sign or marker unless otherwise directed by a fare inspector, peace officer or authorized transit representative;

(t) Recklessly damage, deface, mutilate or tamper with transit property so as to impair its function or value;

(u) Post signs, notices or drawings or inscribe a message, slogan, sign, mark or symbol on transit property without written permission from the transit company, or;

(v) Remain at a transit station or stop for more than one hour. (4889)

(C) Transport of animals
1. No person shall transport animals in a transit vehicle unless:

(a) The animal is a guide or service animal, including a service animal in training, that has been specially trained to assist persons with disabilities and is on a leash, or;

(b) The animal is in a completely enclosed and secured cage or carrying case that is small enough to fit on the passenger’s lap, and the animal does not otherwise endanger or disturb the comfort or health of other passengers. (4889)

(D) Parking and boarding

1. A driver shall not park a vehicle in the area designated for vehicle parking unless the person complies with posted parking regulations. (4889)

2. If intending to pick up or drop off a transit passenger, a driver shall park in the area designated for vehicle parking or briefly stop his or her vehicle in areas designated for passenger loading or unloading, while remaining with the vehicle, and then remove the vehicle from the station without delay after the transit passenger is dropped off or picked up. (4889)

3. No person shall stop or park a vehicle at a transit parking facility in such manner that the vehicle blocks access to a marked pedestrian walkway, designated traffic lane, parking space, fire lane, boarding zone or guideway. (4889)

(E) Use restriction violation

1. A person shall not ride a transit vehicle in violation of a court order or finding that the person is prohibited from riding a transit vehicle. (4889)

12-1-4: USE RESTRICTIONS: (4889)

(A) Any person adjudicated responsible of violating any provision of this Chapter resulting in a fine is prohibited from riding a Metro transit vehicle until the sanction is fully paid. (4889)

(B) Any person adjudicated responsible for violating any provision of this Chapter more than two (2) times within a 24 month period is prohibited from riding a Metro transit vehicle for ninety (90) calendar days. (4889)

(C) Any person who poses a serious continuing risk to the public or transit property may be immediately removed from a Metro transit vehicle and the person will be prohibited from using Metro transit vehicles for a period not to exceed ninety (90) calendar days. (4889)

(D) Any person guilty of assaulting a fare inspector or employee acting in the scope of his employment will be prohibited from using a Metro transit vehicle for a minimum of one year. (4889)

12-1-5: CIVIL VIOLATIONS/PROCEDURE: (4889)

(A) Violation of this Chapter shall be a civil offense and shall be adjudicated pursuant to the Civil Traffic Violations. (4889)

12-1-6: PENALTIES: (4889)

(A) Violations of this Chapter shall be a civil offense. Upon a finding or admission of responsibility, a violator is subject to a sanction of not less than $50 but not more than $500, plus surcharges, costs and fees as set by law. (4889)

(B) In addition to any fines imposed by this Chapter, a City Magistrate or a Civil Hearing Officer may issue an order prohibiting a person from riding a transit vehicle for a specified period of time. (4889)
CHAPTER 1

SPECIAL EVENT LICENSE

SECTION:

5-1-1: PURPOSE AND INTENT

It is acknowledged by the City Council that special events enhance the lifestyle of the citizens of Mesa and create unique venues for expression, entertainment, and business that are not otherwise provided within the framework of the City Code. (2736)

The purpose of this Chapter is to establish a process for permitting and regulating certain temporary activities conducted on public or private property. This Chapter is intended to provide fair and reasonable regulations governing the time, place, and manner in which a special event may take place. (2736)

5-1-2: DEFINITIONS:

PERSON: An individual, firm, partnership, joint venture, association, corporation, or any other group or combination acting as a unit in the plural as well as the singular number. (2736)

SPECIAL EVENT: A temporary use in all zoning districts which: (2736)

(A) Is intended for purposes of entertainment, education, commercial promotion, or cultural, religious, ethnic, or political expression; and (2736)

(B) Is conducted on a site or in an area not specifically zoned, authorized, or otherwise approved for such use on a permanent basis; and (2736)

(C) Is carried on in a temporary structure or outside; and (2736)

(D) May occur in conjunction with an existing permitted use or as a separate activity; and (2736)

(E) Includes parades, sporting events, circuses, fairs, carnivals, festivals, religious revivals, political rallies, vehicle shows and displays, and similar recognized temporary activities. (2736)

(F) Shall not include wedding and funeral ceremonies, holiday boutiques, elections, private yard sales, Christmas tree and pumpkin sales lots, car washes, and activities such as retail sales promotions that could otherwise be lawfully conducted in accordance with the provisions of the Zoning Ordinance in the district where such promotion takes place. (2736)
5-1-3: LICENSE REQUIRED:

(A) Any person, whether as a member, agent, or employee, either for themselves or for any other person, who shall conduct a special event as specified in this Chapter shall first obtain a license from the Finance Director. (2736)

(B) It shall be unlawful for any person to conduct a special event within the corporate limits of the City without first having obtained a license as provided in this Chapter. (2736)

5-1-4: LICENSE PROVISIONS:

(A) License Fee and Conditions. Applications for a special event license shall be made in the office of the Tax and Licensing Administrator on a form provided therefor. Any person who submits an application for a special event license shall include the following: (2736)

1. A fee of one hundred dollars ($100.00) for each day of the special event, not to exceed a maximum of three hundred dollars ($300.00) for each event. (2736, 2864)

2. Certification by an insurance company duly licensed by the State of Arizona that the licensee has in effect insurance to protect the public, the licensee, and the City of Mesa, its elected officials, and employees from liability for losses and damages arising out of the activity which is the subject of the license if deemed necessary by the Finance Director. The specific policy form, limits, and endorsements shall reflect the type of activity anticipated by the license and shall be approved by the Finance Director as a condition of licensure. (2736)

(B) License Nontransferable. No license issued pursuant to this Chapter shall be assigned or transferred. Any attempted assignment or transfer shall be void and work a forfeiture on the license and all license fees paid. (2736)

(C) Exhibition of License. Each person licensed under this Chapter shall place or exhibit the license at all times in a conspicuous place and shall produce the same where requested to do so by any police officer. If the licensee or any person engaged or employed by the licensee shall refuse or neglect to exhibit the license, such person shall be guilty of a violation of this Chapter. (2736)

5-1-5: PRIVILEGE (SALES) TAX LICENSE REQUIRED: (3572)

When any portion of the special event involves a business activity where tangible personal property is sold, displayed for sale, or otherwise offered for sale in the City of Mesa, such business activity shall be conducted, and sales shall take place, in a manner which requires that any applicable local sales tax shall be paid to the City of Mesa in accordance with Title 5, Chapter 10 of the Mesa City Code, and the Model City Tax Code. (3572)
5-1-6: **REFUSAL TO ISSUE OR REVOCATION OF LICENSE: (3572)**
The Finance Director shall have the power to refuse to issue a license or to revoke at any time any license granted in accordance with this Chapter for any of the following causes: (2736)

(A) Fraud, misrepresentation, or false statement made in the course of applying for license; (2736)

(B) Fraud, misrepresentation, or false statement made in the course of carrying on the event; (2736)

(C) Any violation of this Chapter; (2736)

(D) Conviction of any crime or misdemeanor involving moral turpitude; (2736)

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; (2736)

(F) Failure to comply with any term or condition of approval as specified in the license application, such as but not limited to, building permits, tent permits, signage schedules, and development plans. (2736)

5-1-7: **APPEAL: (3572)**
Within five (5) days, excluding weekends and legal holidays, an applicant for a license or licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may designate a Hearing Officer to hear the appeal. (2383,2736)
CHAPTER 2

OFF TRACK BETTING (5100)

SECTION:

5-2-1: PURPOSE (5100)
5-2-2: DEFINITIONS (5100)
5-2-3: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS ADMINISTRATOR; DUTIES, APPEALS (5100)
5-2-4: LICENSE APPLICATION; FEE; TIMELINE (5100)
5-2-5: OFF TRACK BETTING LICENSE REQUIRED (5100)
5-2-6: OFF TRACK BETTING LICENSE APPLICATION; CONTENTS (5100)
5-2-7: LOCATION OF OFF TRACK BETTING ESTABLISHMENT (5100)
5-2-8: PAYMENT OF FEES AND TAXES (5100)
5-2-9: FEES (5100)
5-2-10: TERM OF LICENSE (5100)
5-2-11: PUBLIC HEARING ON OFF TRACK BETTING LICENSE; NOTICE (5100)
5-2-12: INFORMATION UPDATE (5100)
5-2-13: SPECIAL PROVISIONS (5100)
5-2-14: RENEWAL (5100)
5-2-15: INSPECTION OF PREMISES, PROPERTY AND RECORDS (5100)
5-2-16: GROUNDS FOR DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF LICENSE (5100)
5-2-17: POSTING AND DISPLAY OF LICENSE (5100)
5-2-18: PENALTY (5100)

5-2-1: PURPOSE: (5100)
The purpose of this Chapter is to protect the health, safety and welfare of residents of the City of Mesa (“City”) by means of regulation of Off Track Betting operators. (5100)

5-2-2: DEFINITIONS: (5100)
For the purposes of this Chapter, the following words and phrases, wherever used in this Chapter, shall have the meaning as defined in this Section, Mesa City Code 11-86-4, Arizona Revised Statutes Section 5-101, and Arizona Administrative Code Section R19-2-401: (5100)

ADDITIONAL WAGERING FACILITY: A facility which is not the enclosure in which authorized racing takes place but which meets the requirements of Arizona Revised Statutes Section 5-111, Subsection (A) and is used by an Arizona racetrack permittee for handling pari-mutuel wagering. (5100)

DOG RACING: Racing in which Greyhound dogs chase a mechanical lure. (5100)

HARNESS RACING: Horse racing in which the horses are harnessed to a sulky, carriage or similar vehicle and driven by a driver. (5100)

1 Editor's Note – Former Chapter 2 Group Home for the Handicapped and Supervised Living Facility License was repealed by Ordinance 4844, which was adopted on May 19, 2008. Previous ordinances impacting Chapter 2: 1007, 1027, 1706, 1934, 2181, 2430, 2658, 3394, 3746.
HORSE RACING: Racing in which horses are mounted and ridden by jockeys. For purposes of county fair racing meetings, “horse racing” means racing in which horses or mules are mounted and ridden by jockeys. (5100)

OFF TRACK BETTING ESTABLISHMENT: An additional wagering facility which simulcasts horse, harness or dog racing events for the purpose of pari-mutuel wagering that is operated as an accessory use to an eating and drinking establishment as defined by Mesa City Code Section 11-86-4, and is authorized by issuance of a teletrack wagering permit in accordance with Arizona Revised Statutes Section 5-112 and Arizona Administrative Code Title 19, Chapter 2, Article 4. (5100)

OFF TRACK BETTING OPERATOR: Any person who holds a teletrack wagering permit for horse, harness or dog racing events within Arizona and who accepts bets or wagers on the results of any pari-mutuel race at a location which is not the enclosure in which authorized racing takes place. (5100)

PERSON: Any individual, partnership, limited partnership, firm, corporation, association, or any other group acting as a unit. (5100)

PARI-MUTUEL WAGERING: A system of betting which provides for the distribution among the winning patrons of at least the total amount wagered less the amount withheld under Arizona Revised Statutes Section 5-111. (5100)

RACING PROGRAM: Live races conducted at an authorized track, approved dark-day simulcasts and any simulcast races shown to the public in conjunction with live racing on which pari-mutuel wagering is allowed. (5100)

TELETRACKING: Telecast of live audio and visual signals of live or simulcast horse, mule, or Greyhound racing programs conducted at an authorized enclosure within Arizona to an authorized additional wagering facility within Arizona, by an Arizona racetrack permitee for the purpose of pari-mutuel wagering. (5100)

TELETRACK FACILITY: An additional wagering facility owned or leased by an Arizona racetrack permitee which is used for handling legal wagers. (5100)

TELETRACK WAGERING: Pari-mutuel wagering conducted at a teletrack facility within Arizona on a racing program which is conducted at an authorized track within Arizona. (5100)

TELETRACK WAGERING PERMIT: Permit issued by the Arizona Racing Commission authorizing an Arizona racetrack permitee to telecast a racing program to single or multiple teletrack wagering facilities within the state of Arizona for the purpose of pari-mutuel wagering. (5100)
5-2-3: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS ADMINISTRATOR; DUTIES, APPEALS: (5100)

(A) It is the duty and responsibility of the Business Licensing and Revenue Collections Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator will issue, renew, suspend, or revoke the off track betting license in accordance with this Chapter, provided the decision to issue an off track betting license will be made by City Council following the hearing provided in Section 5-2-11. (5100)

(B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator to revoke, suspend or deny renewal of a license under this Chapter may appeal within ten (10) calendar days after being sent, by registered or certified mail, notice of such decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director, or designated representative, within thirty (30) calendar days of receipt of the appeal. A hearing officer designated by the City will render a decision within sixty (60) calendar days of the hearing. (5100)

5-2-4: LICENSE APPLICATION; FEE; TIMELINE: (5100)

(A) Any off track betting operator desiring to obtain an off track betting license must apply to the licensing office. Each application must be accompanied by all required application fees in accordance with the current Schedule of Fees and Charges. (5100)

(B) Upon approval, and prior to issuance of the off track betting license, the applicant must pay all required fees in accordance with the current Schedule of Fees and Charges. (5100)

(C) An application will be granted or denied within the schedule of administrative and substantive review timeframes, as established by the Business Licensing and Revenue Collections Administrator. (5100)

5-2-5: OFF TRACK BETTING LICENSE REQUIRED: (5100)

(A) It is unlawful for any person to conduct or operate as an off track betting operator or off track betting establishment in the City without first obtaining and maintaining in effect a current, unrevoked and unsuspended off track betting license as required by this Chapter. (5100)

(B) It is unlawful for any person to conduct or operate as an off track betting operator or off track betting establishment without obtaining and maintaining in effect a current, unrevoked and unsuspended teletrack wagering permit as required by the Arizona Racing Commission in accordance with Arizona Revised Statutes Section 5-112 and Arizona Administrative Code Title 19, Chapter 2, Article 4. (5100)

(C) The license required by this Chapter is in addition to any other licenses or permits required by any governmental authority necessary to lawfully conduct business. (5100)

(D) It is unlawful for any person licensed as provided in this Chapter to conduct business at any location not specified on such license. (5100)

(E) It is unlawful for any person licensed as provided in this Chapter to conduct teletrack wagering on any type of racing not specified on such license. (5100)

(F) Licenses issued pursuant to this Chapter are nontransferable. (5100)
5-2-6: OFF TRACK BETTING LICENSE APPLICATION; CONTENTS: (5100)

Each application for an off track betting license must, at a minimum, contain all of the information contained in this section. (5100)

(A) Applicant Information: legal name, physical address, mailing address, email address, business telephone number, fax number, type of ownership and statutory agent, if applicable. (5100)

(B) Information on the Mesa eating and drinking establishment that is the proposed location for which off track betting will be an accessory use: physical address, name of primary business at proposed location, and name and telephone number of representative of proposed location. (5100)

(C) If the applicant is a business entity, the full legal name, date of birth and residence address of all persons who participate in management, control or policy direction of the applicant, including, with respect to a corporation, the corporation’s officers, directors and stockholders holding twenty (20) percent or more of the outstanding shares of the corporation’s stock. (5100)

(D) Disclosure of information regarding the persons identified pursuant to subsections (A) and (C) of this section as to any:

1. Felony conviction of such persons within the preceding five (5) years; (5100)

2. Judicial ruling or administrative finding of violation of any law or regulation relating to racing, wagering or gaming, in any jurisdiction; and (5100)

3. Any revocation or suspension of a license or permit relating to pari-mutuel betting or teletracking activities. (5100)

(E) Proof the applicant holds a valid permit from the Arizona Racing Commission to conduct pari-mutuel races within the state of Arizona. (5100)

(F) Accurate drawings to scale indicating the floor plan of the proposed location for which off track betting will be an accessory use that include the precise location of all off track betting facilities and activities. (5100)

(G) Copy of the plan of operation submitted to the Arizona Racing Commission, in accordance with the specifications of Arizona Administrative Code Section R19-2-404. (5100)

(H) If applicant is an individual, proof the applicant’s presence in the United States is authorized under federal law, pursuant to Arizona Revised Statutes Section 41-1080. (5100)

(I) Any other identification and information as stated in the application. (5100)
5-2-7: LOCATION OF OFF TRACK BETTING ESTABLISHMENT: (5100)

(A) An off track betting license will not be granted unless located in an eating and drinking establishment in an approved commercial district in accordance with Mesa City Code Section 11-6-2 and 11-7-2. (5100)

(B) The provisions of this Section will not be construed as permitting any use or activity which is otherwise prohibited or made punishable by law. (5100)

5-2-8: PAYMENT OF FEES AND TAXES: (5100)

An application for the off track betting license will not be processed or renewed if the applicant is delinquent in payment of any City taxes, fees, renewals or other City payments due in accordance with Mesa City Code Section 1-32-400. (5100)

5-2-9: FEES: (5100)

(A) An application for an off track betting license must be accompanied by an application fee in accordance with the current Schedule of Fees and Charges and any other fees required by this Chapter. (5100)

(B) In order for an application to be administratively complete, all fees must be submitted according to the current Schedule of Fees and Charges. (5100)

(C) Submission of the annual renewal form must include the annual fee in accordance with the current Schedule of Fees and Charges before it will be processed. (5100)

(D) Fees are not prorated, transferable or refundable unless otherwise provided by law. (5100)

5-2-10: TERM OF LICENSE: (5100)

The off track betting license, issued pursuant to the provisions of this Chapter, will be issued for a term of one (1) year from the issue date. (5100)

5-2-11: PUBLIC HEARING ON OFF TRACK BETTING LICENSE; NOTICE: (5100)

(A) The City Council will hold a public hearing on an application for an off track betting license. Notice of the hearing will be given at least twenty (20) calendar days prior to the hearing and will be posted on the property of the proposed off track betting location. (5100)

(B) Council’s decision to approve or deny the application will be based on the criteria set forth in Section 16 of this Chapter. (5100)

(C) Within seven (7) calendar days of the public hearing the applicant will be notified in writing of the Council’s decision to approve or deny the application. The applicant must communicate the decision to the Arizona Racing Commission. (5100)
5-2-12: INFORMATION UPDATE: (5100)

(A) Except as otherwise provided herein, any change in the information provided in the application required to be submitted for the issuance of a license in accordance with this Chapter must be submitted to the licensing office in writing within ten (10) calendar days of such change. (5100)

(B) Altering the services offered, the site plan, number or pari-mutuel windows or tote machines, or type of racing conducted without written approval from the licensing office is unlawful. (5100)

5-2-13: SPECIAL PROVISIONS: (5100)

(A) Any person employed by an off track betting establishment in Mesa must be at least eighteen (18) years of age. (5100)

(B) A licensee will not knowingly allow a person who is under twenty one (21) years of age to be a patron of the pari-mutuel system of wagering. (5100)

(C) The licensee of the off track betting establishment must take all reasonable measures, including but not limited to requiring identification from persons placing bets or wagers at an off track betting establishment, to prevent unlawful gambling by anyone under the age of twenty one (21) years of age. (5100)

(D) Teletrack wagering may be conducted only between the hours of 7:00 A.M. and 12:00 A.M. (5100)

(E) Revocation or suspension of a state permit from the Arizona Racing Commission to conduct pari-mutuel races within the state of Arizona will constitute automatic revocation or suspension of the corresponding City license. (5100)

(F) It is unlawful for an off track betting establishment to receive a simulcast race from an unlicensed teletrack operator. (5100)

5-2-14: RENEWAL: (5100)

(A) Within one (1) year of the issue date for the previously effective license, all licensees under this Chapter wishing to remain licensed must apply for renewal on a form established by the licensing office. The renewal form must be submitted no later than forty five (45) calendar days prior to the expiration date with the applicable renewal fee, as set forth in the current Schedule of Fees and Charges. No license shall be renewed unless the licensee complies with all provisions of this Chapter. (5100)

(B) A licensee who fails to timely apply for renewal shall be subject to a penalty in accordance with the current Schedule of Fees and Charges. If the licensee fails to start the renewal process at least thirty (30) calendar days prior to the license expiration date, the license shall expire and become null and void. Licensees who fail to apply to renew their license, yet wish to continue operating an off track betting establishment, must file a new application for license and may not operate an establishment until a new license is issued. Granting of a license under this Chapter does not confer an entitlement to or presumption of renewal of the license. (5100)

5-2-15: INSPECTION OF PREMISES, PROPERTY AND RECORDS (5100)

To ensure compliance with this Chapter and other applicable laws, the business premises of any person required to be licensed under this Chapter, including any property on the premises related to the off track betting license, must be open to inspection by representatives of the City upon request at any time during the licensee’s regular business hours, or reasonable hours as agreed upon by the licensee and the City. (5100)
5-2-16: GROUNDS FOR DENIAL, REVOCA TION, SUSPENSION, OR NON-RENEWAL OF LICENSE: (5100)

The City Council may deny a license application and the Business Licensing and Revenue Collections Administrator may revoke, suspend or deny renewal of a license in accordance with this Chapter for the following grounds: (5100)

(A) Violation of the laws governing wagering within the state of Arizona, in accordance with Arizona Administrative Code Title 19, Chapter 2; (5100)

(B) Repeated acts of violence or disorderly conduct on the off track betting premise; (5100)

(C) False or misleading testimony by the licensee in an investigation or other proceeding related to wagering; (5100)

(D) Delinquency for more than thirty (30) calendar days in the payment of any taxes or fees owed to the City; (5100)

(E) Failure to operate an off track betting establishment in compliance with the plans submitted and approved pursuant to Section 5-2-6(G) of this Chapter. (5100)

(F) Failure to maintain a current Arizona teletrack wagering permit; (5100)

(G) Falsification of information submitted on an off track betting license application or renewal application; (5100)

(H) Violation of any of the provisions of this Chapter; or (5100)

(I) Violation of any Mesa City Code. (5100)

5-2-17: POSTING AND DISPLAY OF LICENSE: (5100)

Any off track betting operator licenses under this Chapter must have the City Off Track Betting License and the state Teletrack Wagering Establishment Permit posted in public view at the licensed Mesa location. (5100)

5-2-18: PENALTY: (5100)

Whenever in this Chapter any act or the failure to do any act is declared to be unlawful, the violation of any such provision of this Chapter is a class one misdemeanor. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. (5100)
CHAPTER 3

PARK AND SWAP OPERATIONS

SECTION:

5-3-1: DEFINITIONS
5-3-2: LICENSES REQUIRED
5-3-3: DISPLAY OF LICENSES; DURATION AND RENEWAL; TRANSFER
5-3-4: FEE SCHEDULE
5-3-5: APPLICATIONS; FORMS; REFUSAL TO ISSUE
5-3-6: REVOCATION OR SUSPENSION OF LICENSE; APPEAL
5-3-7: POLICE REPORTS REQUIRED
5-3-8: PRIVILEGE LICENSE REPORTS AND COLLECTION OF TAXES
(REP. BY 4100, 8-25-03)
5-3-9: TRADING AREA; VISIBILITY OF MERCHANDISE
5-3-10: EXEMPTION

5-3-1: DEFINITIONS:
In this Chapter, unless the context otherwise requires, the following definitions shall apply:

POLICE CHIEF: The Chief of the Mesa Police Department.

PARK AND SWAP LOT: A building, structure, enclosure, lot, or other area into which persons are admitted to display, exchange, barter, buy, sell, or bargain for new and used merchandise, excluding those places normally engaged in the business of making sales at retail.

PARK AND SWAP MEET: The activity carried on at the park and swap lot and consists of the admitting of persons into a park and swap lot for the purpose of displaying, exchanging, bartering, buying, selling, or bargaining for new and used merchandise.

OWNER OR OPERATOR: The owner or operator of a park and swap lot or park and swap meet is the person or persons who control the admission, directly or through agents, of persons and merchandise into the trading area.

PARK AND SWAP MEET PARTICIPANT: Any person other than an owner or operator who brings goods, wares, and merchandise, both new and secondhand, to a park and swap meet for the purpose of displaying, exchanging, bartering, buying, selling, or bargaining these goods, wares, and merchandise.

5-3-2: LICENSES REQUIRED:
It shall be unlawful for any owner or operator to operate within the corporate limits of the City a park and swap lot without first having obtained a license as provided in this Chapter, together with a privilege license pursuant to Section 5-10-2, for reporting and paying monthly to the City all privilege license taxes due by reason of the operator’s operations. (4100)
5-3-3: DISPLAY OF LICENSES; DURATION AND RENEWAL; TRANSFER:

(A) All licenses issued under the provisions of this Chapter shall be displayed in a conspicuous place.

(B) All licenses, unless specifically excepted, shall be issued for a period of one (1) year and shall run from January 1 in each calendar year to December 31 next following, when they may be renewed, provided that no license shall be renewed unless the licensee conforms with the provisions of this Chapter. Licenses issued under this Chapter shall not be transferable.

5-3-4: FEE SCHEDULE:
The following fees shall be charged for applications and licenses for the operation of a park and swap lot: (1050, 4982)

<table>
<thead>
<tr>
<th>Fee</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application fee</td>
<td>As established in the current Schedule of Fees and Charges.</td>
</tr>
<tr>
<td>License Fee</td>
<td>Due annually, as established in the current Schedule of Fees</td>
</tr>
<tr>
<td></td>
<td>and Charges</td>
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</tbody>
</table>

5-3-5: APPLICATIONS; FORMS; REFUSAL TO ISSUE:

(A) An application for a license under this Chapter shall be made on forms furnished by the City. Every application shall be accompanied by an application fee in the amount provided in Section 5-3-4. In the event a license is not issued, the application fee shall not be returned to the applicant but shall be applied to cover the cost of processing the application.

(B) The Finance Director shall have the power to refuse to issue a license for any of the following causes:

1. Fraud, misrepresentation, or a false statement made in the course of applying for the license.

2. Conviction of any crime or misdemeanor involving moral turpitude within the last ten (10) years.

3. Any previous violation of this Chapter. (1613)

5-3-6: REVOCATION OR SUSPENSION OF LICENSE; APPEAL:
Whenever the Finance Director has knowledge or it is brought to the attention of said Director that any person licensed under this Chapter has violated, or is violating, any of the provisions of this Chapter, such person shall be cited to appear before the Finance Director and such City officials as the Director may deem necessary on a day certain to show cause why his license should not be suspended or revoked. Such citation shall state the duty of the person cited to appear personally at the time and place and shall be served by an officer of the Police Department in the manner provided for personal service of civil summons. It shall be the duty of the person cited to appear personally at the time and place named in the citation. He shall have the right at such hearing to be represented by counsel, to introduce witnesses on his behalf, and, at his own expense, to have the testimony given at such hearing transcribed. If, after such hearing, the Finance Director determines that there is a good and sufficient reason for the suspension or revocation of the cited person’s license, the Finance Director shall enter an order effective immediately to such effect and so notify the cited person by registered mail. If the person cited is dissatisfied with the order of the Finance Director, he may appeal to the City Manager within five (5) days, excluding weekends and legal holidays, after receipt of the decision of the Finance Director. The City Manager may designate a Hearing Officer to hear the appeal. (2383)
5-3-7: POLICE REPORTS REQUIRED:

(A) On each day of operation of a park and swap lot, the owner or operator shall, on forms provided by the City, obtain the following information on each park and swap meet participant:

1. Name and address.
2. Date and time of entry.
3. Vehicle description and license plate number, if any.
4. A general description of all property brought into the trading area. For any item of property with an initial asking price of twenty-five dollars ($25.00) or more or which has or did have a serial number, a complete description shall be furnished including the name, make, and any identifying number.
5. Signature of park and swap meet participant.
6. Driver’s license number and the state where issued, if any.
7. Social security number, if available.
8. Whether the person has a valid City of Mesa secondhand dealer’s license and the number thereof.

These forms and admission records shall be available for police inspection during normal business hours and may be filled out by the park and swap meet participant and turned over to the owner, operator, or his designated employee. The owner or operator shall be responsible for forwarding these reports to the Police Chief at the close of each business day.

(B) Each park and swap meet participant shall submit daily to the owner, operator, or his designated employee a list giving the complete description of each item of property traded, bartered, or sold by him which had an initial asking price of twenty-five dollars ($25.00) or more or a sale price of twenty-five dollars ($25.00) or more or had or did have a serial number and the name and address of the person receiving said property. The owner or operator shall be responsible for forwarding these reports to the Police Chief at the close of each day’s business. Forms for these reports will be provided to the owner or operator by the City of Mesa.

5-3-8: PRIVILEGE LICENSE REPORTS AND COLLECTION OF TAXES: (Repealed by 4100)

5-3-9: TRADING AREA; VISIBILITY OF MERCHANDISE:
The swap meet activities shall be conducted only in a building, structure, or other area which is sufficiently enclosed to enable the owner or operator or his employees to control effectively all persons and merchandise and only in an area zoned for this type of activity. All merchandise, both new and secondhand, for which the park and swap participant asks, or intends to ask, an initial price of twenty-five dollars ($25.00) or more shall at all times be visible to the general public and officials of the City.

5-3-10: EXEMPTION:
The provisions of this Chapter shall not be applied to any charitable organization having a valid solicitation’s permit for this activity from the City. This Chapter shall not apply to activities carried on by charitable organizations established and operated exclusively for a religious or charitable purpose if conducted solely among its members and guests by other members serving without remuneration or if such activities are conducted at the assemblies or services of the organization. (1050)
CHAPTER 4

SALE OF JEWELRY AT PUBLIC AUCTION

(Repealed By 4313)

CHAPTER 5

GOING OUT OF BUSINESS SALES

(Repealed By 4314)
CHAPTER 6

HANDBILLS AND CIRCULARS

SECTION:

5-6-1: DEFINITIONS

5-6-2: POSTING NOTICE, PLACARD, BILLS PROHIBITED IN CERTAIN PLACES

5-6-3: THROWING HANDBILLS BROADCAST IN PUBLIC PLACES PROHIBITED

5-6-4: PLACING IN VEHICLES

5-6-5: DISTRIBUTION ON UNINHhabited OR VACANT PRIVATE PREMISES

5-6-6: PROHIBITING DISTRIBUTION WHERE PROPERTY POSTED

5-6-7: DISTRIBUTION ON INHABITED PRIVATE PREMISES

5-6-8: HANDBILLS INCITING TO RIOT PROHIBITED

5-6-9: POSTING OF OBJECTIONABLE MATTER OR MATERIAL PROHIBITED

5-6-1: DEFINITIONS:

The following words, terms, and phrases when used in this Chapter shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. (Res. 1006)

COMMERCIAL HANDBILL: Shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise produced original or copies of any matter of literature: (Res. 1006)

(A) Which advertises for sale any merchandise, product, commodity, or thing or (Res. 1006)

(B) Which directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting the interests thereof by sales or (Res. 1006)

(C) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind when either of the same is held, given, or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety, and good order. Provided, that nothing contained in this clause shall be deemed to authorize the holding, giving, or taking place of any meeting, theatrical performance, exhibition, or event of any kind without a license where such license is or may be required by any law of this State or under any laws of this City or (Res. 1006)

(D) Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distribut or. (Res. 1006)
NEWSPAPER: Shall mean and include any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law and in addition thereto shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public. (Res. 1006)

NONCOMMERCIAL HANDBILL: Shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the aforesaid definitions of a commercial handbill or a newspaper. (Res. 1006)

PRIVATE PREMISES: Shall mean and include any dwelling, house, building, or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to such dwelling, house, building, or other structure. (Res. 1006)

PUBLIC PLACE: Shall mean and include any and all streets, boulevards, avenues, lanes, alleys, or other public ways and any and all public parks, squares, spaces, plazas, grounds, and buildings. (Res. 1006)

5-6-2: POSTING NOTICE, PLACARD, BILLS PROHIBITED IN CERTAIN PLACES:
No person shall post, stick, stamp, paint, or otherwise fix or cause the same to be done by any person any notice, placard, bill, card, poster, advertisement, or other paper or device calculated to attract the attention of the public, except such as may be authorized or required by the laws of the United States, this State, or of this City. (Res. 1006)

5-6-3: THROWING HANDBILLS BROADCAST IN PUBLIC PLACES PROHIBITED:
It shall be unlawful for any person to deposit, place, scatter, or cast any commercial handbill in or upon any public place within this City, and it shall be also unlawful for any person to hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill in any public place to any person willing to accept such. (Res. 1006)

5-6-4: PLACING IN VEHICLES:
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle. The provisions of this Section shall not be deemed to prohibit the handing, transmitting, or distributing of any noncommercial handbill to the owner or other occupant of any automobile or other vehicle who is willing to accept the same. (Res. 1006)

5-6-5: DISTRIBUTION ON UNINHABITED OR VACANT PRIVATE PREMISES:
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant. (Res. 1006)
5-6-6: **PROHIBITING DISTRIBUTION WHERE PROPERTY POSTED:**
It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill upon any premises if requested by anyone thereon not to do so or if there is placed on said premises in a conspicuous position near the entrance thereof a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisements," or any similar notice indicating in any manner that the occupants of said premises do not desire to be molested or to have their right of privacy disturbed or to have any such handbills left upon such premises. (Res. 1006)

5-6-7: **DISTRIBUTION ON INHABITED PRIVATE PREMISES:**
No person shall distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted as provided herein, the aforesaid person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations. (Res. 1006)

5-6-8: **HANDBILLS INCITING TO RIOT PROHIBITED:**
It shall be unlawful for any person to post, hand out, transmit, distribute, or place any sign or any commercial or noncommercial handbill which may reasonably tend to incite riot or other public disorder or which advocates disloyalty to or overthrow of the government of the United States or of this State and is directed to producing or inciting imminent lawless action or is likely to produce or incite such action. (1612)

5-6-9: **POSTING OF OBJECTIONABLE MATTER OR MATERIAL PROHIBITED:**
It shall be unlawful for the owner, lessee, occupant, or agent of premises to permit any person to post, affix, or otherwise attach to any building, structure, or fixture located upon such premises, whether such fixtures be natural or artificial, any poster or handbill containing any matter prohibited by this Chapter. (Res. 1006)
CHAPTER 7

AUCTIONEERS, PAWN BROKERS, SCRAP METAL DEALERS, AND SECONDHAND DEALERS

(5465)

SECTION:

5-7-1: DEFINITIONS
5-7-2: ADMINISTRATION; LICENSES
5-7-3: LICENSE APPLICATION; FEE
5-7-4: FINGERPRINTING REQUIREMENTS
5-7-5: LICENSE RENEWAL
5-7-6: RECORDKEEPING AND REPORTING REQUIREMENTS; INSPECTIONS
5-7-7: FRUITS OF A CRIME; POLICE HOLD
5-7-8: LICENSE DENIAL, SUSPENSION, OR REVOCATION
5-7-9: APPEALS
5-7-10: EXEMPTIONS
5-7-11: PENALTY

5-7-1: DEFINITIONS:
The terms of this Chapter have the below meanings unless the context otherwise requires. 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. The definitions prescribed in A.R.S. § 44-1601, 44-1621, and 44-1641 apply to this Chapter, where applicable, unless a term is specifically defined in this Chapter. All citations to specific statutes in this Chapter shall include the law as amended. (5465)

(1) APPLICANT: A person who applies for a license pursuant to this Chapter who, upon approval of the application, will be the licensee. (5465)

(2) ARTICLE: A particular item, thing, good, asset or other movable or transferable piece of property. (5465)

(3) AUCTIONEER: Any person who is the controlling person operating a business of auctioning articles or offering any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder. (2993, 5465)

(4) BUSINESS DAY: Any day between and including Monday through Friday. (5465)

(5) BUSINESS LICENSING ADMINISTRATOR: The Business Licensing and Revenue Collections Administrator of the City or their designee. (5465)

(6) BUSINESS SERVICES DIRECTOR: The Business Services Director of the City or their designee. (5465)

(7) CITY: City of Mesa, Arizona. (2993, 5465)

(8) CITY MANAGER: The City Manager pursuant to Chapter 20 of Title 1 of the Mesa City Code or their designee. (2993, 5465)
(9) **CONTROLLING PERSON:** Any individual (natural person) who is any of the following: (5465)

(a) Stockholder who owns ten percent (10%) or more of a corporation; (5465)

(b) General partner of a limited partnership or any partner of a non-limited partnership; (5465)

(c) Managing member of a limited liability company/corporation; or (5465)

(d) Sole proprietor of a sole proprietorship. (5465)

(10) **DESIGNATED AGENT:** The individual (natural person) designated by the licensee to be the party who receives City notices pursuant to this Chapter. If a licensee is an individual (natural person) the licensee may name themselves as the designated agent. (5465)

(11) **HEARING OFFICER:** The Business Services Department Director or their designee. (2993, 5465)

(12) **LICENSE:** A license issued to an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in accordance with this Chapter. (5465)

(13) **LICENSEE:** Any person to whom the City has issued a license under this Chapter or any person acting on behalf of such person. (2993, 5465)

(14) **LICENSING OFFICE:** Business Licensing and Revenue Collections Division of the City under the supervision of the Business Licensing Administrator. (5465)

(15) **PAWNBROKER:** A person engaged in the business of advancing money on the security of pledged goods or engaged in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time. (5465)

(16) **PERSON:** Any corporation, company, partnership, firm, association, organization, joint venture, business entity, trust, proprietor, agent, or society, as well as an individual (natural person). (2993, 5465)

(17) **POLICE DEPARTMENT:** The Police Department for the City pursuant to Title 3, Chapter 1 of the Mesa City Code. (2993, 5465)

(18) **SCHEDULE OF FEES AND CHARGES:** The current City schedule of fees and charges as approved by the City Council. (5465)

(19) **SCRAP METAL DEALER:** Each person (except “automotive recyclers” as defined and licensed pursuant to Arizona Revised Statutes Title 28, Chapter 10) whose primary business is the dismantling, selling or disposing of parts or accessories of motor vehicles engaged in the business of purchasing, trading, bartering, or otherwise receiving secondhand or castoff material of any kind which is commonly known as scrap metal. Scrap metal includes insulated and uninsulated metallic cables. (5465)

(20) **SECONDHAND:** Any new or used property (article) that has been sold, traded, exchanged, consigned or otherwise disposed of by the original owner. The definition of secondhand includes, but is not limited to: (i) old stamps; (ii) old coins and money; (iii) “precious item” as defined in A.R.S. § 44-1601; and (iv) used automotive components when purchased by a “used automotive components dealer” as that term is defined in A.R.S. § 44-1321. The definition of secondhand does not include “numismatic coin” as defined in A.R.S. § 44-1801. (2993, 5465)
(21) **SECONDHAND DEALER:** Any person engaged in conducting, managing, facilitating, or carrying on the business of buying, selling, trading, exchanging, receiving on consignment, or otherwise dealing in any of the following secondhand items: goods, wares, merchandise, or articles. This definition applies whether such business is the principal or sole business carried on, managed, or conducted or is merely incidental to or in connection with a branch or department of some other business. (2993, 3600, 4916, 5465)

(22) **STATE:** State of Arizona. (5465)

**5-7-2: ADMINISTRATION; LICENSES**

(A) It is the duty and responsibility of the Business Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, suspend, or revoke auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealer licenses in accordance with this Chapter. (5465)

(B) Any party aggrieved by a decision of the Business Licensing Administrator under this Chapter may appeal within ten (10) calendar days of issuance of the decision. The appeal must meet the requirements set forth in Section 5-7-9. (5465)

(C) Any person who operates a business in the City as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must obtain a license from the Licensing Office as provided in this Chapter. A person who operates as an antiques dealer is a secondhand dealer under this Chapter. Antiques dealers will be issued a license governed by the requirements of this Chapter pertaining to secondhand dealers; however, the title on the license will be that of “Antiques Dealer.” For the purposes of this Subsection (C), an “antiques dealer” means a person who is primarily engaged in the business of buying and selling items collected or desirable due to age, rarity, condition or some other unique feature. (5465)

(D) A person must obtain a separate license for each location in the City where they operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, except a separate license is not required for each location for firearms transactions by a pawnbroker acting as a federally licensed firearms dealer at an organized gun show in accordance with A.R.S. § 44-1627. (5465)

(E) All licenses will be issued for a period of one (1) year. Licenses cannot be sold or transferred. (5465)

(F) A licensee must display its license in a conspicuous place at the business location. (5465)

(G) A licensee must at all times be in compliance with local, state, and federal law applicable to the licensed activity which could include, but is not limited to, the laws set forth in Arizona Revised Statutes Title 44. If the language of this Chapter is preempted and conflicts with the language of state law, then the state law will control. (5465)

**5-7-3: LICENSE APPLICATION; FEE**

(A) Any person desiring to obtain an auctioneer, pawnbroker, scrap metal dealer or secondhand dealer license must apply to the Licensing Office. An applicant for a license must present to the Licensing Office the completed application, containing all information requested on the application and corresponding documents, along with the required application fee and fingerprint records. The application fee is non-refundable unless otherwise required by law. (5465)

(B) Following receipt from the applicant of a complete application, fingerprints, and application fee as set forth in the Schedule of Fees and Charges, the Licensing Office will refer the application to the Police Department for investigation and criminal record review in accordance with this Chapter. (5465)
(C) The Licensing Office will grant a license to an applicant unless it determines that the application is subject to denial in accordance with Section 5-7-8. (5465)

(D) Upon approval, and prior to the issuance of a license, the applicant must: (i) pay a first-year license fee in accordance with the Schedule of Fees and Charges, and (ii) provide the Licensing Office with a designated agent if that person was not named in the application. (5465)

(E) A person must apply for a license on forms furnished or approved by the City. The forms will include requests for information deemed necessary by the City consistent with the requirements of this Chapter and applicable law. (5465)

5-7-4: FINGERPRINTING REQUIREMENTS

(A) Each person applying for a license must submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons of the applicant. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5465)

(B) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data of license applicants and controlling persons, for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information will be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license. (5465)

(C) The Police Department will have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department will recommend to the Licensing Office approval or denial of the license. (5465)

5-7-5: LICENSE RENEWAL

(A) A license, unless revoked, may be renewed by a licensee and such renewal will be valid for a term of one (1) year. The completed renewal application must be submitted by the licensee no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee in the Schedule of Fees and Charges. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed in accordance with the requirements of this Chapter. (5465)

(B) If a licensee fails to submit a complete renewal application and renewal fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license will expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to renew their license, but who wish to continue operating as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, must file a new application for a license pursuant to Section 5-7-3 and may not operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in the City until a new license is issued. (5465)

(C) An application for renewal of a license may be denied based on the standards set forth in Section 5-7-8. (5465)
5-7-6: RECORDKEEPING AND REPORTING REQUIREMENTS; INSPECTIONS

(A) Pawnbrokers. Pawnbrokers must file a true, complete and accurate report with the Police Department of each article the pawnbroker receives subject to the reporting requirements set forth in Arizona Revised Statutes Title 44, Chapter 11, Article 3. (5465)

(1) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1625. Reports will be filed on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The pawnbroker must collect a fingerprint from the right index finger of the pledgor or seller as required on the approved forms. The pawnbroker must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. (5465)

(2) No article will be sold or exchanged by any pawnbroker until it has been in the custody of the pawnbroker for twenty (20) calendar days after the transaction date. Any article held in custody pursuant to this Subsection (A)(2) must not be altered or transformed in any way, but must be held in the same condition in which it was delivered to the pawnbroker. This Subsection (A)(2) does not apply to the redemption of pawned or pledged articles. (5465)

(B) Secondhand Dealers. (5465)

(1) Reportable Transactions and Records. (5465)

(a) Secondhand dealers must file a true, complete and accurate report with the Police Department of each article the secondhand dealer receives on deposit, consignment, trade, exchange, or purchase that meets any of the following requirements (hereafter “Reportable Transaction”): (5465)

(i) Bears a serial number; (5465)

(ii) Bears an owner applied number (O.A.N.); (5465)

(iii) Has a fair market value in excess of one hundred dollars ($100.00); (5465)

(iv) Any item that meets the definition of a “precious item” as that term is defined in A.R.S. § 44-1601; or (5465)

(v) Any coin fabricated from a metal meeting the definition of a “precious item” as set forth in A.R.S. § 44-1601 and that does not meet the definition of “numismatic coin” as that term is defined in A.R.S. § 44-1801. (5465)

(b) Reports must be filed on forms approved by the Police Department within two (2) business days of the Reportable Transaction. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The secondhand dealer must collect a fingerprint of the right index finger of the pledgor or seller of an article in a Reportable Transaction as required on the approved forms and verify the identity of the seller as required by A.R.S. § 44-1602. The secondhand dealer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. (5465)

(c) A secondhand dealer will retain in its custody any article obtained in a Reportable Transaction at its place of business or other storage location approved by the Police Department for a period of twenty (20) calendar days after filing a completed report form with the Police Department. Any article held in custody must not be altered or transformed in any way, but will be held in the same condition in which it was delivered to the secondhand dealer. (5465)
(d) The provision of Subsection 5-7-6(B)(1) do not apply to any of the following: (5465)

(i) Purchases by a secondhand dealer from a business with a fixed business location of either business inventory or business equipment, provided the secondhand dealer acquires, by the time of the transaction, the secondhand dealer has documentation of: (5465)

a. The name and address of the business; (5465)

b. The state and local privilege (sales) tax license number of the business, if applicable; and (5465)

c. A copy of the invoice or other document showing the business’s bona fide purchase of or right to possess the articles sold to the secondhand dealer and, where applicable, a copy of a completed report required by Subsection 5-7-6(B)(1) filed with the Police Department by the business. (5465)

(ii) Secondhand dealer purchases of household items from a place of residence provided all the below requirements are met. (5465)

a. The purchase is made by the secondhand dealer by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the secondhand dealer has obtained a receipt for that cash payment from the seller bearing the seller’s name and address verified to be accurate by the secondhand dealer. (5465)

b. The seller produced for the secondhand dealer’s inspection documentation establishing the seller is either the lawful occupant or the premises from which the household items are being sold or the seller had the legal right to sell the items offered for sale. The secondhand dealer must either retain a copy of the documentation produced or record from the documentation a description of the document, including the name or nature of the document, and, to the extent available, its date, the seller’s name and address thereon, and any account number. (5465)

(iii) Consignments to secondhand dealers, other than a firearm, provided that no payment is made by the secondhand dealer to the consignor for a period of ten (10) calendar days after the date of consignment. (5465)

(iv) Articles received by a secondhand dealer in trade, exchange, or by purchase which are: (1) used clothing or furniture; (2) from a business engaged in the lawful liquidation of its business; or (3) from an auctioneer or pawnbroker possessing a valid license. (5465)

(e) All documentation required to substantiate any of the exclusions set forth in Subsection (d) above must be retained on the business premises of the secondhand dealer for a period of twenty-four (24) months from the day the article is acquired by the secondhand dealer. (5465)

(2) Dealers of Precious Items. (5465)

(a) In addition to the requirements set forth in Subsection 5-7-6(B)(1) above, secondhand dealers who deal in “precious item[s]” as defined in A.R.S. § 44-1601 must maintain the records, file the reports and meet all requirements of Arizona Revised Statutes Title 44, Chapter 11, Article 1. (5465)
(b) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1602. Reports will be filed on forms approved by the Police Department. The secondhand dealer must collect a fingerprint of the right index finger of the seller of a precious item as required on the approved forms. (5465)

The secondhand dealer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. (5465)

(3) Used Automotive Components Dealer. (5465)

“Used automotive component dealers”, as that term is defined in A.R.S. § 44-1321, must maintain the records and file the reports set forth in Arizona Revised Statutes Title 44, Chapter 9, Article 9. (5465)

(C) Auctioneers. Auctioneers must file a true, complete and accurate report with the Police Department of all articles received by the auctioneer except for clothing, books, records, compact discs, and audio tapes. Reports will be made on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The auctioneer must collect a fingerprint of the seller of the article as required on the approved forms. The auctioneer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. The reports must be delivered or postmarked within twenty-four (24) hours after receipt of the article. An auctioneer will describe the article using either of the following methods: (5465)

(1) By attaching a legible copy of the auctioneer’s consignment agreement, purchase receipt, purchase invoice, or other similar document containing a description of the article; or (5465)

(2) For groups of articles that are received as part of one business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of articles. (5465)

(D) Scrap Metal Dealers. Scrap metal dealers must file a true, complete and accurate record within twenty-four (24) hours of receipt of scrap metal in accordance with Arizona Revised Statutes Title 44, Chapter 11, Article 3.1. (5465)

(E) If a licensee comes into possession of abandoned property, the licensee must turn over such property to the Police Department who will hold the property in accordance with Police Department policy. For this Subsection (E), “abandoned property” is defined as property that was voluntarily discarded, left behind or otherwise intentionally relinquished by the owner. (5465)

(F) It will not be considered a violation of Section 5-7-6 if the violation is the result of a bona fide error, provided the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For the purpose of this Subsection (F), bona fide error means clerical, calculation, computer malfunction, programming, printing, and other similar errors. (5465)

(G) Inspections. The business premises of any licensee, along with their transaction records and stock of goods (articles) will be open to reasonable inspection by any peace officer of any governmental unit within or of this state when the business premises are open during regular business hours. Each licensee must maintain a current copy of this Chapter on the premises and will make it available upon request to any employee, customer, and law enforcement. (5465)

(H) All auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealers must maintain at their place of business a copy of any reports or transaction records required under this Chapter or applicable law for a period of at least two (2) years after the date the transaction occurred. (5465)
5-7-7: **FRUITS OF A CRIME; POLICE HOLD**

(A) Upon notification by any peace officer that the peace officer has probable cause to believe property received on deposit or consignment, in pawn, pledge, trade, exchange, or purchase are the fruits of a crime, the peace officer may place a Police Hold (as defined herein) on such article and no auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will dispose of such article (sell, trade, return to consignor, or otherwise relinquish possession of) until notified by the law enforcement agency of which the peace officer placing the hold is a member. (5465)

(B) A peace officer may place a hold on property requiring an article not to be disposed of in any manner (hereafter “Police Hold”). A Police Hold must be requested with a written notice; however, an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will honor a Police Hold made in person, via telephone, or by other reasonable means of communication for five (5) business days after which time the Police Hold will no longer be valid unless written notice is received continuing the Police Hold during the five (5) business day period. A written notice for a Police Hold will include all the following information: (5465)

1. The date the Police Hold; (5465)
2. A description of the property, including serial number if applicable; (5465)
3. The name and, if applicable, badge number of the peace officer requesting the Police Hold; (5465)
4. The telephone number of the peace officer requesting the Police Hold; and (5465)
5. The law enforcement agency’s report number. (5465)

(C) If a peace officer declares a Police Hold on any article, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must attach a tag supplied by the Police Department to the article. The tag will include the information required on the written notice of the Police Hold as set forth in Subsection (B) above. The tag must remain on the article until the law enforcement agency releases the Police Hold or until the Police Hold expires pursuant to Subsection (D) below. (5465)

(D) A Police Hold will expire ninety (90) calendar days after the date of the Police Hold. For the purpose of criminal investigation or for use in any judicial proceeding, a Police Hold may be extended by the law enforcement agency in ninety (90) day increments by written notification to the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer if the notification is received prior to the expiration of the Police Hold. (5465)

(E) Interest upon articles pawned or pledged will cease to accrue during a Police Hold. (5465)

(F) Upon receiving a receipt from any peace officer, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must turn over articles on a Police Hold to the peace officer. (5465)
LICENS DENIAL, SUSPENSION, OR REVOCATION

(A) In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons: (5465)

(1) Police Department recommends denial of an application based upon applicant’s failure to meet the requirements set forth in this Chapter or applicable state law. (5465)

(2) Applicant or a controlling person was convicted within the ten (10) year period immediately preceding the date of application of any of the following: (5465)

(a) a felony or misdemeanor offense having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, as applicable; (5465)

(b) a felony offense involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or (5465)

(c) a felony or misdemeanor offense of a crime involving moral turpitude. (5465)

(3) Applicant failed to pay the application processing fee or, upon approval of the license, failed to pay the applicable license fee. (5465)

(4) Applicant or a controlling person has an outstanding warrant for his or her arrest. (5465)

(5) Application contained false statements or material misrepresentations. (5465)

(6) Applicant failed to provide all the information and documentation required for the application. (5465)

(7) Applicant or a controlling person is currently in violation of any provision of this Chapter. (5465)

(8) Applicant currently owes a debt to the City and therefore cannot be issued a license as set forth in Mesa City Code Title 1, Chapter 32. (5465)

(9) Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City. (5465)

(10) Applicant, within the one (1) year period immediately preceding the date of application, had an application for a license denied or had a license revoked. (5465)

(B) In addition to any penalties set forth in this Chapter, an application for renewal of a license may be denied for any of the following reasons: (5465)

(1) Applicant failed to submit the renewal application within the required time frame or pay the applicable fee. (5465)

(2) For any reason set forth in Subsection (A) above except a renewal license may be issued if the licensee or controlling person has any felony or misdemeanor charge of the type set forth in Subsection (A) pending in a trial court (defined as a court of original jurisdiction where the evidence is first received and considered); however, the issuance of such renewal license will not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge including, but not limited to, suspension or revocation of the license. (5465)
(C) In addition to any penalties set forth in this Chapter, a license will be suspended if during the term of the license: (5465)

(1) Licensee or a controlling person for the licensee is convicted of a criminal offense: (5465)

(a) Having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer; (5465)

(b) Involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or (5465)

(c) A crime involving moral turpitude. (5465)

(2) The application upon which the license was awarded was found to contain false statements or material misrepresentations, or the licensee failed to meet any of the requirements for the issuance of a license. (5465)

(3) Licensee or a controlling person for the licensee knows or should have known that trafficking in stolen property is occurring or has occurred in the operation of the licensed establishment. (5465)

(4) The licensee ceased to use the license for purposes of the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer. The failure of a licensee to operate in the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer under the license for thirty (30) consecutive calendar days will create a rebuttable presumption the licensee has ceased to use the license. (5465)

(5) If on two (2) or more occasions within an eighteen (18) month period, the licensee or an employee, agent or representative of the licensee, while in the conduct of business at the licensed establishment, commits a criminal offense of the type set forth in Subsection 5-7-8(C)(1). For the purposes of this Subsection (C)(5): (5465)

(a) a person will be deemed to have committed an offense upon conviction; (5465)

(b) in applying the eighteen (18) month provision, the date of the commission of the offense will be the determining factor; and (5465)

(c) the two (2) or more offenses subjecting the license to suspension do not have to be committed by the same person and do not have to be violations of the same statute or ordinance so long as they are offenses of the type listed in Subsection 5-7-8(C)(1). (5465)

(6) The penalty for a suspension under Subsection (C) will be: (5465)

(a) For the first suspension of a license during an eighteen (18) month period, licensee will pay a fine of $250 and the license will be suspended up to fourteen (14) calendar days. (5465)

(b) For the second suspension of a license during an eighteen (18) month period, licensee will pay a fine of $500 and the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5465)

(c) For the third suspension of a license during an eighteen (18) month period, the license will be revoked. (5465)

(D) In applying the eighteen (18) month period provision of Subsection 5-7-8(C)(6) the date the decision was issued by the Business Licensing Administrator for the first of the three (3) suspensions will constitute the beginning of the eighteen (18) month period. (5465)
5-7-9: APPEALS

(A) Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director; the failure of an appeal to meet the requirements of this Subsection will entitle the Business Services Director to deny the appeal without further review. (5465)

(B) If an appeal meets the requirements of Subsection (A), the Business Services Director will schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (A) will suspend the decision of the Business Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Hearing Officer, will be reinstated and dated as of the original date the decision was issued by the Business Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter. (5465)

(C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony will be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery will be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5465)

(D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, will constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5465)

(E) The decision of the Business Licensing Administrator, if not appealed, will be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Business Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer will be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5465)

5-7-10: EXEMPTIONS

The requirements of this Chapter do not apply to any of the following: (5465)

(1) Any person who deals exclusively with clothing, phonograph records, books, audio cassette tapes, videotapes, compact discs, or digital video discs. (5465)

(2) Any person who deals exclusively in titled vehicles or titled articles, the transfer of title to which is governed by the laws of the state, must be evidenced by written instrument, and recorded as a public record. (5465)

(3) The operator of any self-service storage facility foreclosing its lien in accordance with A.R.S. § 33-1704. For this Subsection (3), the terms “operator” and “self-service storage facility” have the meanings prescribed in A.R.S. § 33-1701. (5465)

(4) Garage sales, rummage sales, or similar nonrecurring sales between individuals. (5465)
(5) Any organization exempt from federal income tax under Section 501 of the Internal Revenue Code. (5465)

(6) Any business dealing in rent-to-own merchandise where the business is the original owner of the merchandise. (5465)

(7) Any person who deals exclusively in “numismatic coins” as that term is defined in A.R.S. § 44-1801. (5465)

(8) Any operator of an Automated Kiosk who is issued an Automated Kiosk license by the City pursuant to Mesa City Code Title 5, Chapter 22. (5465)

5-7-11: PENALTY

Among other penalties that may apply, a person that violates any provision of this Chapter will be guilty of a class one misdemeanor. Upon conviction, an individual (natural person) will be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, a business entity will be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00). Each day in which a violation continues will constitute a separate criminal offense, punishable as described above. (5465)
CHAPTER 8

PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

SECTION:

5-8-1: PURPOSE OF THIS CHAPTER
The purposes of this Chapter shall be to protect the health, safety, and welfare of residents of the City by means of investigation and regulation of peddlers, solicitors, canvassers, and transient merchants. (1016)

5-8-2: LICENSE REQUIRED
It shall be unlawful for any peddler, solicitor, canvasser, transient merchant, itinerant merchant, or itinerant vendor as the same is herein defined to engage in such business within the corporate limits of the City without first obtaining a license therefor in compliance with the provisions of this Chapter; provided, however, that the provisions of this Chapter shall not apply to the producers of agricultural products as defined in A.R.S. §3-561 or to any member of the family or agents or persons in the service of the producer when the agricultural products are sold or disposed of on behalf of and for the benefit of the producer or to persons soliciting for newspaper subscriptions. (1428, 1891)

5-8-3: DEFINITIONS:

PEDDLER: Any person who, either personally or through agents or employees or by transporting either persons or property, whether a resident of the City or not, travels by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions who offers and exposes the same for sale or who makes sales and delivers articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a motor vehicle, railroad car, or other vehicle or conveyance or from a fixed location on foot, and further provided that one who solicits orders and as a separate transaction makes delivery to purchasers as a part of the scheme or design to evade the provisions of this Chapter shall be deemed a peddler subject to the provisions herein contained. (1475, 1981)
SOLICITOR OR CANVASSER: Any individual, whether resident of the City or not, traveling either by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop, or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT, ITINERANT MERCHANT, ITINERANT VENDOR: Any person, whether owner or otherwise, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within said City and who, in furtherance of such purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat or public room in a hotel, lodging house, apartment, shop, or any street or other place within the City for the exhibition and sale of such goods, wares, and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm, or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this Chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any such local dealer, trader, merchant, or auctioneer. (1016)

5-8-4: APPLICATION AND APPLICATION FEE:
Applicants for a license under this Chapter must file with the Finance Director a sworn application in writing on a form to be furnished by the Finance Director which shall contain, but not necessarily be limited to, the following information:

(A) Name and description of the applicant.

(B) Address (legal and local).

(C) A brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant.

(D) If employed, the name and address of the employer, together with credentials establishing the exact relationship.

(E) The length of time for which the right to do business is desired.

(F) If a vehicle is to be used, a description of the same, together with license number or other means of identification.

(G) A photograph of the applicant taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2") showing the head and shoulders of the applicant in a clear and distinguishing manner.
The fingerprints of the applicant and the names of at least two (2) reliable property owners of the City who
will certify as to the applicant’s good character and business responsibility or, in lieu of the names of
references, any other available evidence as to the good character and business responsibility of the applicant
as will enable an investigator to properly evaluate such character and business responsibility.

A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of
any municipal laws, the nature of the offense, and the punishment or penalty assessed therefor.

If the applicant is a minor, such applicant shall not be fingerprinted, but no license shall be issued unless the
minor’s parent(s) or guardian(s) appears personally before the Finance Director or the authorized designee of
the Finance Director and provides the following:

1. Satisfactory evidence that the person or persons are in fact the parent(s) or guardian(s) of the particular
applicant;

2. A written statement signed by the parent(s) or guardian(s) and witnessed by the Finance Director or the
authorized designee of the Finance Director giving permission for the applicant to be licensed upon the
meeting of provisions of this Chapter.

No license issued hereunder shall be transferable. At the time of filing the application, a fee of ten dollars
($10.00) shall be paid to the Finance Director, no part of which shall be refunded.

Upon receipt of such application, the Finance Director shall cause an investigation to be made to
determine whether the applicant or any officer, director, trustee, partner, agent, employee, or other person associated
with the applicant: (1016,1605,1815)

Has been convicted of a felony involving a transaction in securities or consumer fraud in any state or federal
jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1016,1605,1815)

Has been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, or theft
by false pretenses in any state or federal jurisdiction within the seven- (7-) year period immediately preceding
the filing of the application; (1016,1605,1815)

Has been or is presently subject to an injunction, judgment, decree, or permanent order of any federal court
entered within the seven- (7-) year period immediately preceding the filing of the application of such
injunction, judgment, decree, or permanent order: (1016,1605,1815)

Involving the violation of fraud or registration provisions of the securities laws of that jurisdiction or
(1016,1605,1815)

Involving the violation of the consumer fraud laws of that jurisdiction. (1016,1605,1815)
(D) Has been convicted of a felony involving moral turpitude or burglary, robbery, or theft as defined in Arizona Revised Statutes or a crime of violence in any state or federal jurisdiction within the seven- (7) year period immediately preceding the filing of the application. (1844)

If, as a result of such investigation, it is determined that any of the items set forth above as A, B, C, and D are determined to exist, the application shall be denied. If not, and if a privilege license as set forth in Title 5, Chapter 10 of the Mesa City Code is required by the nature of the business the applicant desires to carry on and has been obtained by the applicant, a license shall be issued by the Finance Director upon payment of the required fee. (1016, 1605,1815,1844)

5-8-6: FEES:
The license fee for any peddler, solicitor, canvasser, or transient merchant shall be thirty dollars ($30.00) per quarter if paid on a quarterly basis or one hundred dollars ($100.00) per year if paid on an annual basis. All such fees shall be paid in advance. (1428)

5-8-7: BOND REQUIRED:
Before any license as provided herein shall be issued for engaging in the business of peddler, solicitor, canvasser, or transient merchant as defined in this Chapter, every applicant plying his trade as an individual shall file with the Finance Director a surety bond running to the City in the amount of one thousand dollars ($1,000.00). Every business, firm, company, or corporation which has employees or agents acting in the capacity of peddler, solicitor, canvasser, or transient merchant shall file with the Finance Director a blanket surety bond covering all such employees or agents and running to the City in the amount of five thousand dollars ($5,000.00).

Every bond for those engaging in a transient or an itinerant business or as a peddler as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant’s agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating and concerning sale of goods, wares, and merchandise and will pay all judgments rendered against said applicant for any violation, together with all judgments and costs that may be recovered against him by any person for damage arising out of any misrepresentation or deception practiced on any person transacting any such business with such applicant, whether said misrepresentations or deceptions were made or practiced by the applicant or its agents or employees either at the time of making a sale or through any advertising of any nature whatsoever printed or circulated with reference to the goods, wares, or merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person or directly by the aggrieved person.

Every bond for those engaging in the business of solicitor or canvasser as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant’s agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating concerning the business of solicitor or canvasser and guaranteeing to any citizen of the City that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor or canvasser and further guaranteeing any citizen of the City doing business with said solicitor or canvasser that the property purchased will be delivered according to the representations of said solicitor or canvasser.

Regardless of the number of claimants and the number of years any bond required to be filed pursuant to this Section has been in force, the total liability of the surety shall in no event exceed the total sum of the penalty of such bond. (1428,1605)
5-8-8: LICENSE TO BE POSTED:
The license issued to the licensee hereunder by the Finance Director shall be posted in a conspicuous place if the licensee is using a vehicle or building in his business and otherwise must be kept by the person and exhibited at any time upon request. (1043,1605)

5-8-9: LOCATION RESTRICTIONS:
No licensee hereunder shall have any exclusive right to any location in a public street, nor shall any be permitted a stationary location thereon or within three hundred feet (300') of a public school ground, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this Chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced. No business activity shall be carried on in any area of the City by any licensee who is licensed pursuant to this Chapter where such business activity is prohibited by the City of Mesa Zoning Ordinance. (1043)

5-8-10: UNDUE NOISES PROHIBITED; HOURS OF OPERATION:
Licensees, agents, and employees of licensees and persons acting on behalf of licensees shall not yell, shout, cry out, blow a horn, ring a bell, or use any sound-amplifying devices such as loudspeakers, microphones, radios, sound-amplifying systems, or any other similar devices for the purpose of attracting attention to any goods, wares, or merchandise if the sound emitted or produced is of sufficient volume that it can be plainly heard upon the public thoroughfares. Licensees, agents, and employees of licensees shall not conduct any business activities between the hour of eight (8:00) P.M. of any day and the hour of eight (8:00) A.M. of the following day. (1629)

5-8-11: UNLAWFUL ACTS:
It shall be unlawful for any peddler, solicitor, canvasser, or transient merchant in the course of business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers or Solicitors" or similar wording is exposed to public view. (1043)

5-8-12: DUTY OF POLICE OFFICERS TO ENFORCE:
It shall be the duty of any police officer of the City to enforce this Chapter. The Chief of Police shall report to the Finance Director all violations of this Chapter. (1043,1605)

5-8-13: RENEWALS:
Licenses which are continually renewed shall pay only the applicable fees prescribed in Section 5-8-6. Licenses which are not continuously renewed, upon application for renewal, shall be treated as an original application. (1428)

5-8-14: SUSPENSION AND REVOCATION:
Whenever the Finance Director has reason to believe that any licensee is guilty of any of the following acts:

(A) Fraud, misrepresentation, or false statement contained in the application for license;

(B) Fraud, misrepresentation, or false statement made in the course of carrying on his business;
(C) Violation of any of the provisions of this Chapter;

(D) Conviction of any crime or misdemeanor involving moral turpitude;

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; and

(F) Failure to file an additional surety bond as required by Section 5-8-7 hereof within ten (10) days after the liability of the surety on the previous bond has been exhausted, the Finance Director shall immediately suspend the license and give the licensee notice by registered mail of the suspension and of a hearing to be held within ten (10) days to determine whether or not the permit should be revoked. The notice shall contain a statement of the purported reason for the suspension. At the hearing the licensee shall have the right to be represented by counsel, to introduce witnesses on his behalf and at his own expense, and to have the testimony given at the hearing transcribed. Within the next three (3) days after the hearing, if the Finance Director determines that there is a good and sufficient reason for revocation of the licensee’s license, the Finance Director shall enter an order revoking the license effective immediately and notify the licensee by registered mail. (1428,1605)

5-8-15: APPEAL:
Within five (5) days, excluding weekends and legal holidays, an applicant for license or a licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (2383)

5-8-15.01: RESTRICTIONS OF ISSUING A LICENSE; ADDITIONAL UNLAWFUL ACTS:

(A) If the license of the licensee has been revoked pursuant to provisions of Section 5-8-14 of this Code, the Finance Director shall designate a period of time not exceeding three (3) years, during which time a renewal or a new license may not be issued to the same licensee or to a corporation controlled by that licensee. Unless otherwise specified by the Finance Director, the period of disqualification shall be the maximum three- (3-) year period.

(B) No licensee shall knowingly permit a person whose license is under suspension or has been revoked to be employed in any capacity by the licensee during the period of suspension or the period of time that a renewal or new license may not be issued to such person pursuant to provisions of Subsection (A) of this Section.

(C) Every licensee whose license has been revoked may be disqualified from obtaining or retaining a privilege tax license for a period of up to one (1) year from the date of such revocation. (1428,1605)

5-8-16: SEVERABILITY:
If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portions. (1016)
CHAPTER 9

REGULATING THE SALE OF ALCOHOLIC BEVERAGES

SECTION:

5-9-1: DEFINITION

In this Chapter, unless the context otherwise requires, all words and phrases shall have the same meaning as is provided in Title 4, Chapter 1, Article 1, Arizona Revised Statutes, and amendments thereto. (919,4338)

5-9-2: POWERS AND DUTIES OF THE COUNCIL:

The Council shall administer and enforce provisions of this Chapter and shall have power to prescribe necessary rules and regulations for carrying out such provisions. (919)

5-9-3: MANUFACTURE OR SALE WITHOUT LICENSE ILLEGAL:

It shall be unlawful for any person to buy, sell, or deal in spirituous liquors within the City under any circumstances which would require a license from the State without first having procured a license issued by the Business Licensing and Revenue Collections Administrator as herein provided. Such license shall be displayed by the licensee at a conspicuous place in the business. (1606,4338)

5-9-4: APPLICATION FOR LICENSE:

(A) Any person desiring a license to manufacture, sell, or deal in spirituous liquor shall file an application on forms prescribed and furnished by the Arizona State Department of Liquor Licenses and Controls. (4338)

Each application, except a qualifying organization requesting a special event liquor license, shall pay to the Special Licensing Office at the time of making application an application fee in accordance with the current Schedule of Fees and Charges, no part of which shall be returned whether the application is granted or not. (1606,1646,2127,4338)

(B) The Special Licensing Office shall immediately file one (1) copy of the application in the office and post the other for a period of twenty (20) days in a conspicuous place on the front of the premises wherein the business is proposed to be conducted, with a statement requiring any person who is a bona fide resident residing, owning, or leasing property within a one- (1-) mile radius from the premises proposed to be licensed and who is in favor of or opposed to the issuance of the license to file written arguments in favor of or opposed to the issuance of the license with the City Clerk within twenty (20) days after the date of posting. The City Clerk shall forward all written arguments to the Business Licensing and Revenue Collections Administrator. (2127,4338)
(C) The Council shall then enter an order recommending approval or disapproval within sixty (60) days after filing of the application and shall file a certified copy of the order with the State Liquor Board. If the recommendation is for disapproval, then a statement of the specific reasons containing a summary of the testimony or other evidence supporting the recommendation for disapproval shall be attached to the order. All petitions submitted to the City Council within the twenty-(20-) day period for filing protests shall be transmitted to the State Liquor Board with the certified copy of the order. Upon approval of the application by the State Liquor Board, the Business Licensing and Revenue Collections Administrator shall issue a license to the applicant. (1606,4338)

5-9-5: QUALIFICATIONS OF LICENSEE:
No applicant shall be issued a spirituous liquor license from the City unless such applicant meets all of the requirements set forth in the Arizona Revised Statutes, Title 4, Chapter 2, Article 1, as amended, for the issuance of a State liquor license. (4338)

5-9-6: ISSUANCE OF LICENSES:
Every person applying for a license under this Chapter shall pay the application fee provided for in Section 5-9-4 hereof and shall also pay the issuance fee and the license fee described in this Chapter for each place of business maintained by such applicant. (1673)

5-9-7: ISSUANCE; LICENSE AND TRANSFER FEES:
The issuance fees and annual fees for licenses to be paid to the City shall in accordance with the current Schedule of Fees and Charges. (4338)

The issuance fee shall be paid at the time of making application for the license, and if the license is not issued, shall be returned to the applicant. The first annual fee shall be paid with the application, and if the license is not issued, it shall be returned to the applicant. The renewal fee shall be paid annually in advance on or before the thirty-first (31) day of December of each year, and if not paid when due, an additional twenty percent (20%) penalty shall immediately become due and owing. Every license shall expire on December 31 of each year. (919, 2127,2139)

Each application for a transfer of license, whether a transfer from person to person, location to location, change of agent for a corporation, or any other type of transfer, shall for the purposes of this Chapter be treated as if the application were for the issuance of an original license, and the application fee, the issuance fee, and the annual fee shall be paid with such application, notwithstanding that the annual fees may have been paid with respect to that license elsewhere. (919)

5-9-8: SANITATION AND COMPLIANCE WITH OTHER LAWS AND ORDINANCES:
It shall be unlawful for any person to sell spirituous liquors in the City without first having provided this place of business or establishment adequate toilet and sanitation conveniences and without having first complied with all the requirements of any law or ordinance of the City or any law of the State which may be applicable thereto. (919,4338)
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PRIVILEGE AND EXCISE TAXES (Index)

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ARTICLE II - DETERMINATION OF GROSS INCOME

| 14   | 200     |        |     | Determination of gross income: in general |
| 14   | 200     |        | (A) | Includes: |
| 14   | 200     |        | 1   | Value from sales of property or service |
| 14   | 200     |        | 2   | Total sale or lease price |
| 14   | 200     |        | 3   | Receipts, cash, barter, exchange, reduction of debt, etc. |
| 14   | 200     |        | 4   | Including deposits and deferred payments (Reg. 200.1) |
| 14   | 200     |        | (B) | Barter, exchange, trade-outs, etc. |
| 14   | 200     |        | (C) | No deduction for cost, losses, etc. |
| 14   | 200     |        | (D) | Gross income, gross receipts |
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<td>Exclusion of cash discounts, returns, refunds, trade-in values, vendor issued coupons, and rebates from gross income</td>
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### ARTICLE III - LICENSING AND RECORD KEEPING

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<td>Every person storing/using tangible personal property on which tax is imposed</td>
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<td>License Fees; Annual Renewal; Renewal Fees</td>
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<td>Fee of $20; Valid only for the calendar year</td>
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### ARTICLE IV - PRIVILEGE TAXES

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### ARTICLE V - ADMINISTRATION

| 61   | 500     |        |     | Administration of this Chapter; rule making |
| 61   | (A)     |        |     | Administration vested in the Tax Collector |
| 61   | (B)     |        |     | Tax Collector shall prescribe forms and procedures |
| 61   | (C)     |        |     | City Council approves Regulations |
| 61   | (D)     |        |     | (Reserved) |
| 61   | (E)     |        |     | Unified Audit Committee guidelines |
| 61   | 510     |        |     | Divulging of information prohibited; exceptions |
| 61   | (A)     |        |     | Divulging information prohibited except as provided here |
| 61   | (B)     |        |     | City Council authorized examination by another U.S. jurisdiction |
| 61   | (C)     |        |     | Tax Collector can provide information to another Arizona privilege tax administration |
| 61   | (D)     |        |     | Successors, receivers, trustees, etc. |
| 61   | (E)     |        |     | City Attorney authorized disclosure to collection agencies |
| 61   | (F)     |        |     | Other Arizona City when tax paid to wrong city |
| 61   | (G)     |        |     | Others involved in allocation of publishing tax |
| 61   | (H)     |        |     | By agreement approved by City Council with another jurisdiction |
| 62   | 515     |        |     | Duties of Taxpayer Resolution Officer |
| 62   | (A)     |        |     | Assistance to taxpayers |
| 62   | (B)     |        |     | Duties of officer |
| 63   | (C)     |        |     | Review of actions |
| 63   | (D)     |        |     | Quarterly report |
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### ARTICLE VI - USE TAX

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| 88   | 602     |        |     | (Reserved) |
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| 98   | (C)     | Promoting access to health care |
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CHAPTER 10

PRIVILEGE AND EXCISE TAXES

SECTION:

5-10-1: CODE ADOPTED
5-10-2: VIOLATION; PENALTY (2447)

5-10-1: CODE ADOPTED:
That certain document known as "Chapter 10, Privilege and Excise Taxes of the City of Mesa, Arizona," three (3) copies of which are on file in the office of the City Clerk of the City, which document was made a public record by Resolution No. 5831 of the City, is hereby referred to, adopted and made a part hereof as if fully set out in this Chapter, the provisions thereof to become effective on April 8, 1987. (2175)

5-10-2: VIOLATION, PENALTY: (2447)
Any person convicted of a violation of any provision of Title 5, Chapter 10, Mesa City Code shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a term not to exceed six (6) months, or by both fine and imprisonment. (2447, 2466)

CHAPTER 10 - PRIVILEGE AND EXCISE TAXES

ARTICLE I - GENERAL CONDITIONS AND DEFINITIONS

5-10-1: WORDS OF TENSE, NUMBER, AND GENDER; CODE REFERENCES:

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

(B) For the purposes of this Chapter, all Code references, unless specified otherwise, shall:

1. Refer to this City Code.

2. Be deemed to include all amendments to such Code references.

5-10-100: GENERAL DEFINITIONS:
For the purposes of this Chapter, the following definitions apply:

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

BROKER: Any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter and who receives for his principal all or part of the gross income from the taxable activity.
BUSINESS: Includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either directly or indirectly, but does not include either: casual activities or sales; or the transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system. (5190)

BUSINESS DAY: Any day of the week when the Tax Collector’s Office is open for the public to conduct the Tax Collector’s business.

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

COMBINED TAXES: The sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Chapter 6, Article 3, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter. (3729/Reso. 7458)

COMMERCIAL PROPERTY: Any real property or portion of such property used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as office, etc. (2977/Reso. 6722)

COMMUNICATIONS CHANNEL: Any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

CONSTRUCTION CONTRACTING: The activity of a construction contractor.

CONSTRUCTION CONTRACTOR: A person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract. (3420/Reso. 7134)

DELIVERY (OF NOTICE) BY THE TAX COLLECTOR: Receipt (of notice) by the taxpayer.

DELIVERY, INSTALLATION, OR OTHER DIRECT CUSTOMER SERVICES: Services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer’s books and records.

ENGAGING: When used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
EQUIVALENT EXCISE TAX:

1. A Privilege or Use Tax levied by another Arizona municipality upon the transaction in question and paid either to such Arizona municipality directly or to the vendor;

2. An excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question and paid either to such jurisdiction directly or to the vendor; or

3. An excise tax levied by a Native American government organized under the laws of the federal government upon the transaction in question and paid either to such jurisdiction directly or to the vendor. (2977/Reso. 6722)

FEDERAL GOVERNMENT: The United States government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

FOOD: Any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. §42-1387. Under no circumstances shall "food" include alcoholic beverages or tobacco or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall “Food” include an edible product, beverage, or ingredient infused, mixed, or in any way combined with Medical Marijuana or an active ingredient of Medical Marijuana. (5059)

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

JET FUEL: Jet fuel as defined in A.R.S. Section 42-5351. (3729/Reso. 7458)

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

LESSEE: Includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

LESSOR: Includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

LICENSING (FOR USE): Any agreement between the user ("licensee") and the owner or the owner’s agent ("licensor") for the use of the licensor’s property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

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

MANUFACTURED BUILDING: A manufactured home, mobile home, or factory-built building as defined in A.R.S. §41-2142. (2977/Reso. 6722)

MANUFACTURER: A person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms qualities, properties, and combinations.
MEDICAL MARIJUANA:  Means “Marijuana” used for a “Medical Use” as those terms are defined in A.R.S. Section 36-2801. (5059)

MINING AND METALLURGICAL SUPPLIES:  All tangible personal property acquired by persons engaged in activities defined in Section 5-10-432 for such use. This definition shall not include: (2977/Reso. 6722)

1. Janitorial equipment and supplies.
2. Office equipment, office furniture, and office supplies.
3. Motor vehicles licensed for use upon the highways of the State.

MODIFIER:  A person who reworks, changes, or adds to products, wares, or articles of manufacture.

NONPROFIT ENTITY:  Any entity organized and operated exclusively for charitable purposes or operated by the federal government, the State, or any political subdivision of the State.

OCCUPANCY (OF REAL PROPERTY):  Any occupancy or use or any right to occupy or use real property, including any improvements, rights, or interests in such property.

OUT-OF-CITY SALE:  The sale of tangible personal property and job printing if all of the following occur:

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

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

OUT-OF-STATE SALE:  The sale of tangible personal property and job printing if all of the following occur:

1. The order is placed from without the State of Arizona; and
2. The property is delivered to the buyer at a location outside the State; and
3. The property is purchased for use outside the State. (4835)

OWNER-BUILDER:  An owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

PERSON:  An individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the federal government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.
PROSTHETIC: Means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner, or veterinarian: (2977, 5190/Reso. 6722)

1. Any man-made device for support or replacement of a part of the body or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

2. Insulin, insulin syringes, and glucose test strips sold with or without a prescription. (3270/Reso. 6970)

3. Hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

4. Drugs or medicine, including oxygen.

5. Equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

6. Durable medical equipment which has a federal Health Care Financing Administration Common Procedure Code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home. (3270/Reso. 6970)

7. Orthodontic devices dispensed by a dental professional who is licensed under Title 32, Chapter 11 to a patient as part of the practice of dentistry. (5059, 5190)

8. Under no circumstances shall “prosthetic” include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person. (5190)

QUALIFYING COMMUNITY HEALTH CENTER:

(1) An entity that is recognized as nonprofit under Section 501(c)3 of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either: (3476,4616/Reso. 7209,4169/Reso. 8205)

(a) The sole provider of primary care in the community. (3476,4616/Reso. 7209)

(b) A nonhospital-affiliated clinic that is located in a federally designated medically underserved area in this State. (3476,4616/Reso. 7209)

(2) Includes clinics that are being constructed as qualifying community health centers. (4169,4616/Reso. 8205)

QUALIFYING HEALTH CARE ORGANIZATION: An entity that is recognized as nonprofit under Section 501(c)3 of the United States Internal Revenue Code and that uses, saves, or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health- and medical-related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved, or invested to lease, purchase, or construct a facility for health- and medical-related education and charitable services are included in the eighty percent (80%) requirement. (3476/Reso. 7209,4169/Reso. 8205)
QUALIFYING HOSPITAL: Means any of the following: (3476/Reso. 7209,4169/Reso.8205)

1. A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (3476/Reso. 7209)

2. A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services, or health-related services and is not used or held for profit. (3476/Reso. 7209)

3. A hospital, nursing care institution, or residential care institution which is operated by the federal government, this State, or a political subdivision of this State. (3476/Reso. 7209)

4. A facility that is under construction and that on completion will be a facility under Subdivision 1, 2, or 3 of this paragraph. (4169/Reso. 8205)

RECEIPT (OF NOTICE) BY THE TAXPAYER: The earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer’s address of record with the Tax Collector.

REMEDICATION: Those actions that are reasonable, necessary, cost-effective, and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess, and evaluate such release or threat of release, actions of remediation, removal, or disposal of hazardous substances, or taking such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic, and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply. (3420/Reso. 7134)

RENTAL EQUIPMENT: Tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

1. The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and (2321,4616)

2. The item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation to an extent greater than fifteen percent (15%) of its actual use. (4616)

RENTAL SUPPLY: An expendable or nonexpendable repair or replacement part sold to become part of "rental equipment," provided that:

1. The documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
2. The vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and (2321)

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

REPAIRER: A person who restores or renews products, wares, or articles of manufacture.

RESIDES WITHIN THE CITY: In cases other than individuals whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

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

RETAIL SALE (SALE AT RETAIL): The sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

RETAILER: Any person engaged or continuing in the business of sales of tangible personal property at retail.

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

SOLAR DAYLIGHTING: A device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting. (4835)

SOLAR ENERGY DEVICE: A system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a Trombe wall, and not merely as a part of a normal structure, such as a window. (4835)
**SPECULATIVE BUILDER:** Either: (3729/Reso. 7458)

1. An owner-builder who sells or contracts to sell at any time improved real property (as provided in Section 5-10-416) consisting of:
   
   (a) Custom, model, or inventory homes, regardless of the stage of completion of such homes; or
   
   (b) Improved residential or commercial lots without a structure; or (3729/Reso. 7458)

2. An owner-builder who sells or contracts to sell improved real property, other than improved real property specified in Subsection (1) above: (3729/Reso. 7458)
   
   (a) Prior to completion; or
   
   (b) Before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete. (2535)

**SUBSTANTIALLY COMPLETE:** The construction contracting or reconstruction contracting:

1. Has passed final inspection or its equivalent;

2. Certificate of Occupancy or its equivalent has been issued; or

3. Is ready for immediate occupancy or use. (2535)

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

**TAX COLLECTOR:** The Finance Director or his designee or agent for all purposes under this Chapter.

**TAXPAYER:** Any person liable for any tax under this Chapter.

**TAXPAYER PROBLEM RESOLUTION OFFICER:** The individual designated by the City to perform the duties identified in Section 5-10-515 and 5-10-516. In cities with a population of fifty thousand (50,000) or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than fifty thousand (50,000), the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Office is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector. (3270/Reso. 6970)

**TELECOMMUNICATION SERVICE:** Any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.
TRANSIENT: Any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days. (4616)

UTILITY SERVICE: The producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

5-10-110: DEFINITIONS; INCOME-PRODUCING CAPITAL EQUIPMENT:

(A) The following tangible personal property, other than items excluded in Subsection (D) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:

1. Machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining, or metallurgical operations. The terms "manufacturing," "processing," "fabricating," "job printing," "refining," and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting, and refining. (2977/Reso. 6722)

2. Mining machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading, or transporting such extracted material to the surface. "Mining" includes underground, surface, and open pit operations for extracting ores and minerals. (2977/Reso. 6722)

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems. (2977/Reso. 6722)

4. Machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power. (2977/Reso. 6722)

5. Pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this Section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals, and any other parts that are used in operating the pipes or valves. (2977/Reso. 6722, 3729/Reso. 7458)

6. Aircraft, navigational and communication instruments, and other accessories and related equipment sold to: (2977/Reso. 6722)

(a) A person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property, or United States mail in intrastate, interstate, or foreign commerce. (2977/Reso. 6722)

(b) Any foreign government for use by such government outside of this State. (2977/Reso. 6722)
(c) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State. (2977/Reso. 6722)

7. Machinery, tools, equipment, and related supplies used or consumed directly in repairing, remodeling, or maintaining aircraft, aircraft engines, or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property. (2977/Reso. 6722)

8. Railroad rolling stock, rails, ties, and signal control equipment used directly to transport persons or property. (2977/Reso. 6722, 3729/Reso. 7458)

9. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes. (2977/Reso. 6722)

10. Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town, or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation. (2977/Reso. 6722)

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


13. Machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering and designing, developing, or testing prototypes, processes, or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services. (2977/Reso. 6722)

14. (Reserved)

15. Included in income-producing capital equipment are liquid, solid, or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development, or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This Subsection does not include chemicals that are used or consumed in activities such as packaging, storage, or transportation, but does not affect any deduction for such chemicals that is otherwise provided by this Code. Chemicals meeting the requirements of this Subsection are deemed not to be expendable under Subsection (D) of this Section. (2977/Reso. 6722, 3476/Reso. 7209, 3729/Reso. 7458)
16. Cleanrooms that are used for manufacturing, processing, fabrication, or research and development, as defined in paragraph 13 of this Subsection, of semiconductor products. For purposes of this paragraph, "cleanroom" means all property that comprises or creates an environment where humidity, temperature, particulate matter, and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom: * (3476/Reso. 7209)

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting, and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment. (3476/Reso. 7209)

(b) Does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment. (3476/Reso. 7209)

17. Machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia, or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five (5) years after the start of initial construction. For purposes of this paragraph: (3476/Reso. 7209)

(a) "Motion picture, multimedia, or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, CD-Rom, video game production, commercial advertising and television episode production, and other genres that are introduced through developing technology. (3476/Reso. 7209)

(b) "Soundstage complex" means a facility of multiple stages including production offices, construction shops, and related areas, property, and costume shops, storage areas, parking for production vehicles, and areas that are leased to businesses that complement the production needs and orientation of the overall facility. (3476/Reso. 7209)

18. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control, or transmit telecommunications information: (3476/Reso. 7209)

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations Parts 25 and 100. (3476/Reso. 7209)

(b) Any satellite television or data transmission facility, if both of the following conditions are met: (3476/Reso. 7209)

i. Over two-thirds (2/3) of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one (1) or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations Parts 25 and 100. (3476/Reso. 7209)

ii. Over two-thirds (2/3) of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services. (3476/Reso. 7209)

* Pursuant to Ordinance 3476/Reso. 7209, Section 5-10-110, Subsection (A), paragraph 16 is retroactive to April 1, 1987.
For purposes of Subdivision (b) of this paragraph, "test period" means the three hundred sixty-five- (365-) day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers. (3476/Reso. 7209)

19. Machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility, or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs. (3729/Reso. 7458)

20. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity, or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality, or a political subdivision of this State to prevent, monitor, control, or reduce land, water, or air pollution. (3729/Reso. 7458)

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission order issued April 21, 1997, 47 Code of Federal Regulations Part 73. This paragraph does not exempt any of the following: (3729/Reso. 7458)

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph. (3729/Reso. 7458)

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph. (3729/Reso. 7458)

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first. (3729/Reso. 7458)

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

(C) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in Subsection (D) below, where the property is acquired to become an integral part of another item itemized in Subsections (A) or (B) above.

(D) The tangible personal property defined as "income-producing capital equipment" in this Section shall not include:

1. Expendable materials. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in Subsections (A), (B), or (C) of this Section regardless of the cost or useful life of that property. (2977/Reso. 6722, 3729/Reso. 7458)
2. Janitorial equipment and hand tools. (2977/Reso. 6722)

3. Office equipment, furniture, and supplies.

4. Tangible personal property used in selling or distributing activities.

5. Motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to Subsection (A)10 above without regard to the use of such motor vehicles. (2977/Reso. 6722)

6. Shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt. (2977/Reso. 6722)

7. Motors and pumps used in drip irrigation systems. (2977/Reso. 6722)

(E) For the purposes of this Section: (2977/Reso. 6722)

1. "Aircraft" includes: (2977/Reso. 6722)

   (a) An airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121. (2977/Reso. 6722)

   (b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property. (2977/Reso. 6722)

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation. (2977/Reso. 6722)

5-10-115: DEFINITIONS; COMPUTER SOFTWARE, CUSTOM COMPUTER PROGRAMMING:

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

(B) CUSTOM COMPUTER PROGRAMMING: Any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

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

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

5-10-120: (RESERVED):
ARTICLE II - DETERMINATION OF GROSS INCOME

5-10-200: DETERMINATION OF GROSS INCOME; IN GENERAL:

(A) Gross income includes:

1. The value proceeding or accruing from the sale of property, the providing of service, or both.

2. The total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

3. All receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

4. All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

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

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

(D) For the purposes of this Chapter the total amount of gross income, gross receipts or gross proceeds of sales for nuclear fuel shall be deemed to be the value of the purchase price of uranium oxide used in producing the fuel. The tax imposed by this Chapter may be imposed only once for any one quantity or batch of nuclear fuel regardless of the number of the transactions or financing arrangements which may occur with respect to that nuclear fuel. (5190)

5-10-210: DETERMINATION OF GROSS INCOME; TRANSACTIONS BETWEEN AFFILIATED COMPANIES OR PERSONS:

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

5-10-220: DETERMINATION OF GROSS INCOME; ARTIFICIALLY CONTRIVED TRANSACTIONS:

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

5-10-230: DETERMINATION OF GROSS INCOME BASED UPON METHOD OF REPORTING:

The method of reporting chosen by a taxpayer, as provided in Section 5-10-520, necessitates the following adjustments to gross income for all purposes under this Chapter:
(A) Cash basis. When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:

1. The total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions and

2. All amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are allowed. Interest on finance contracts may be deducted if separately itemized on all books and records. (3270/Reso. 6970)

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

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

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

5-10-240: EXCLUSION OF CASH DISCOUNTS, RETURNS, REFUNDS, TRADE-IN VALUES, VENDOR-ISSUED COUPONS, AND REBATES FROM GROSS INCOME:

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

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

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

3. The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 5-10-427. (2977/Reso. 6722)

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

5. Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.
6. In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer. (3270/Reso. 6970)

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

5-10-250: EXCLUSION OF COMBINED TAXES FROM GROSS INCOME; ITEMIZATION; NOTICE; LIMITATIONS:

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

1. Remittance of all Tax Charged and/or Collected. When an added charge is made to cover City (or combined) Privilege and Use Taxes, the person upon whom the tax is imposed shall pay the full amount of the City taxes due, whether collected by him or not, and in the event he collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts billed or collected on account of combined taxes, the tax collected may not be excluded from gross income unless such records are completed and/or clarified to the satisfaction of the Tax Collector.

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

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

5-10-260: EXCLUSION OF FEES AND TAXES FROM GROSS INCOME; LIMITATIONS

(A) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees, or both, have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III regarding record keeping are met. For the purpose of the exclusion provided by this Subsection only, the terms vendor and vendee shall also apply to a lessor and lessee, respectively, of a motor vehicle if, in addition to all other requirements of this Subsection, the lease agreement specifically requires the lessee to pay such fees or taxes and such amounts are separately itemized in the documentation provided to the lessee.
(B) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III relating to record keeping have been met.

(C) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III regarding record keeping are met: (3270/Reso. 6970)

1. Emergency telecommunication services excise tax imposed pursuant to A.R.S. §42-1472. "Emergency telecommunications services" means telecommunication services or systems that use Number 911 or a similarly designated telephone number for emergency calls; (3270/Reso. 6970)

2. The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. §42-1472; (3270/Reso. 6970)

3. Federal excise taxes on communications services as imposed by 26 U.S.C. §4251; (3270/Reso. 6970)

4. Car rental surcharge imposed pursuant to A.R.S. §48-4234; (3270/Reso. 6970)

5. Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. §4001(.01); (3270/Reso. 6970)

6. Waste tire disposal fees imposed pursuant to A.R.S. §44-1302. (3270/Reso. 6970, 4169/Reso. 8205)

(D) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor. (3270/Reso. 6970)

5-10-265: (RESERVED) (2977/RESO. 6722)

5-10-266: EXCLUSION OF MOTOR CARRIER REVENUES FROM GROSS INCOME
There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following: (2977/Reso. 6722)

(A) A motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16. (2977,4616/Reso. 6722, 3476/Reso. 7209)

(B) Leasing, renting, or licensing a motor vehicle, subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16. (2977/Reso. 6722, 3476/Reso. 7209)

(C) The sale of a motor vehicle, and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting, or licensing such property. (2977/Reso. 6722, 3476/Reso. 7209)
(D) For the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing twenty-six thousand (26,000) pounds or more, a lightweight motor vehicle which weighs twelve thousand one (12,001) pounds to twenty-six thousand (26,000) pounds, and a light motor vehicle weighing twelve thousand (12,000) pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15, or A.R.S. Title 28, Chapter 16.

5-10-270: EXCLUSION OF GROSS INCOME OF PERSONS DEEMED NOT ENGAGED IN BUSINESS:

(A) For the purposes of this Section, the following definitions shall apply:

1. FEDERALLY EXEMPT ORGANIZATION: An organization which has received a determination of exemption or qualifies for such exemption under 26 U.S.C. §501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity," "nonlicensed business," or "public educational entity."

2. GOVERNMENTAL ENTITY: The federal government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.

3. NONLICENSED BUSINESS: Any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.

4. PROPRIETARY CLUB: Any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. §§501(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.

5. PUBLIC EDUCATIONAL ENTITY: Any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

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

(C) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:

1. Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. §§501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue as prescribed by regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.
2. Gross income from unrelated business income as that term is defined in 26 U.S.C. §512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.

3. (Reserved)

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

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

2. The Privilege License number of the otherwise exempt vendee; and

3. Such other information as the Tax Collector may require.

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

(F) In any case, if a federally exempt organization, proprietary club, or nonlicensed business rents, leases, licenses, or purchases any tangible personal property for its own storage or use and no City Privilege or Use Tax or equivalent excise tax has been paid on such transaction, said organization, club, or business shall be liable for the Use Tax upon such acquisitions or use of such property.

5-10-280: (RESERVED): (3729/RESO. 7458)

5-10-285: (RESERVED):

5-10-290: (REPEALED BY 3039)
ARTICLE III - LICENSING AND RECORD KEEPING

5-10-300: LICENSING REQUIREMENTS:

(A) The following persons shall make application to the Tax Collector for a Transaction Privilege and Use Tax License and no person shall engage or continue in business or engage in such activities until he shall have such a license: (2533,2910,4037,4852,5259)

1. Every person engaging or continuing in business activities within the city or town upon which a Transaction Privilege Tax is imposed by this Chapter. (5259)

2. Every person engaging or continuing in business within the city or town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter. (5259)

3. (Reserved)

(B) For the purpose of determining whether a Transaction Privilege and Use Tax License is required, a person shall be deemed to be “engaging or continuing in business” within the city or town if: (4037,4852,5259)

1. Engaging in any activity as a principal or broker, the gross receipts of which may be subject to Transaction Privilege Tax under Article IV of this Chapter, or (5259)

2. Maintaining within the city or town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business; maintaining within the city or town directly, or if a corporation by a subsidiary, any real or tangible personal property; or having any agent or other representative operating within the city or town under the authority of such person, or if a corporation by a subsidiary, irrespective of whether such place of business, property, or agent or other representative is located here permanently or temporarily, or (5259)

3. Soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the city or town from customers, consumers, or users located within the city or town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this city or town. (5259)

4. A person shall also be deemed to be “engaging or continuing in business” if engaging in any activity subject to Use Tax under Article VI of this Chapter for business purposes. Individuals who acquire items subject to Use Tax for their own personal use or their family’s personal use are not required to obtain a license. (5259)

5. (Reserved)

(C) A person engaging in more than one activity subject to Transaction Privilege Tax at any one business location is not required to obtain a separate license for each activity, provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. (4037,5259)
(D) The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days. (2977/Reso. 6722,4037,5259)

(E) Limitation. The issuance of a Transaction Privilege and Use Tax License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject. (4037,5259)

(F) Casual activity. For the purposes of this Chapter, individuals engaging in a “casual activity or sale” are not subject to the license requirements imposed under this Article provided that they are only engaged in private sales activities, such as the sale of a personal automobile or garage sale, on no more than three separate occasions during any calendar year. (5259)

5-10-310: LICENSING: SPECIAL REQUIREMENTS: (5259)

(A) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaging in business as partners, limited or general, shall be in the name of the partnership. (5259)

(B) Limited Liability Companies. Application for a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business shall provide, as a minimum, the names and addresses of all members and the manager. Licenses issued to persons engaging in business as Limited Liability Companies, shall be in the name of the LLC. (5259)

(C) Corporations. Application for a Transaction Privilege and Use Tax License for a corporation engaging or continuing in business shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaging in business as corporations shall be in the name of the corporation. (5259)

(D) Multiple Locations or Multiple Business Names. A person engaging or continuing in one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment. (2321,5259)

(E) Real Property Rental, Leasing, and Licensing for Use. In all cases the Transaction Privilege and Use Tax License shall be issued only to the owner of the real property regardless of the owner engaging a property manager or other broker to oversee the owner’s business activity including filing tax returns on behalf of the owner. Each rental property that can be independently sold or transferred is deemed to be a separate business establishment. Each platted parcel of real property subject to the tax imposed by this Chapter is deemed to be a separate business establishment and requires a separate license, regardless of the number of rental units located on that platted parcel. If one structure is located on multiple parcels in a manner such that ownership of an individual parcel cannot be sold or transferred without requiring alteration to divide the structure, one license shall be required for all affected parcels. (5259)
5-10-320: LICENSE FEES; ANNUAL RENEWAL; RENEWAL FEES: (5259)

(A) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of twenty dollars ($20.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately identified in this Section. The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such annual renewal fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (5259)

(B) The Transaction Privilege and Use Tax License to engage in the business activity of residential real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of twenty dollars ($20.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (5259)

(C) The Transaction Privilege and Use Tax License to engage in the business activity of commercial real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of twenty dollars ($20.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty dollars ($20.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. (5259)

5-10-330: LICENSING; DURATION; TRANSFERABILITY; DISPLAY; PENALTIES; PENALTY WAIVER; RELICENSING; FEES COLLECTIBLE AS IF TAXES. (5259)

(A) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector’s office to be deemed paid and received. (5259)

(B) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee’s place of business. (5259)

(C) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540. (5259)

(D) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or portion of a year he operated without a license, plus a license penalty of 50% of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540. (5259)
(E) Any licensee who permits his license to expire through cancellation as provided in Section 5-10-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 5-10-320. (5259)

(F) Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license. (5259)

(G) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the city for all applicable fees and penalties and shall be subject to the provisions of Sections 5-10-580 and 5-10-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections. (5259)

5-10-340: LICENSING; CANCELLATION; REVOCATION: (5259)

(A) Cancellation. The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector. (5259)

(B) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee. (5259)

(C) Notice and Hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector. (5259)

(D) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter. (5259)

5-10-350: OPERATING WITHOUT A LICENSE: (5259)

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter. (5259)

5-10-360: RECORD KEEPING REQUIREMENTS: (5259)

(A) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by this Article; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day. (3270/Reso. 6970, 5259)
(B) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

1. Only for future reporting periods, and

2. Only by express determination of the Tax Collector that such specific record keeping is necessary due to the inability of the taxing jurisdiction to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer. (5259)

5-10-362: RECORD KEEPING; INCOME: (5259)

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show: (5259)

(A) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City. (5259).

(B) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return. (5259)

(C) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return. (5259)

(D) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed: (5259)

1. If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease or license for use of rental equipment: (5259)
   a. the City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and (5259)
   b. the name, business address, and business activity of the customer, and (5259)
   c. evidence sufficient to persuade a reasonable prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation. (5259)

2. If the transaction is claimed to be exempt for any other reason: (5259)
   a. the name, business address, and business activity of the customer, and (5259)
   b. evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation (5259)

(E) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated. (5259)
(F) With respect to special classes and activities, such other books, records and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class. (5259)

(G) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter. (5259)

5-10-364: RECORDKEEPING: EXPENDITURES: (5259)
The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are: (5259)

(A) The total price of all goods acquired for use or storage in the City. (5259)

(B) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City. (5259)

(C) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license. (5259)

(D) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable. (5259)

(E) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:

1. All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders. (5259)

2. Disbursement of collected gratuities and related payroll information required of restaurants. (5259)

3. (Reserved)

4. The validity of any claims of proof of exemption. (5259)

5. A claimed alternative prior value for reconstruction. (5259)

6. All claimed exemptions to the Use Tax imposed by Article VI of this Chapter. (5259)

7. Costs used to compute the “computed charge” claimed for retail service and repair. (5259)

8. (Reserved)

9. (Reserved)

(F) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer. (5259)

(G) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter. (5259)
5-10-366: RECORDKEEPING: OUT-OF-CITY AND OUT-OF-STATE SALES: (5259)

(A) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations. (5259)

(B) Out-State-Sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation: (5259)

1. Documentation of location of the buyer at the time of the order placement; and (5259)

2. Shipping, delivery, or freight documents showing where the buyer took delivery; and (5259)

3. Documentation of intended location of use or storage of the tangible personal property sold to such buyer. (5259)

5-10-370: RECORDKEEPING: CLAIM OF EXCLUSION, EXEMPTION, DEDUCTION, OR CREDIT; DOCUMENTATION; LIABILITY: (5259)

(A) All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required either by this Chapter or Regulation. (5259)

(B) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again by collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor. (5259)

5-10-372: PROOF OF EXEMPTION: SALE FOR RESALE; SALE, RENTAL, LEASE, OR LICENSE OF RENTAL EQUIPMENT: (5259)

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of “sale for resale or lease” or “lease for re-lease” does not meet this burden and is insufficient to justify an exemption. The “reasonable evidence” must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions. (5259)

5-10-380: INADEQUATE OR UNSUITABLE RECORDS. (5259)

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either: (5259)

(A) To provide such other records required by this Chapter or Regulation; or (5259)

(B) To correct or to reconstruct his records, to the satisfaction of the Tax Collector. (5259)
ARTICLE IV - PRIVILEGE TAXES

5-10-400: IMPOSITION OF PRIVILEGE TAXES; PRESUMPTION:

(A) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

1. Privilege Tax upon persons on account of their business activities to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not or whether derived from within the City or from without.

2. (Reserved)

3. A privilege tax upon persons for the privilege of selling jet fuel, whether derived from residents of the City or not, or whether derived from within the City or from without, in accordance with the provisions of Section 5-10-400. (3729/Reso. 7458)

(B) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(C) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income, or gallons sold, is subject to the tax until the contrary is established by the taxpayer. (3729/Reso. 7458)

(D) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

5-10-405: ADVERTISING:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of local advertising by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from local advertising. All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "local advertising," except the following: (3491,4553,5478)

1. The advertising of a product or service which is sold or provided both within and without the State by more than one (1) "commonly designated business entity" within the State and in which the advertisement names either no "commonly designated business entity" within the State or more than one (1) "commonly designated business entity."
COMMONLY DESIGNATED BUSINESS ENTITY: Any person selling or providing any product or service to its customers under a common business name or style even though there may be more than one (1) legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

2. The advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

3. The advertising of a product which may only be purchased from an out-of-State supplier.

4. Political advertising for United States Presidential and Vice Presidential candidates only.

5. Advertising by means of product purchase coupons redeemable at any retail establishment carrying such product, but not product coupons redeemable only at a single commonly designated business entity.

6. Advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(B) (Reserved)

5-10-407: (RESERVED) (2321)

5-10-410: AMUSEMENTS, EXHIBITIONS, AND SIMILAR ACTIVITIES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the City or takes place entirely within the City, which includes the following type or nature of businesses: (2977,4616,5478/Reso. 6722,3491,4553)

1. Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment. (2977/Reso. 6722)

2. (Reserved)

(B) Deductions or Exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section: (4616)

1. (Reserved)

2. Amounts retained by the Arizona Exposition and Arizona State Fair Board from ride ticket sales at the annual State Fair. (4616)
3. Income received from a hotel business subject to tax under Section 5-10-444, if all of the following apply:

(a) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax. (4616)

(b) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection. (4616)

(c) The hotel business has provided an exemption certificate to the person engaging in business under this section. (4616)

4. Income that is specifically included as the gross income of a business activity upon which another section of this article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity. (4616)

5. Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business. (4616)

(C) The tax imposed by this section shall not include arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement. (4616)

5-10-415: CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City. (3491,4553,5478)

1. However, gross income from construction contracting shall not include charges related to groundwater-measuring devices required by A.R.S. §45-604.

2. (Reserved)

3. Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 5-10-427. (2977/Reso. 6722)

4. For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services. (4835)
(B) Deductions and Exemptions. (3729/Reso. 7458)

1. Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

2. All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

3. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under: (3729/Reso. 7458)

   (a) Section 5-10-465, Subsections (G) and (P) (3729/Reso. 7458)

   (b) Section 5-10-660, Subsections (G) and (P) (3749/Reso. 7458)

   shall be exempt or deductible, respectively, from the tax imposed by this Section. *(3729/Reso. 7458)

4. The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to Section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one (1) of the following: (3729/Reso. 7458, 3954/Reso. 7756)

   (a) To be incorporated into real property. (3729/Reso. 7458)

   (b) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

   (c) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

5. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

6. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-415, Subsection (B)3 is retroactive to January 1, 1999
7. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

8. The gross proceeds of sales or gross income received from a post-construction contract to perform post-construction treatment of real property for termite and general pest control, including wood-destroying organisms, shall be exempt from tax imposed under this Section. (3954/Reso. 7756)

9. Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(a) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, Subsection D. (4616)

(b) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation. (4616)

(c) Any other information considered to be necessary. (4616)

10. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer. For the purposes of this paragraph: (4616,4979)

(a) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(c) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

11. For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sale or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)
(C) **SUBCONTRACTOR:** A construction contractor performing work for either:

1. A construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number. (2535)

2. An owner-builder who has provided the subcontractor with a written declaration that:
   
   (a) The owner-builder is improving the property for sale; and
   
   (b) The owner-builder is liable for the tax for such construction contracting activity; and
   
   (c) The owner-builder has provided the contractor his City Privilege License number. (2535)

3. A person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and setup and has provided the subcontractor his City privilege license number. (2977/Reso. 6722)

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above. (2535)

5-10-416: **CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:**

(A) The tax shall be equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City. (3491, 4553, 5478)

1. The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

2. **IMPROVED REAL PROPERTY:** Any real property:
   
   (a) Upon which a structure has been constructed; or
   
   (b) Where improvements have been made to land containing no structure (such as paving or landscaping); or
   
   (c) Which has been reconstructed as provided by regulation; or
   
   (d) Where water, power, and streets have been constructed to the property line.

3. **SALE OF IMPROVED REAL PROPERTY:** Includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
4. **PARTIALLY IMPROVED RESIDENTIAL REAL PROPERTY:** As used in this Section, means any improved real property as defined in Subsection (A)2 above being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale. (2321)

(B) Exclusions.

1. In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income as provided by regulation.

2. Neither the cost nor the fair market value of the land which constitutes part of the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

3. (Reserved)

4. A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in Subsection (A)4 above to another speculative builder only if all of the following conditions are satisfied:

   (a) The speculative builder purchasing the partially improved residential real property has a valid City Privilege License for construction contracting as a speculative builder; and (2535)

   (b) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all Privilege Taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and (2535)

   (c) The seller also:

      i. Maintains proper records of such transactions in a manner similar to the requirements provided in this Chapter relating to sales for resale; and

      ii. Retains a copy of the written declaration provided by the buyer for the transaction; and

      iii. Is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City Privilege Tax return where he claims the exclusion. (2321,2535)

5. For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services. (4835)

(C) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions, and tax credits: (3729/Reso. 7458)
1. Exemptions. (3729/Reso.7458)

(a) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under:

i. Section 5-10-465, Subsections (G) and (P) (3729/Reso. 7458)

ii. Section 5-10-660, Subsections (G) and (P) (3729/Reso. 7458)

shall be exempt or deductible, respectively, from the tax imposed by this Section.* (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(c) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(d) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph: (4616,4979).

(i) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(iii) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-416, Subsection (C)(a) is retroactive to January 1, 1999
2. Deductions. (3729/Reso. 7458)

(a) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%). (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following: (3729/Reso. 7458, 3954/Reso. 7756)

(i) To be incorporated into real property. (3729/Reso. 7458)

(ii) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

(c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)

3. Tax Credits. (3729/Reso. 7458)

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector. (3729/Reso. 7458)

(a) A tax credit equal to the amount of City privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder. (3729/Reso. 7458)

(b) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property. (3729/Reso. 7458)

(c) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported. (3729/Reso. 7458)
5-10-417: CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS:

(A) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two percent (2.00%) of:

1. The gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 5-10-415(C)2; and

2. The purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(B) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this Subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(C) The tax liability of this Section is subject to the following provisions relating to exemptions, deductions, and tax credits:

1. Exemptions.

(a) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment, or other tangible personal property that is exempt from or deductible from privilege or use tax under:

i. Section 5-10-465, Subsections (G) and (P)

ii. Section 5-10-660, Subsections (G) and (P)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(b) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed by this Section.

(c) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair, or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 5-10-465, Subsection (G) shall be exempt from the tax imposed under this Section.

* Pursuant to Ordinance 3729/Reso. 7458, Section 5-10-417, Subsection (B)1(a) is retroactive to January 1, 1999
(d) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural, or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition, or addition to or subtraction from any building, highway, road, excavation, manufactured building, or other structure, project, development, or improvement used directly and primarily to prevent, monitor, control, or reduce air, water, or land pollution shall be exempt from the tax imposed under this Section. (3729/Reso. 7458)

(e) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the Model City Tax Code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this Section. For the purposes of this paragraph: (4616,4979).

(i) The attributable amount shall not exceed the value of the development fees actually imposed. (4979)

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees. (4979)

(iii) “Development Fees” means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to A.R.S. Section 9-463.05, A.R.S. Section 11-1102 or A.R.S. Title 48 regardless of the jurisdiction to which the fees are paid. (4979, 5059)

2. Deductions. (3729/Reso. 7458)

(a) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%). (3729/Reso. 7458)

(b) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 5-10-110, that is deducted from the retail classification pursuant to Section 5-10-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation, or manufactured building or other structure, project, development, or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance, or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one (1) of the following: (3729/Reso. 7458, 3954/Reso. 7756)
(i) To be incorporated into real property. (3729/Reso. 7458)

(ii) To become so affixed to real property that it becomes part of the real property. (3729/Reso. 7458)

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed. (3729/Reso. 7458)

(c) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a Solar Energy Contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the City, as applicable, for examination. (4835, 5059)

3. Tax Credits. (3729/Reso. 7458)

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector. (3729/Reso. 7458)

(a) A tax credit equal to the amount of City privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder. (3729/Reso. 7458)

(b) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property. (3729/Reso. 7458)

(c) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported. (3729/Reso. 7458)

(D) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 5-10-540, will be based on reportable date.

(E) (Reserved)

5-10-418: (RESERVED) (3729/RESO. 7458)

5-10-420: (RESERVED):
5-10-422:  JET FUEL SALES: (3729/RESO. 7458)

(A) The tax rate shall be at an amount of three (3) cents per gallon sold from the business activity upon every person engaging or continuing in the business of selling jet fuel. (3729/Reso. 7458)

1. Gallons sold includes all gallons sold, bartered, exchanged, included as part or whole of a trade-out, or similar transactions regardless of the type or form of payment. (3729/Reso. 7458)

2. For purposes of this Section the following terms are substitutable in Articles III and V of this Chapter, and corresponding regulations: (3729/Reso. 7458)

   (a) "Gallons" for "gross income." (3729/Reso. 7458)

   (b) "Gallon(s)" for "amount(s)." (3729/Reso. 7458)

(B) The burden of proving that a sale of jet fuel is not a taxable sale shall be upon the person who made the sale. (3729/Reso. 7458)

(C) Except as provided in Section 5-10-567, when this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a jet fuel sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax. (3729/Reso. 7458)

(D) The appropriate tax liability for any jet fuel sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the rate of the city or town of such seller's location. (3729/Reso. 7458)

(E) Exemptions. Notwithstanding Section 5-10-400(D), the exemptions in Sections 5-10-465(A), (B), and (D) through (Z) will apply to sales of jet fuel taxed under this Section. (3729/Reso. 7458)

5-10-425:  JOB PRINTING:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction. (3491,4553,5478)

(B) The tax imposed by this Section shall not apply to:

1. Job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

2. Out-of-City sales.

4. Job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by Subsection 5-10-435(A) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.

5. Sales of job printing to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

6. (Reserved) (2977/Reso. 6722)

5-10-427: MANUFACTURED BUILDINGS

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income, including site preparation, moving to the site, and/or setup, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building. (2977,4553,5478 Reso. 6722,3491)

(B) The sale of used manufactured buildings is not taxable. (2977/Reso. 6722)

(C) The sales price of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. The sale of such items is subject to the tax under Section 5-10-460. (2977/Reso. 6722)

(D) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability. (2977/Reso. 6722)

5-10-430: TIMBERING AND OTHER EXTRACTION: (2977,4553/RESO. 6722)

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the following businesses: (3491,4553,5478)

1. Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use. (2977/Reso. 6722)

2. Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use. (2977/Reso. 6722)

(B) The rate specified in Subsection (A) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State. (2977/Reso. 6722)
(C) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of State without making sale of such products or ships his products outside the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out of State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(D) (Reserved) (2977/Reso. 6722)

5-10-432: MINING

(A) The tax rate shall be at an amount equal to one-tenth of one percent (.1%), not to exceed one-tenth of one percent (.1%), of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use. (2977/Reso. 6722)

(B) The rate specified in Subsection (A) above shall be applied to the value of the entire product mined, smelted, or produced for sale, profit, or commercial use when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State. (2977/Reso. 6722)

(C) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of State without making sale of such products or ships his products outside the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out of State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section. (2977/Reso. 6722)

5-10-435: PUBLISHING AND PERIODICALS DISTRIBUTION:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business activity of: (3491,4553,5478)

1. Publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 5-10-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

2. Distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(B) "Location of publication" is determined by:

1. Location of the editorial offices of the publisher, when the physical printing is not performed by the publisher or

2. Location of either the editorial offices or the printing facilities if the publisher performs his own physical printing.
(C) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further, except sales of published items directly or through distributors for the purpose of resale to retailers subject to the Privilege Tax on such resale.

(D) "Circulation," for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(E) Allocation of Taxes Between Cities and Towns. In cases where publication or distribution occurs in more than one (1) city or town, the measurement of gross income subject to tax by the City shall include:

1. That portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

2. Only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(F) The tax imposed by this Section shall not apply to sales of newspapers, magazines, or other periodicals to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

5-10-440: (RESERVED):

5-10-444: HOTELS:
The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any: (3491,4553,5478)

(A) Person. (2535)

(B) Exclusions. The tax imposed by this section shall not include: (2535,4616)

1. Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other State or a political subdivision of this State or of any other State in a privately operated prison, jail or detention facility. (4616)

2. Gross proceeds of sales or gross income that is properly included in another business activity under this article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity. (4616)

3. Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article. (4616)
4. Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 5-10-410 or Section 5-10-475 due to an exclusion, exemption or deduction. (4616)

5. Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 5-10-445 or Section 5-10-450 as rental, leasing or licensing for use of real or tangible personal property. (4616)

6. Income from providing telephone, fax or Internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 5-10-470 as telecommunication services. (4616)

5-10-445: RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration to the tenant in actual possession or the licensing for use of real property to the final licensee located within the City for a consideration, including any improvements, rights, or interest in such property; provided further that: (2977,4553,5478/Reso. 6722,3476/Reso. 7209,3491)

1. Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

2. Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

3. However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 5-10-470.

(B) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(C) Charges by a qualifying hospital, qualifying community health center, or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt. (3476/Reso. 7209)

(D) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(E) (Reserved)
(F) A person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased, or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is not deemed to be in the rental business and is therefore exempt from the tax imposed by this Section on such income. However, a person who has one (1) or more units of commercial property is subject to the tax imposed by this Section on rental, lease, and license income from all such lodging spaces and commercial units of real estate, even though said person may have fewer than two (2) lodging spaces. (2535, 2977, 4841/Reso. 6722)

(G) (Reserved)

(H) (Reserved)

(I) (Reserved)

(J) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 5-10-444 of this Code. (2535)

(K) (Reserved)

(L) (Reserved) (2977/Reso. 6722)

(M) (Reserved) (2977/Reso. 6722)

(N) Notwithstanding the provisions of Section 5-10-200(B), the fair market value of one (1) apartment in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section. (2977/Reso. 6722)

(O) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State, or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail, or detention facility is exempt from the tax imposed by this Section. (3729/Reso. 7458)

(P) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt. (3954/Reso. 7756)

(Q) Charges to patients receiving "personal care" or "directed care," by any licensed assisted living facility, licensed assisted living center, or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title 36, Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt. (3954/Reso. 7756)
(R) Income received from the rental of any “low-income unit” as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the “gross rent” defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory “low-income unit” rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the “gross rent” limitation for the unit and the rent received from that unit. (4582)

(S) Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph: (5059, 5190)

1. “Affiliated companies, businesses, persons or reciprocal insurers” means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, an affiliated entity holds a controlling interest in both the lessor and the lessee or an unrelated person holds a controlling interest in both the lessor and the lessee. (5059, 5190)

2. “Controlling interest” means direct or indirect ownership of a least eighty per cent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation. (5059, 5190)

3. “Reciprocal Insurer” has the same meaning prescribed in A.R.S. Section 20-762. (5059, 5190)

5-10-446: (RESERVED) (2321)

5-10-447: RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY; ADDITIONAL TAX UPON TRANSIENT LODGING: (3175,4616,5018)
In addition to the taxes levied as provided in Section 5-10-444, there is hereby levied and shall be collected an additional tax in an amount equal to five percent (5%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient. (3175,4192,4616,5018)

5-10-450: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by regulation. (3491,4553,5478)

(B) Special Provisions Relating to Long-Term Motor Vehicle Leases: A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor’s interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
(C) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

1. Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

2. Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

3. Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 5-10-410 or to a radio station, television station, or subscription television system.

4. Rental, leasing, or licensing for use of the following:
   
   (a) Prosthetics.
   
   (b) Income-producing capital equipment.
   
   (c) Mining and metallurgical supplies.

   These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies. (2977/Reso. 6722)

5. Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)3 of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement, or rehabilitation programs or testing for mentally or physically handicapped persons. (3476/Reso. 7209)

6. Separately billed charges for delivery, installation, repair, and/or maintenance as provided by regulation.

7. Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.

8. The gross income from coin-operated washing, drying, and dry cleaning machines or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.

9. Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State as prescribed by regulation if such rental, leasing, or licensing had been a sale. (2977/Reso. 6722)

10. Rental, leasing, or licensing for use an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215. (3729,4616/Reso. 7458, 3921)
11. Rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and City, as applicable, for examination. (4979)

5-10-452: (RESERVED) (2535)

5-10-455: RESTAURANTS AND BARS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity. (3491,4553,5478)

(B) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, setup, and cleanup charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this section. (2321)

(C) The tax imposed by this section shall not apply to sales to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321,3476/Reso. 7209)

(D) The tax imposed by this section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. §42-5061 (A) (49) that serves the food and beverages to its passengers, without additional charge, for consumption in flight. (3476,4616/Reso. 7209)

(E) The tax imposed by this section shall not apply to sales of prepared food, beverages, condiments, or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. (3476/Reso. 7209)

(F) For the purposes of this section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476/Reso. 7209)

5-10-460: RETAIL SALES; MEASURE OF TAX; BURDEN OF PROOF; EXCLUSIONS:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail. (3491,4553,5478)

(B) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
(C) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:

1. Sales of stocks, bonds, options, or other similar materials.

2. Sales of lottery tickets or shares pursuant to Article 1, Chapter 5, Title 5, Arizona Revised Statutes.

3. Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

4. Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax shall be considered gross income of that business activity and are not includable as gross income subject to the tax imposed by this Section.

5. Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(D) (Reserved)

(E) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax. (3270/Reso. 6970)

(F) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller’s location.

(G) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section. (3729/Reso. 7458)

5-10-465: RETAIL SALES; EXEMPTIONS:
Income derived from the following sources is exempt from the tax imposed by Section 5-10-460:

(A) Sales of tangible personal property to a person regularly engaged in the business of selling such property.

(B) Out-of-City sales or out-of-State sales. (2977/Reso. 6722)

(C) Charges for delivery, installation, or other direct customer services as prescribed by regulation.

(D) Charges for repair services as prescribed by regulation when separately charged and separately maintained in the books and records of the taxpayer.

(E) Sales of warranty, maintenance, and service contracts when separately charged and separately maintained in the books and records of the taxpayer.
(F) Sales of prosthetics.

(G) Sales of income-producing capital equipment.

(H) Sales of rental equipment and rental supplies.

(I) Sales of mining and metallurgical supplies.

(J) Sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single-trip use fuel tax permit issued under A.R.S. §28-5739; or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle. (3270/Reso. 6970,3476/Reso. 7209)

(K) Sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.

(L) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State. (3270/Reso. 6970)

(M) Sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient or component part of a product.

(N) Sales made directly to the federal government to the extent of: (2447)

1. One hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer. (2447)

2. Fifty percent (50%) of the gross income derived from retail sales made by any other person. (2447)

(O) Sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 5-10-455 or the equivalent excise tax upon such income. (2977/Reso. 6722)
(P) Sales of tangible personal property to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)3 of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement, or rehabilitation programs or testing for mentally or physically handicapped persons. (3476/Reso. 7209)

(Q) Sales of Food. (IN98-1/Election 3-14-00)

Definitions. (IN98-1/Election 3-14-00)

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply: (IN98-1/Election 3-14-00)

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other nonstaple foods. (IN98-1/Election 3-14-00)

2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs. (IN98-1/Election 3-14-00)

3. "Automatic retailer" means a coin-operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers. (IN98-1/Election 3-14-00)

4. "Caterer" means a person engaged in the business of serving meals, food, and drinks on the premises used by his customer, but does not include employees hired by the hour or day. (IN98-1/Election 3-14-00)

5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food, and grocery items kept under refrigeration. (IN98-1/Election 3-14-00)

6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle. (IN98-1/Election 3-14-00)

7. "Food." (IN98-1/Election 3-14-00)

(a) Food is defined as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages, or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax-exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the statute, and are therefore subject to the sales tax, shall be referred to herein as "taxable foods." (IN98-1/Election 3-14-00)
(b) "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the City does not consider food for human consumption: (IN98-1/Election 3-14-00)

i. Pet food and supplies. (IN98-1/Election 3-14-00)

ii. Cosmetics and grooming items. (IN98-1/Election 3-14-00)

iii. Tobacco products. (IN98-1/Election 3-14-00)

iv. Soaps and paper products and household supplies. (IN98-1/Election 3-14-00)

v. Dietary supplements such as vitamins or protein supplements. (IN98-1/Election 3-14-00)

vi. Medicines. (IN98-1/Election 3-14-00)

vii. Fertilizer. (IN98-1/Election 3-14-00)

8. "Food for Consumption on the Premises." (IN98-1/Election 3-14-00)

(a) "Food for consumption on the premises" means the following: (IN98-1/Election 3-14-00)

i. Hot prepared food, including products, items, or ingredients of food which are prepared and sold or intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer. (IN98-1/Election 3-14-00)

ii. Hot or cold sandwiches including frozen sandwiches. (IN98-1/Election 3-14-00)

iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and within parking areas (for in-car consumption). (IN98-1/Election 3-14-00)

iv. Food served with trays, glasses, dishes, or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer. (IN98-1/Election 3-14-00)

v. Beverages sold in cups, glasses, or open containers. Beverages shall include items such as milk shakes and ice cream floats. (IN98-1/Election 3-14-00)

vi. Food sold by caterers. (IN98-1/Election 3-14-00)
vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction, food for consumption on the premises does not include sales of tax-exempt food by a qualified retailer within the premises of a full-time educational institution that charges tuition for a full course of studies. (IN98-1/Election 3-14-00)

(b) Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable. (IN98-1/Election 3-14-00)

9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption. (IN98-1/Election 3-14-00)

10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails, and other such institutions. (IN98-1/Election 3-14-00)

11. "Premises" means the total space and facilities, including buildings, grounds, and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer. (IN98-1/Election 3-14-00)

12. "Qualified Retailer." (IN98-1/Election 3-14-00)

(a) A qualified retailer or qualified retail business is one that may be eligible to sell tax-exempt food without including the sale of tax-exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer. (IN98-1/Election 3-14-00)

(b) Qualified retailers are: (IN98-1/Election 3-14-00)

i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the Food Stamp Program. If a retailer is eligible to participate in the Food Stamp Program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Arizona Department of Revenue (and is approved by the State) to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include: (IN98-1/Election 3-14-00)

(1) Grocery stores; (IN98-1/Election 3-14-00)

(2) Convenience stores; (IN98-1/Election 3-14-00)

(3) Butcher shops; (IN98-1/Election 3-14-00)
(4) Bakeries; (IN98-1/Election 3-14-00)

(5) Dairy stores; (IN98-1/Election 3-14-00)

(6) Cheese stores; (IN98-1/Election 3-14-00)

(7) Farmer’s markets. (IN98-1/Election 3-14-00)

ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations. (IN98-1/Election 3-14-00)

iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups. (IN98-1/Election 3-14-00)

iv. Delicatessen business, if such retailer conducts his business so that the sale of tax-exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax-computing keys which are used to record taxable and tax-exempt sales. (IN98-1/Election 3-14-00)

v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include: (IN98-1/Election 3-14-00)

(1) Snackmobile; (IN98-1/Election 3-14-00)

(2) Chuck wagon; (IN98-1/Election 3-14-00)

(3) Mobile hot dog stands. (IN98-1/Election 3-14-00)

vi. Vending machines and other automatic retailers. (IN98-1/Election 3-14-00)

13. "Staple food" means those food items intended for home preparation and consumption, which includes meats, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. (IN98-1/Election 3-14-00)

14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the sales tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises. (IN98-1/Election 3-14-00)

15. Tax-Exempt Foods. (IN98-1/Election 3-14-00)

(a) "Tax-exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1998, to be purchased with food coupons issued by the United States Department of Agriculture. (IN98-1/Election 3-14-00)
(b) Tax-exempt foods shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1998. (IN98-1/Election 3-14-00)

(c) The following are examples of items which the City will consider as tax-exempt food: (IN98-1/Election 3-14-00)

- Bread and flour products
- Vegetables and vegetable products
- Candy and confectionery
- Sugar, sugar products and substitutes
- Cereal and cereal products
- Butter, oleomargarine, shortening, and cooking oils
- Cocoa and cocoa products
- Coffee and coffee substitutes
- Milk and milk products
- Eggs and egg products
- Tea
- Meat and meat products
- Spices, condiments, extracts, and food colorings
- Fish and fish products
- Frozen foods
- Soft drinks and soda (including bottles on which a deposit is required to be paid)
- Fruit and fruit products
- Packaged ice cream products
- Dietary substitutes
- Ice cubes and bottled water including carbonated and mineral water
- Purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax-computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted. (IN98-1/Election 3-14-00)

(R) Sales of the following to persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry, or ratites: (2977/Reso. 6722)

1. Seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.

2. Feed for livestock, poultry, or ratites, including salt, vitamins, and other additives to such feed. (2977/Reso. 6722)

3. Livestock, poultry, or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses. (2977/Reso. 6722)

4. (Reserved)
This exemption shall not be construed to include machinery, equipment, fuels, lubricants, pharmaceuticals, repair and replacement parts, or other items used or consumed in the running, maintenance, or repair of machinery, equipment, buildings, or structures used or consumed in the business of farming, ranching, or feeding of livestock, poultry, or ratites. (2977/Reso. 6722)

(S) Sales of groundwater-measuring devices required by A.R.S. §45-604.

(T) Sales of paintings, sculptures, or similar works of fine art, provided that such works of fine art are sold by the original artist; and provided further that sales of "art creations," such as jewelry, macramé, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether sold by the artist or by another.

(U) Sales of aircraft acquired for use outside the State as prescribed by regulation. (2977/Reso. 6722)

(V) Sales of food products by producers as provided for by A.R.S. §3-561, §3-562, and §3-563. (3270,4616/Reso. 6970)

(W) (Reserved)

(X) Sales of food and drink to a person who is engaged in business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees’ hours of employment. (5190)

(Y) (Reserved)

(Z) Gross income received for tangible personal property consisting of manufactured items destroyed by being subjected to destructive stress, strain, or similar testing for the purpose of developing engineering information or for the purpose of quality control, but only to the extent that a sale of said property would otherwise be exempt by the provisions of this Chapter.

(AA) The sale of tangible personal property used in remediation contracting as defined in Section 5-10-100 and Regulation 5-10-100.S. (3420/Reso. 7134)

(BB) Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries, or federal, state, county, or municipal libraries for use by the public as follows: (3476/Reso. 7209)

1. Printed or photographic materials. (3476/Reso. 7209)

2. Electronic or digital media materials. (3476/Reso. 7209)

(CC) Sales of food, beverages, condiments, and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. §42-5061 (A) (49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476,4616/Reso. 7209)
(DD) In computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services. (3476/Reso. 7209)

(EE) For the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470 is considered to be a sale for resale in the regular course of business. (3476/Reso. 7209)

(FF) Sales of alternative fuel as defined in A.R.S. §1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used fuel oil under A.R.S. §49-426 or §49-480. (3476/Reso. 7209)

(GG) Sales of food, beverages, condiments, and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476, 5190/Reso. 7209)

(HH) Sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 5-10-444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy. (3476/Reso. 7209)

(I) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline. (3729/Reso. 7458)

(JJ) Sales of food, beverages, condiments, and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks, or other disposable containers, or other items which facilitate the consumption of food. (3729/Reso. 7458)

(KK) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215. (3729,4616/Reso. 7458, 3921)

(LL) Sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the Department of Revenue as a Solar Energy Retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and City, as applicable, for examination. (4835)

(MM) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)
(NN) Sales of magazines or other periodicals or other publications by this state to encourage tourist travel. (5190)

(OO) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing. (5190)

(PP) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. (5190)

(QQ) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service. (5190)

(RR) Sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This Subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction. (5190)

5-10-470: TELECOMMUNICATION SERVICES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City. (3491,4553,5478)

1. Telecommunication services shall include:

   (a) Two-way voice, sound, and/or video communication over a communications channel.

   (b) One-way voice, sound, and/or video transmission or relay over a communications channel.

   (c) Facsimile transmissions.

   (d) Providing relay or repeater service.

   (e) Providing computer interface services over a communications channel.

   (f) Time-sharing activities with a computer accomplished through the use of a communications channel.
2. Gross income from the business activity of providing telecommunication services to consumers within this City shall include:

(a) All fees for connection to a telecommunication system.

(b) Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.

(c) Fees charged for access to or subscription to or membership in a telecommunication system or network.

(d) Charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.

(e) Charges for telephone, fax or Internet access services provided at an additional charge by a hotel business subject to taxation under Section 5-10-444. (4616)

(B) Resale Telecommunication Services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser’s customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(C) Interstate Transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

(D) (Reserved)

(E) (Reserved)

(F) Prepaid Calling Cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 5-10-460 are exempt from the tax imposed under this Section. (3729/Reso. 7458)

(G) Internet Access Services. The gross income subject to tax under this Section shall not include sales of Internet access services to the person's subscribers and customers. For the purposes of this Subsection: (3954/Reso. 7756)

1. "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio. (3954/Reso.7756)

2. "Internet access" means a service that enables users to access content, information, electronic mail, or other services over the Internet. Internet access does not include telecommunication services provided by a common carrier. (3954/Reso. 7756)

5-10-475: TRANSPORTING FOR HIRE:

The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State: (3491,4553,5478)

(A) Transporting of persons or property by railroad; provided, however, that the tax imposed by this Subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one (1) railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads. (3729/Reso. 7458)
(B) Transporting of oil or natural or artificial gas through pipe or conduit.

(C) Transporting of property by aircraft.

(D) (Reserved)

(E) (Reserved)

(F) Deductions or Exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section:

1. Income that is specifically included as the gross income of a business activity upon which another section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity. (4616).

2. Income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business. (4616)

(G) The tax imposed by this section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation. (4616)

5-10-480: UTILITY SERVICES:

(A) The tax rate shall be at an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

1. Consumers or ratepayers who reside within the City.

2. Consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or rate payers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(B) Exclusion of Certain Sales of Natural Gas to a Public Utility. Notwithstanding the provisions of Subsection (A) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its rate payers shall be considered a retail sale of tangible personal property subject to Sections 5-10-460 and 5-10-465 and not considered gross income taxable under this Section.

(C) Resale Utility Services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or rate payers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
(D) (Reserved)

(E) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (2321, 3476/Reso. 7209)

(F) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle. (3270/Reso. 6970)

(G) The tax imposed by this Section shall not apply to: (3270/Reso. 6970)

1. Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial, or industrial developments or connecting residential, commercial, or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement, or debt service of the utility system or systems. (3270/Reso. 6970)

2. Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on, or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment. (3270/Reso. 6970)

(H) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. §1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. §49-426 or §49-480. (3476/Reso. 7209)

(I) The tax imposed by this Section shall not apply to sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, “renewable energy credit” means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)

5-10-485: WASTEWATER REMOVAL SERVICES (2535, 4990, 5190)

(A) The tax rate shall be an amount equal to two percent (2.00%) of the gross income from the business activity upon every person engaging or continuing in the business of providing wastewater removal services by means of sewer lines or similar pipelines to: (4990, 5190, 5478)

1. Consumers or ratepayers who reside within the city. (5190)

2. Consumers or ratepayers of this city, whether within the city or without, to the extent that this city provides such persons wastewater removal services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this city for providing such wastewater removal services to such persons. (5190)

(B) The tax imposed by this Section shall not apply to gross income relating to the providing of wastewater removal services from a qualifying hospital, qualifying community health center or a qualifying health care organization. (4990)
ARTICLE V - ADMINISTRATION

5-10-500: ADMINISTRATION OF THIS CHAPTER; RULE MAKING:

(A) The administration of this Chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector.

(B) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

(C) Except as provided in this Section, no rule or regulation shall be adopted until approved by formal action of the City Council.

(D) (Reserved) (3270/Reso. 6970)

(E) The Unified Audit Committee shall publish uniform guidelines that interpret the model city tax code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005. (3954/Reso. 7756)

1. Prior to finalization of uniform guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment. (3954/Reso. 7756)

2. Pursuant to A.R.S. Section 42-6005(D), when the State statutes and the Model City Tax Code are the same and where the Arizona Department of Revenue has issued written guidance, the Department's interpretation is binding on cities and towns. (3954/Reso. 7756)

5-10-510: DIVULGING OF INFORMATION PROHIBITED; EXCEPTIONS ALLOWING DISCLOSURE:

(A) Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.

(B) The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the federal government, the State of Arizona, or any political subdivisions.

(C) The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.

(D) Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.

(E) Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report and the amount of such delinquent and unpaid tax, penalty, or interest to a private collection agency having a written collection agreement with the City.
(F) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of A.R.S. Section 42-6003, A.R.S. Section 42-6005, and A.R.S. Section 42-6056.

(G) The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 5-10-435 upon publishing and distribution of periodicals.

(H) The Tax Collector may provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

5-10-515: DUTIES OF TAXPAYER PROBLEM RESOLUTION OFFICER:

(A) The Taxpayer Problem Resolution Officer shall assist taxpayers in:

1. Obtaining easily understandable tax information and information on audits, corrections, and appeals procedures of the City.

2. Answering questions regarding preparing and filing the returns required under this Chapter.

3. Locating documents filed with or payments submitted to the Tax Collector by the taxpayer.

(B) The Taxpayer Problem Resolution Officer shall also:

1. Receive and evaluate complaints of improper, abusive, or inefficient service by the Tax Collector or any of his designees, employees, or agents and recommend to the City Manager or, for a City without a City Manager, the Chief Administrative Officer, appropriate action to correct such service.

2. Identify policies and practices of the Tax Collector or any of his designees, employees, or agents that might be barriers to the equitable treatment of taxpayers and recommend alternatives to the City Manager or, for a City without a City Manager, the Chief Administrative Officer.

3. Provide expeditious service to taxpayers whose problems are not resolved through normal channels.

4. Negotiate with the Tax Collector, his designees, employees, or agents to resolve the most complex and sensitive taxpayer problems.

5. Take action to stop or prohibit the Tax Collector from taking an action against a taxpayer.

6. Participate and present taxpayers’ interests and concerns in meetings formulating the City’s policies and procedures under and interpretation of this Chapter.

7. Compile data each year on the number and type of taxpayer complaints and evaluate the actions taken to resolve those complaints.
8. Survey taxpayers each year to obtain their evaluation of the quality of service provided by the Tax Collector, his designees, employees, and agents. (3270/Reso. 6970)

9. Perform other functions which relate to taxpayer assistance as prescribed by the City Manager or, for a City without a City Manager, the Chief Administrative Officer. (3270/Reso. 6970)

(C) Actions taken by the Taxpayer Problem Resolution Officer may be reviewed and/or modified only by the City Manager or, for a City without a City Manager, the Chief Administrative Officer upon request of the Tax Collector or a taxpayer. (3270/Reso. 6970)

(D) The Mayor and Council of the City shall be provided with a report quarterly which identifies: (3270/Reso. 6970)

1. Any complaints of improper, abusive, or inefficient service received by the Taxpayer Problem Resolution Officer since the date of the last report. (3270/Reso. 6970)

2. Any recommendations made, action taken, or surveys obtained by the Taxpayer Problem Resolution Officer pursuant to Subsection (B)1-9 above since the date of the last report. (3270/Reso. 6970)

5-10-516: TAXPAYER ASSISTANCE ORDERS: (3270/RESO. 6970)

(A) The Taxpayer Problem Resolution Officer, with or without a formal written request from a taxpayer, may issue a taxpayer assistance order that suspends or stays an action or proposed action by the Tax Collector if, in the Problem Resolution Officer’s determination, a taxpayer is suffering or will suffer a significant hardship due to the manner in which the Tax Collector is administering the tax laws. (3270/Reso. 6970)

(B) A taxpayer assistance order may require the Tax Collector to release any lien perfected under this Chapter or cease any action or refrain from taking any action to enforce against the taxpayer any section of this Chapter pending resolution of the issue giving rise to the taxpayer assistance order. (3270/Reso. 6970)

(C) The Taxpayer Problem Resolution Officer, City Manager, or, for a City without a City Manager, the Chief Administrative Officer may modify, reverse, or rescind a taxpayer assistance order. A taxpayer assistance order is binding on the Tax Collector until it is reversed or rescinded. (3270/Reso. 6970)

(D) The running of the applicable statute of limitations for any action that is the subject of a taxpayer assistance order is suspended from the date the taxpayer applies for the order or the date the order is issued, whichever is earlier, until the order’s expiration date, modification date, or revision date, if any. Interest that would otherwise accrue on an outstanding tax obligation is not affected by the issuance of a taxpayer assistance order. (3270/Reso. 6970)

(E) A taxpayer assistance order may not be used: (3270/Reso. 6970)

1. To contest the merits of a tax liability. (3270/Reso. 6970)

2. To substitute for informal protest procedures or administrative or judicial proceedings to review a deficiency assessment, collection action, or denial of a refund claim. (3270/Reso. 6970)
5-10-517: BASIS FOR EVALUATING EMPLOYEE PERFORMANCE: (3270/RESO. 6970)

(A) The Tax Collector shall solicit evaluations from taxpayers and include such evaluations in the performance appraisals of his employees, where applicable. (3270/Reso. 6970)

(B) The Tax Collector shall not evaluate an employee on the basis of taxes assessed or collected by that employee. (3270/Reso. 6970)

5-10-520: REPORTING AND PAYMENT OF TAX:

(A) Returns. The returns required under this Chapter shall be made upon forms prescribed or approved by the Tax Collector and shall be considered filed only when the accuracy of the return has been attested to, by signature upon the form, by an authorized agent of the taxpayer and when such form has been received by the Tax Collector.

(B) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.

(C) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.

(D) Method of Reporting. Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the Privilege License application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.

1. Taxpayers must report all gross income subject to the tax using the same basis of reporting.

2. Taxes imposed upon construction contracting shall be reported as follows:

   (a) Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.

   (b) Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.

   (c) Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 5-10-417.

5-10-530: WHEN TAX DUE; WHEN DELINQUENT; VERIFICATION OF RETURN; EXTENSIONS:

(A) Except as provided elsewhere in this Section, the taxes shall be due and payable monthly on or before the twentieth (20th) day of the month next succeeding the month in which the tax accrues.

1. Quarterly Returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income in excess of five thousand dollars ($5,000.00) but less than fifty thousand dollars ($50,000.00) to file returns on a calendar-quarterly basis. The taxes for each calendar quarter shall be due and payable on or before the twentieth (20th) day of the month next succeeding the end of each calendar quarter.
2. Annual Returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City Privilege and Use Tax liability on taxable gross income of not more than five thousand dollars ($5,000.00) to file returns for such taxes on a calendar-annual basis. The taxes for each calendar year shall be due and payable on or before the twentieth (20th) day of January of the following year.

(B) Special Requirements of Taxpayers Filing Quarterly or Annual Returns. No taxpayer may report on a quarterly or annual basis until he has established, to the Tax Collector’s satisfaction, six (6) months’ reporting history. It is the taxpayer’s responsibility to notify the Tax Collector and increase his reporting frequency (to quarterly or monthly as applicable) when his taxable income or tax due exceeds the maximum limits for his current reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Tax Collector, is sufficient cause for the Tax Collector to deny future filings by the taxpayer on a quarterly or annual basis.

(C) Delinquency Date. Except as provided in Subsection (D) below, all returns and remittances received within the Tax Collector’s office on or before the last business day of the month when due shall be regarded as timely filed. The start of business of the first business day following the month when due shall be the delinquency date. It shall be the taxpayer’s responsibility to cause his return and remittance to be timely received. Mailing the return or remittance on or before the due date or delinquency date does not relieve the taxpayer of the responsibility of causing his return or remittance to be received by the last business day of the month when due. (2535)

(D) Jeopardy Reporting. If the Tax Collector determines that the collection of any tax due to the City is in jeopardy, the Tax Collector may direct the taxpayer to file his return and remit the tax on a weekly, daily, or transaction-by-transaction basis. Such return and remittance shall be due upon the date fixed by the Tax Collector, and the “delinquency date” shall be the following day.

(E) Extensions. The Tax Collector may extend the time for filing a return, for good cause shown, and only when requested in writing and received by the Tax Collector prior to the tax due date. However, the time for filing such return shall not be extended beyond the last business day of the month next succeeding the due date of such return. In such cases, only the penalties for late filing and late payment may be waived by the Tax Collector for filing and payment within the extension period. Notwithstanding the granting of an extension, the interest payable for late payment of taxes shall be paid for the period commencing upon the original delinquency date and ending on the date the tax is paid. The interest may not be waived by the Tax Collector. (2977/Reso. 6722)

5-10-540: INTEREST AND CIVIL PENALTIES:

(A) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by Section 6621 of the United States Internal Revenue Code and compounded annually under the method described in Subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621 (B) of the Internal Revenue Code, plus three percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 5-10-570. (3270,4582/Reso. 6970)
1. On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered as part of the principal amount of the tax and accrues interest pursuant to this section. (4582)

2. Interest accrued prior to October 1, 2005 shall not be added to the principal. (4582)

(B) In addition to interest assessed under Subsection (A) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

1. A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

2. A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under Subsection (B)1 above for the same tax period, the total penalties under Subsection (B)1 and this Subsection shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

3. A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period. (3270/Reso. 6970)

4. If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under Subsection (B)1 or (B)2 above for the same tax period, the total penalties imposed under Subsections (B)1, (B)2, and this Subsection shall not exceed twenty-five percent (25%) of the tax due. (3270/Reso. 6970)

5. If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(C) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

(D) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to Subsection (B)1 or (B)2 above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer and the Tax Collector nevertheless decides to assess penalties pursuant to Subsection (B)1 or (B)2 above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector’s determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause. (3270/Reso. 6970)
(E) The assessment of the penalties prescribed by Subsections (B)3 through (B)5 above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon Subsection (B)3, (B)4 or (B)5 above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances. (3270/Reso. 6970)

(F) The Tax Collector shall waive or adjust penalties imposed by Subsections (B)1 and (B)2 above upon a finding that: (3270/Reso. 6970)

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner;

2. The amount of the penalty is greatly disproportionate to the amount of the tax; or

3. The failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question: (3270/Reso. 6970)

   (a) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

   (b) Erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

   (c) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

   (d) Unavoidable absence of the taxpayer immediately prior to the due date.

   (e) Destruction by fire or other casualty of the taxpayer’s place of business or records.

   (f) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

   (g) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due. (3270/Reso. 6970)

   (h) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter, and after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required. (3270/Reso. 6970)

   (i) The taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation. (3270/Reso. 6970)

   (j) The taxpayer can provide some public record (court case; report in a periodical, professional journal, or publication; etc.) stating that the transaction is not subject to tax. (3270/Reso. 6970)

   (k) The Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period. (3270/Reso. 6970)
A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

(G) No request for waiver of penalty under Subsection (F) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under Subsection (F) above may appeal under the provisions of Section 5-10-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer’s receipt of notice by the City that waiver has been denied. (3270/Reso. 6970)

(H) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City. (2321, 3270/Reso. 6970)

(I) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake." Examples of negligence include: (3270/Reso. 6970)

1. The taxpayer’s failure to maintain records in accordance with Article III of this Chapter; (3270/Reso. 6970)
2. Repeated failures to timely file returns; or (3270/Reso. 6970)

5-10-541: ERRONEOUS ADVICE OR MISLEADING STATEMENTS BY THE TAX COLLECTOR; ABATEMENT OF PENALTIES AND INTEREST; DEFINITION: (3270/RESO. 6970)

(A) Notwithstanding Section 5-10-540(A), no interest or penalty may be assessed on an amount assessed as a deficiency if either: (3270/Reso. 6970)

1. The deficiency assessed is directly attributable to erroneous written advice furnished to the taxpayer by an employee of the City acting in an official capacity in response to a specific request from the taxpayer and not from the taxpayer’s failure to provide adequate or accurate information. (3270/Reso. 6970)

2. All of the following are true: (3270/Reso. 6970)
   (a) A tax return form prepared by the Tax Collector contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this Chapter. (3270/Reso. 6970)
   (b) The taxpayer reasonably relies on the statement. (3270/Reso. 6970)
   (c) The taxpayer’s underpayment directly results from this reliance. (3270/Reso. 6970)

(B) Each employee of the Tax Collector, at the time any oral advice is given to any person, shall inform the person that the Tax Collector is not bound by such oral advice. (3270/Reso. 6970)

(C) For purposes of this Section, "tax return form" includes the instructions that the Tax Collector prepares for use with the tax return form. (3270/Reso. 6970)
5-10-542: PROSPECTIVE APPLICATION OF NEW LAW OR INTERPRETATION OR APPLICATION OF LAW: (3954, 4582/RESO. 7756)

(A) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law. (3954/Reso. 7756)

(B) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law: (3954/Reso. 7756)

1. The change in interpretation or application applies prospectively only unless it is favorable to taxpayers. (3954/Reso. 7756)

2. The Tax Collector shall not assess any tax, penalty, or interest retroactively based on the change in interpretation or application. (3954/Reso. 7756)

(C) For purposes of Subsection (B), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter. (3954/Reso. 7756)

(D) (Reserved)

5-10-545: DEFICIENCIES; WHEN INACCURATE RETURN IS FILED; WHEN NO RETURN IS FILED; ESTIMATES:

(A) If the taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return and payment of the amount of tax required and additional taxes are determined by the Tax Collector to be due, the Tax Collector shall deliver written notice of his determination of a deficiency to the taxpayer, and such deficiency, plus penalties and interest, shall be due and payable forty-five (45) days after receipt of the notice and demand. Such additional taxes shall bear any applicable civil penalties and interest as provided in Section 5-10-540, and every such notice of a determination of an additional amount due shall be assessed within the limitation period provided in Section 5-10-550.

1. When a Return is Filed. If the Tax Collector is not satisfied with a return and payment of the amount of tax required by this Chapter to be paid to the City, he may examine the return or examine the records of the taxpayer and redetermine the amount of tax, penalties, and interest required to be paid for any periods available to the Tax Collector under Section 5-10-550, based upon the information contained in the return or records or based upon any information within his possession or which comes into his possession.

2. When No Return is Filed. If any person fails to make a return, the Tax Collector may make an estimate of the amount of tax due under this Chapter and compute any applicable penalties and interest due, based upon any information within his possession or which comes into his possession.

(B) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not in any way invalidate the Tax Collector’s estimate. It is the responsibility of the taxpayer to prove that the Tax Collector’s estimate is not reasonable and correct by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.
5-10-546: CLOSING AGREEMENTS IN CASES OF EXTENSIVE TAXPAYER MISUNDERSTANDING OR MISAPPLICATION; CITY ATTORNEY APPROVAL; RULES: (3270/RESO. 6970)

(A) If the Tax Collector determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this Chapter, it may enter into closing agreements with those taxpayers under the following terms and conditions: (3270/Reso. 6970)

1. Extensive misunderstanding or misapplication of the tax laws occurs if the Tax Collector determines that more than sixty percent (60%) of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws. (3270/Reso. 6970)

2. The Tax Collector shall publicly declare the nature of the possible misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misapplication and the definition of the affected class. (3270/Reso. 6970)

3. If after the public hearing the Tax Collector determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws, it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation in the City and through the next two Model City Tax Code updates. (3270/Reso. 6970)

4. A closing agreement under this Section may abate some or all of the penalties, interest, and tax that taxpayers have failed to remit, or the agreement may provide for the prospective treatments of the matter as to the class of affected taxpayers. All taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods. (3270/Reso. 6970)

5. Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into an equivalent closing agreement providing for a pro rata credit or refund of their taxes previously paid. (3270/Reso. 6970)

6. The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to adhere to such a requirement, the closing agreement is voidable by the Tax Collector, and he may assess the taxpayer for the delinquent taxes. The Tax Collector may issue such a proposed assessment within six (6) months after the date that he declares that closing agreement void or within the period prescribed by Section 5-10-550 of this Chapter. (3270/Reso. 6970)

(B) Before entering into closing agreements pursuant to this Section, the Tax Collector shall secure such approval as required by Charter, ordinance, or administrative regulation. (3270/Reso. 6970)

(C) After a closing agreement has been signed pursuant to this Section, it is final and conclusive except on a showing of fraud, malfeasance, or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed upon, or the agreement shall not be modified by any officer, employee, or agent of the City. The agreement or any determination, assessment, collection, payment, abatement, refund, or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action, or proceeding. (3270/Reso. 6970)

(D) The Tax Collector shall report in writing its activities under this Section to the Mayor and City Council on or before February 1 of each year. (3270/Reso. 6970)
5-10-550: LIMITATION PERIODS:

(A) Limitation When a Return Has Been Filed.

1. Except as provided elsewhere in this Section, the Tax Collector may assess additional tax due at any time within four (4) years after the date on which the return is required to be filed or within four (4) years after the date on which the return is filed, whichever period expires later. (3270/Reso. 6970)

2. However, if a taxpayer does not report an amount properly reportable which is in excess of twenty-five percent (25%) of the taxable amount stated on the return, the Tax Collector may assess additional tax due at any time within six (6) years after the date on which the return was filed. (2535,3270/Reso. 6970)

3. Any delay in commencement or completion of any examination by the Tax Collector which is requested or agreed to in writing by the taxpayer shall be excluded from the computation of any limitation period prescribed by this Section; the Tax Collector shall be entitled to make a determination for taxes due without exclusion of any such time period, and any limitation period shall be extended for a length of time equivalent to the period of the agreed-upon delay. (3270/Reso. 6970)

4. Any assessment by the Tax Collector of additional tax due shall be deemed to have been made by mailing a copy of a notice of audit assessment by certified mail to the taxpayer’s address of record with the Tax Collector or by personal delivery of a copy of a notice of audit assessment to the taxpayer or his authorized agent.

(B) Suspension of Limitation Period. The limitation period on assessment shall be suspended for any period:

1. The assets of the taxpayer are in the control or custody of the court in any proceeding before any court of jurisdiction within the United States of America, and for one hundred eighty (180) calendar days thereafter; or

2. Which the taxpayer and the Tax Collector agree upon in writing. (3270/Reso. 6970)

(C) When No Return Filed; Fraudulent Return. In the case of a fraudulent return with the intent to evade tax or the failure or refusal to file a return for any month, the Tax Collector may assess the amount of taxes payable for that month at any time without any reliance by the taxpayer upon any time limitation provided elsewhere in this Chapter. (3270/Reso. 6970)

(D) Special Provisions Relating to Owner-Builders. The limitation for an owner-builder subject to the tax as prescribed in Section 5-10-417 shall be based upon the date such tax liability is reportable or was reported as provided in Section 5-10-417.

5-10-553: EXAMINATION OF TAXPAYER RECORDS; JOINT AUDITS (3921)

(A) Waiver of Joint Audit. A taxpayer that does not authorize a joint audit to be conducted for a tax jurisdiction is subject to audit by that tax jurisdiction at any time subject to the limitation provisions provided in Section 5-10-550. (3921)
(B) Tax Jurisdiction Acceptance of Joint Audit. If the Arizona Department of Revenue intends to conduct an audit of a taxpayer, the cities or towns for whom a joint audit is being conducted may accept the audit by the Arizona Department of Revenue or may elect to have a representative participate, provided that no more than two (2) city or town representatives in total may participate. (3921)

1. If a city or town does not accept the audit as a joint audit, the city or town may not conduct an audit of the taxpayer for forty-two (42) months from the close of the last tax period covered by the audit unless an exception applies to that taxpayer pursuant to A.R.S. Section 42-2059. (3921)

2. If a joint audit is performed by a city or town, the Arizona Department of Revenue is not prohibited from conducting an audit that does not violate the provisions of A.R.S. Section 42-2059. (3921)

5-10-555: TAX COLLECTOR MAY EXAMINE BOOKS AND OTHER RECORDS; FAILURE TO PROVIDE RECORDS:

(A) The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter for any periods available to him under Section 5-10-550.

(B) In order to perform any examination authorized by this Chapter, the Tax Collector may issue an Administrative Request for the attendance of witnesses or for the production of documents as provided by regulation.

(C) If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information, the Tax Collector may, in addition to penalties prescribed under Section 5-10-540, impose an additional penalty of twenty-five percent (25%) of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. (3270/Reso. 6970)

(D) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards. (3270/Reso. 6970)

(E) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings to determine the correct tax. The provisions of Section 5-10-545(B) concerning estimates shall apply.

(F) The Tax Collector shall give the taxpayer written notice of his determination of a deficiency by certified mail to the taxpayer's address of record with the Tax Collector, and the tax deficiency, plus interest and penalties, is final forty-five (45) days from the date of receipt of the notice by the taxpayer unless an appeal is taken pursuant to the provisions of Sections 5-10-570 through 5-10-575. (2977/Reso. 6722)
5-10-556: NO ADDITIONAL AUDITS OR PROPOSED ASSESSMENTS; EXCEPTIONS:

(A) Once the Tax Collector completes an examination authorized by Section 5-10-555 and a written notice of the determination of a deficiency has been issued to the taxpayer pursuant to Section 5-10-545(A) or 5-10-555(F), the taxpayer’s liability for the time period subjected to the examination is fixed and determined, and no additional audit or examination may be conducted by the Tax Collector with respect to such time period except under the following circumstances: (3270/Reso. 6970)

1. If a taxpayer files a claim for refund under Section 5-10-560, the Tax Collector may conduct an examination limited to the issues presented in the refund claim. (3270/Reso. 6970)

2. If the taxpayer failed to disclose material information during the initial examination, falsified books or records, or otherwise engaged in conduct which prevented the Tax Collector from conducting an accurate examination. The applicability of this Subsection and the Tax Collector’s right to proceed thereunder may be raised and contested by the taxpayer in a subsequent administrative review brought pursuant to Section 5-10-570. (3270/Reso. 6970)

(B) An audit or examination conducted by any other taxing jurisdiction will not preclude the Tax Collector from conducting an audit or examination for the same time period. (3270/Reso. 6970)

(C) If the Tax Collector issues a notice of deficiency pursuant to either Section 5-10-545(A) or Section 5-10-555(F), the Tax Collector may not increase the proposed deficiency except in one (1) or more of the following circumstances: (3270/Reso. 6970)

1. The taxpayer made a material misrepresentation of fact. (3270/Reso. 6970)

2. The taxpayer failed to disclose a material fact. (3270/Reso. 6970)

3. The Tax Collector submitted a written request for information prior to issuance of the assessment, and the taxpayer, despite possessing or having access to such information, failed to provide it within sixty (60) days as required by Section 5-10-555(C). (3270/Reso. 6970,3476/Reso. 7209)

4. After issuing the notice of determination of deficiency but before the deficiency became final, the Arizona Tax Court, Court of Appeals, or Supreme Court issued a decision, the applicability of which causes the deficiency initially proposed to increase. (3270/Reso. 6970)

5-10-560: ERRONEOUS PAYMENT OF TAX; CREDITS AND REFUNDS; LIMITATIONS:

(A) The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties, or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be cancelled from the accounts of the City if no timely filed request for credit or refund is made by the claimant claiming same within one (1) year following the date of determination and notice by the Tax Collector of the excess payment. For purposes of this section, “claimant” means a taxpayer that has paid a tax imposed under this article and has submitted a credit or refund claim under this section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer’s behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from customers by separately stated itemization. (3270, 4582/Reso. 6970)
(B) No credit shall be allowed or refund paid except under one (1) of the following conditions: (3270/Reso. 6970)

1. As provided in Section 5-10-565.

2. Upon examination of filed returns for any period not excluded by Section 5-10-550 and not to exceed the tax, penalty, or interest actually paid with such returns. (3270/Reso. 6970)

3. Upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 5-10-550. In the case of an examination performed at the taxpayer’s request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest actually paid within the limitation period provided in Section 5-10-550, such period to be calculated from the date of receipt of the taxpayer’s request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits. (3270/Reso. 6970)

4. Upon the claimant’s submission of a written claim for credit or refund of any taxes, penalties, or interest paid to the City by the claimant. (3270, 4582/Reso. 6970)

(C) A credit or refund claim submitted by a claimant pursuant to subsection (B)(4) of this section must:

1. Identify the name, address and city tax identification number of the taxpayer; and (4582)

2. Identify the dollar amount of the credit or refund requested; and (4582)

3. Identify the specific tax period involved: and (4582)

4. Identify the specific grounds upon which the claim is based. (4582)

(D) When a written claim for credit or refund is submitted pursuant to subsection (B)(4) of this section, no credit shall be allowed or refund paid except for those taxes, penalties, or interest paid in excess of the amount due within the limitation period provided in Section 5-10-550. The credit or refund limitation period shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of Subsection (C) of this section. (3270, 4582/Reso. 6970)

(E) The following additional requirements apply to the Tax Collector and the claimant for claims for credit or refund submitted pursuant to Subsection (B)(4) of this section: (3270, 4582/Reso. 6970)

1. The Tax Collector shall notify the claimant that the claim for credit or refund has been received and shall indicate whether the claim meets the requirements of Subsection (C) of this section. If the claim does not meet the requirements of Subsection (C) of this section, the Tax Collector shall identify the deficiency in writing. Any claim that does not meet the requirements of Subsection (C) of this section shall not secure the limitation period pursuant to section 5-10-550. (4582)

2. The Tax Collector may request, in writing, additional information or documentation from the claimant to support the requested credit or refund. Such information or documentation must be reasonably related to the claim and required to be maintained under this chapter in the normal course of business. (4582)
(a) The claimant may request in writing one or more extensions to supply the requested information or documentation. The Tax Collector may reject an extension request only by denying the claim in whole or in part, subject to appeal by the claimant pursuant to Section 5-10-570 (4582)

(b) A claimant aggrieved by a request for information or documentation under this subsection may file an appeal in the manner provided for in Section 5-10-570 regarding the scope of the request for information or documentation. Such petition must be filed no later than the last day by which requested information or documentation must be provided to the Tax Collector, including any extensions. The decision of the Hearing Officer regarding a request for information or documentation may not be appealed by either party until the claim has been approved or denied, in whole or in part, under Subsection (H) of this section or through Subsubsections (E)(3) or (E)(4) of this section. A claimant shall not be barred from raising the issue of the reasonableness of the Tax Collector’s information or documentation request in an appeal filed under Subsection (H) of this section or through Subsubsections (E)(3) or (E)(4) of this section through a lack of filing a petition under this Subsubsection. (4582)

3. If the Tax Collector fails to request additional information or documentation pursuant to this section and fails to issue a determination on any claim for credit or refund within six (6) months after the claim is filed, the claimant may consider the claim denied and may file an appeal pursuant to Section 5-10-570. (4582)

4. If the Tax Collector fails to issue a determination within six (6) months of receiving all requested additional information or documentation, the claimant may consider the claim for credit or refund denied and may file an appeal pursuant to Section 5-10-570. (4582)

5. The burden of proof to show that a notice, request, determination or other communication was received by the claimant in this section is on the Tax Collector, and will be satisfied by receipt of notice. The burden of proof to show that a claim or additional information or documentation was received by the Tax Collector is on the claimant and will be satisfied by receipt of notice. (4582)

(F) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to Subsections (B)(3) or (B)(4) of this section. Such interest shall be allowed on the overpayment of tax at the rate and in the manner set forth in Section 5-10-540 (A), as follows: (3270,4582/Reso. 6970)

1. For credits or refunds authorized pursuant to Subsection (B)(3) of this section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim following the date of notice to the claimant authorizing the credit or refund. (4582)

2. For credits or refunds authorized pursuant to Subsection (B)(4) of this section, interest shall be calculated from the date the Tax Collector receives the claimant's written claim meeting the requirements of subsection (C) of this section. (4582)

(G) The Tax Collector shall give the claimant a written notice of determination for a claim made under Subsection (B) of this section. If the determination is a denial of a claim, in whole or in part, the determination must state that the claim for credit or refund has been denied in whole or in part, with the reason for denial, and must include the claimant's rights of appeal pursuant to section 5-10-570. (4582)
(H) A determination by the Tax Collector under this section, whether an approval of a claim or a denial of a claim, in whole or in part, shall become final forty-five (45) days from the date of receipt of the notice by the claimant, unless an appeal is made pursuant to Section 5-10-570. If the claimant is the prevailing party in an appeal of a determination under this section, Section 5-10-578 shall apply, except that reasonable fees and other costs may be awarded either by the Hearing Officer or court and are not subject to the monetary limitations of Subsection 5-10-578(E) if the tax collector’s position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this section, “reasonable fees and other costs” means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant’s case and necessary fees for attorneys or other representatives. (4582)

(I) The amendments to this section as enacted in Ordinance #4582 shall be effective as follows:

1. For any claim for refund or credit received by the Tax Collector before October 1, 2005, (4582)
   (a) The provisions of this section as it existed prior to the adoption of Ordinance #4582 shall apply, except that interest shall be allowed from and after October 1, 2005 as provided in Subsection (F) of this section as enacted by Ordinance #4582. (4582)
   (b) Except as noted in Subsection (1)(A) above, the amendments to this section as enacted in Ordinance #4582 shall not be cited or considered in the construction or the interpretation of the city tax refund or credit provisions, interest provisions, or appeal provisions in effect prior to October 1, 2005. (4582)

2. The provisions of this section enacted by ordinance #4582 shall apply to all claims for refund or credit, for any periods as determined by subsections (D) or (E) of this section, received by the Tax Collector from and after October 1, 2005, except for claims that, in whole or in part, had been received by the collector prior to October 1, 2005. (4582)

(J) Any refund paid under the provisions of this section shall be paid from the privilege tax revenue accounts. (4582)

5-10-565: PAYMENT OF TAX BY THE INCORRECT TAXPAYER OR TO THE INCORRECT ARIZONA CITY OR TOWN: (3270/RESO. 6970)

(A) When it is determined that taxes have been reported and paid to the City by the wrong taxpayer, any taxes erroneously paid shall be transferred by the City to the privilege tax account of the person who actually owed and should have paid such taxes, provided that the City receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. (3270/Reso. 6970)

(B) An assignment and waiver provided under this Section must: (3270/Reso. 6970)

1. Identify the name and City privilege license number of the person who erroneously paid the tax and the person who should have paid the tax. (3270/Reso. 6970)

2. Provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid. (3270/Reso. 6970)

3. Authorize the City treasurer to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax. (3270/Reso. 6970)
(C) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax. (3270/Reso. 6970)

(D) This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. §42-1452. The limitations and procedures set forth in A.R.S. §42-1452 shall apply to all payments under this Section. (3270/Reso. 6970)

(E) When reference is made in this Section to this City or an Arizona city or town and payments made to or requested from this City or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this City or an Arizona city or town. (3270/Reso. 6970)

5-10-567: (RESERVED) (3270/RESO. 6970)

5-10-570: ADMINISTRATIVE REVIEW; PETITION FOR HEARING OR FOR REDETERMINATION; FINALITY OF ORDER: (3270/RESO. 6970)

For purposes of this section, "Municipal Tax Hearing Office" means the administrative offices of the Municipal Tax Hearing Officer. (3921)

(A) Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

(B) Administrative Review. (3270/Reso. 6970)

1. Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of any tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

   (a) Within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due or that a request for refund or credit has been denied;
   
   (b) By voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment;
   
   (c) By petition accompanying a timely filed return contesting an amount reported but not paid; or
   
   (d) By petition requesting review of denial of waiver of penalty as provided in Subsection 5-10-540(G). (3270/Reso. 6970)
2. Extension to File a Petition. In all cases, the taxpayer may request an extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow a forty-five (45) day extension to file a petition, when such written request has been properly and timely made by the taxpayer. The Tax Collector may grant an additional extension and may determine the corresponding time of any such extension at his sole discretion. (4979)

3. Requirements for Petition.

   (a) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

   (b) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made, the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

   (c) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under this Section.

4. Transmittal to the Hearing Officer. The City shall designate a Hearing Officer, who may be other than an employee of the City. The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Office (MTHO) within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition. (2535,3270/Reso. 6970, 3921)

5. Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same. (2535)

6. Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

7. Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.

8. Notice of Refund or Adjusted Assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision. (3270/Reso. 6970)
(C) Stipulations That Future Tax is Also Protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income. (3270/Reso. 6970)

(D) When an Assessment is Final. (3270/Reso. 6970)

1. If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by Subsection (B) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due, and any tax, interest, or penalty determined to be due shall be final as provided in Subsections 5-10-545(A) and 5-10-555(F).

2. The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by Subsection (B) above, unless the taxpayer appeals the order or decision in the manner provided in Section 5-10-575. (3270/Reso. 6970)

(E) (Reserved)

5-10-571: JEOPARDY ASSESSMENTS:

(A) If the Tax Collector believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax or deficiency declared to be in jeopardy, including interest, penalties, and additions.

(B) Jeopardy assessments are immediately due and payable, and the Tax Collector may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment or within such additional time as the Tax Collector may allow, by bond or collateral in favor of the City in the amount Tax Collector declared to be in jeopardy in his notice.

(C) Bond or Collateral.

1. "Bond or collateral" shall mean either:

   (a) A bond issued in favor of the City by a surety company authorized to transact business in this State and approved by the Director of Insurance as to solvency and responsibility or

   (b) Collateral composed of securities or cash which are deposited with, and kept in the custody of, the Tax Collector.

2. Shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Tax Collector must be of a nature that they may be sold at public or private sale without notice to the taxpayer.
(D) If bond or collateral is not filed within the period prescribed by Subsection (B) above, the Tax Collector may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Sections 5-10-570 and 5-10-575. The filing of a petition by the taxpayer under Section 5-10-570, however, shall not stay the Tax Collector's rights to pursue any collection proceedings. (2321)

(E) If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 5-10-570, including requests for additional time to file a petition.

5-10-572: EXPEDITED REVIEW OF JEOPARDY ASSESSMENTS: (3270/RESO. 6970)

(A) Within thirty (30) days after the day on which the Tax Collector furnishes the written notice required by Section 5-10-571(A), the taxpayer, pursuant to Section 5-10-570, may request the Tax Collector to review the action taken. Within fifteen (15) days after the request for review, the Tax Collector shall determine whether both the jeopardy determination and the amount assessed are reasonable. (3270/Reso. 6970)

(B) Within thirty (30) days after the Tax Collector notifies the taxpayer of the determination he reach pursuant to Subsection (A) above, the taxpayer may bring a civil action in the appropriate court. If the taxpayer so requests, the City shall stipulate to an accelerated and expedited resolution of the civil action. If the court determines that either the jeopardy determination or the amount assessed is unreasonable, the court may order the Tax Collector to abate the assessment, to predetermine any part of the amount assessed, or to take such other action as the court finds to be appropriate. A determination made by the court under this Subsection is final except as provided in Arizona Revised Statutes §12-170. (3270/Reso. 6970)

5-10-575: JUDICIAL REVIEW:

(A) A taxpayer may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action against the City in the appropriate Court of this County. A taxpayer is not required to pay any tax, penalty, or interest upheld by the Hearing Officer before seeking such judicial review. (3270/Reso. 6970)

(B) The Tax Collector may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action in the appropriate Court of this County.

(C) An action for judicial review cannot be commenced by either the taxpayer or the Tax Collector more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Hearing Officer's decision, unless the time to commence such an action is extended in writing signed by both the taxpayer and the Tax Collector. Failure to bring the action within thirty (30) days or such other time as is agreed upon in writing shall constitute a waiver of any right to judicial review, except as provided in Subsection (F) below. (3270/Reso. 6970)

(D) The court shall hear and determine the appeal as a trial de novo; however, the Tax Collector cannot raise in the court any grounds or basis for the assessment not asserted before the Hearing Officer. Nothing in this Subsection, however, shall preclude the Tax Collector from responding to any arguments which are raised by the taxpayer in the appeal. (3270/Reso. 6970)
(E) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This Subsection does not abrogate any requirement of this Chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This Subsection applies to a factual issue if a preponderance of the evidence demonstrates that: (3729/Reso. 7458)

1. The taxpayer asserts a reasonable dispute regarding the issue. (3729/Reso. 7458)

2. The taxpayer has fully cooperated with the Tax Collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the taxpayer's control, as reasonably requested by the Tax Collector. (3729/Reso. 7458)

3. The taxpayer has kept and maintained records as required by the City. (3729/Reso. 7458)

(F) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment. (3729/Reso. 7458)

(G) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil procedure. (3729/Reso. 7458)

5-10-577: REFUNDS OF TAXES PAID UNDER PROTEST:
In the event the Hearing Officer’s decision or a final judgment by the Court is rendered in favor of the taxpayer to recover protested taxes, it shall be the duty of the Tax Collector, upon receipt of such decision or of a certified copy of such final judgment, to authorize a warrant in favor of the taxpayer in an amount equal to the amount of the tax found by such decision or by the final judgment to have been paid under protest, and such warrant shall include the amount of interest or other cost that may have been recovered against the City by the final judgment in such action in the courts, to be paid from the Privilege Tax revenue accounts.

5-10-578: REIMBURSEMENT OF FEES AND OTHER COSTS; DEFINITIONS: (3270/RESO. 6970)
(A) A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to any administrative proceeding brought by the taxpayer pursuant to Section 5-10-570(B). For purposes of this Section, a taxpayer is considered to be the prevailing party only if both of the following are true: (3270/Reso. 6970)

1. The Tax Collector’s position was not substantially justified. (3270/Reso. 6970)

2. The taxpayer prevails as to the most significant issue or set of issues. (3270/Reso. 6970)

(B) Reimbursement under this Section may be denied if any of the following circumstances apply: (3270/Reso. 6970)

1. During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter. (3270/Reso. 6970)

2. The reason that the taxpayer prevailed is due to an intervening change in the applicable law. (3270/Reso. 6970)
(C) The taxpayer shall present an itemization of the reasonable fees and other costs to the Taxpayer Problem Resolution Officer within thirty (30) days after receipt by the taxpayer of a notice of refund or recalculated assessment issued by the Tax Collector pursuant to Section 5-10-570(B)8. The Taxpayer Problem Resolution Officer shall determine the validity of the fees and other costs within thirty (30) days after receiving the itemization. The Taxpayer problem Resolution Officer’s decision is considered a final decision. Either the taxpayer or the Tax Collector may seek judicial review of the Taxpayer Problem Resolution Officer’s decision. An action for judicial review, however, shall not be commenced more than thirty (30) days after receipt of the Resolution Officer’s decision. (3270/Reso. 6970)

(D) In the event judicial review is not sought pursuant to Subsection (C) above, the City shall pay these fees and other costs awarded as provided in this Section within thirty (30) days after demand by a person who has received an award pursuant to this Section. (3270/Reso. 6970)

(E) Reimbursement to a taxpayer under this Section shall not exceed twenty thousand dollars ($20,000.00) or actual monies spent, whichever is less. The reimbursable attorney or representative fees shall not exceed one hundred dollars ($100.00) per hour or actual monies spent, whichever is less, unless the Taxpayer Problem Resolution Officer determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or representatives for the proceeding involved justifies a higher fees. (3270/Reso. 6970)

(F) For purposes of this Section, "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses; the cost of any study, analysis, report, test, or project that is found to be necessary to prepare the party’s case; and necessary fees for attorneys or other representatives. (3270/Reso. 6970)

5-10-580: CRIMINAL PENALTIES:

(A) It is unlawful for any person to knowingly or willfully:

1. Fail or refuse to make any return required by this Chapter.

2. Fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.

3. Make or cause to be made a false or fraudulent return.

4. Make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.

5. Fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.

6. Fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

7. Advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.
8. Fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

9. Reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure an exemption from taxes imposed by this Chapter.

(B) The violation of any provision of Subsection (A) above shall constitute a Class 1 Misdemeanor.

(C) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

5-10-590: CIVIL ACTIONS:

(A) Liens.

1. Any tax, penalty, or interest imposed under this Chapter which has become final as provided in this Chapter shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer; the amount of the tax, penalty, and interest; the period or periods for which the same is due and the date of accrual thereof; the amount of the recording costs by the County Recorder in any county in which the taxpayer owns real property; and the documentation and lien processing fees imposed by the City Council; and further stating that the City claims a lien therefor. (2977/Reso. 6722)

2. The notice and claim of lien shall be signed by the City Manager under his official seal or the official seal of the City, and with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and with respect to personal property, shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest, and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien. (2977/Reso. 6722)

3. Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and may be collected in the manner set forth in Subsection (B) below. (2977/Reso. 6722)

4. Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above, and lien release fees imposed by the County Recorder in any county in which the lien was recorded, thereby be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property for partial payment of monies due the City. (2977/Reso. 6722)

(B) Actions to Recover Tax. An action may be brought by the City Attorney or other legal advisor to the City designated by the City Council at the request of the Tax Collector in the name of the City to recover the amount of any taxes, penalties, interest, recording costs, lien processing fees, and lien release fees due under this Chapter; provided that: (2977/Reso. 6722)

1. No action or proceeding may be taken or commenced to collect any taxes levied by this Chapter until the amount thereof has been established by assessment, correction, or reassessment and
2. Such collection effort is made or the proceedings begun:

(a) Within six (6) years after the assessment of the tax;

(b) Prior to the expiration of any period of collection agreed upon in writing by the Tax Collector and the taxpayer before the expiration of such six-(6-) year period, or any extensions thereof; or

(c) At any time for the collection of tax arising by reason of a tax lien perfected, recorded, or possessed by the City under this Section.

5-10-595: COLLECTION OF TAXES WHEN THERE IS SUCCESSION IN AND/OR CESSATION OF BUSINESS:

(A) In addition to any remedy provided elsewhere in this City Code that may apply, the Tax Collector may apply the provisions of Subsections (B) through (D) below concerning the collection of taxes when there is succession in and/or cessation of business.

(B) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods or quits his business if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(C) Any person who purchases or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder as provided in Sections 5-10-416 and 5-10-417.

(1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor’s debtor by any means set forth in this Subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 5-10-416(A)(4) and all of the requirements of Section 5-10-416(B)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale. (5017)

(2) In the event a creditor or its affiliate uses the acquired improved real property for a business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 5-10-416 and 5-10-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition. (5017)

(3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this Subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate. (5017)

(4) If the tax liability imposed by either Section 5-10-416 or Section 5-10-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the Tax Collector by the debtor subsequent to payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the Tax Collector in good faith, against the tax imposed on the creditor or its affiliate by either Paragraph 1 or Paragraph 2 of this Subsection. (5017)
(5) Notwithstanding anything in this Chapter to the contrary, if a creditor or its affiliate is subject to tax as described in Paragraph 1 or Paragraph 2 of this Subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due. (5017)

(D) A person’s successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid and interest or penalties due and payable until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

1. If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.

2. If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased with interest and penalties accrued by the former owner or assignees. (2321)

5-10-596: AGREEMENT FOR INSTALLMENT PAYMENTS OF TAX: (3270/RESO. 6970)

(A) The City may enter into an agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax imposed by this Chapter by means of installment payments. The Tax Collector may require a taxpayer who requests an installment payment agreement to complete a financial report in such form and manner as the Tax Collector may prescribe. (3270/Reso. 6970)

(B) The Tax Collector, without notice, may alter, modify, or terminate an installment payment agreement if the taxpayer:

1. Fails to pay an installment at the time the installment payment is due under the agreement. (3270/Reso. 6970)

2. Fails to pay any other tax liability at the time the liability is due. (3270/Reso. 6970)

3. Fails to file any tax report or return at the time the report or return is due. (3270/Reso. 6970)

4. Fails to furnish any information requested by the Tax Collector within thirty (30) days after receiving a written request for such information. (3270/Reso. 6970)

5. Fails to notify the Tax Collector of a material improvement in the taxpayer’s financial condition above the income previously reported in the most recent income statement within thirty (30) days after the material improvement.

6. Provides inaccurate, false, or incomplete information to the Tax Collector. (3270/Reso. 6970)

(C) Notwithstanding any installment payment agreement, the Tax Collector may offset any tax refunds against the liabilities provided for in the installment payment agreement, may file and perfect any tax liens, and in the event the taxpayer breaches any term or provision of the installment payment agreement, may engage in collection activities. (3270/Reso. 6970)
(D) The Tax Collector, without notice, may terminate an installment payment agreement if the Tax Collector believes that the collection of tax to which the payment agreement pertains is in jeopardy. (3270/Reso. 6970)

(E) If the Tax Collector determines that the financial condition of a taxpayer has improved, the Tax Collector may alter, modify, or terminate the agreement by providing notice to the taxpayer at least thirty (30) days before the effective date of the action. The notice shall include the reasons why the Tax Collector believes the alteration, modification, or termination is appropriate. (3270/Reso. 6970)

(F) An installment payment agreement shall remain in effect for the term of the agreement except as otherwise provided in this Section. (3270/Reso. 6970)

(G) A taxpayer who is aggrieved by a decision of the Tax Collector to refuse to enter into an installment payment agreement or to alter, modify, or terminate an agreement entered into pursuant to this Section may petition the Taxpayer Problem Resolution Officer to review that determination. The Taxpayer Problem Resolution Officer may stay such alteration, modification, or termination pending its review and may modify or nullify the determination. (3270/Reso. 6970)

(H) The City and the taxpayer may modify any installment payment agreement at any time by entering into a new or modified agreement. (3270/Reso. 6970)

5-10-597: PRIVATE TAXPAYER RULINGS; REQUEST; REVOCATION OR MODIFICATION; DEFINITION: (3270/RESO. 6970)

(A) The Tax Collector shall issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall: (3270/Reso. 6970)

1. State the name, address, and if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling. (3270/Reso. 6970)

2. Describe all facts that are relevant to the requested ruling. (3270/Reso. 6970)

3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the Tax Collector or any other taxing jurisdiction in connection with an active audit, protest, or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing jurisdiction for a ruling. (3270/Reso. 6970)

4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer. (3270/Reso. 6970)

(B) A private taxpayer ruling may be revoked or modified by either: (3270/Reso. 6970)

1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by regulations and court decisions. (3270/Reso. 6970)

2. Actual written notice by the Tax Collector to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling. (3270/Reso. 6970)
(C) With respect to the taxpayer or prospective taxpayer to whom a private taxpayer ruling is issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification, and the Tax Collector shall not assess any penalty or tax attributable to erroneous advice that is furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if: (3270/Reso. 6970)

1. The taxpayer reasonably relied on the private taxpayer ruling. (3270/Reso. 6970)

2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information. (3270/Reso. 6970)

(D) A private taxpayer ruling may not be relied upon, cited, or introduced into evidence in any proceeding by any taxpayer other than the taxpayer who received the ruling. (3270/Reso. 6970)

(E) A taxpayer may appeal the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the Tax Collector pursuant to Section 5-10-570 within forty-five (45) days after receiving written notice of the intent to retroactively apply a revoked or modified private taxpayer ruling. (3270/Reso. 6970)

(F) A private taxpayer ruling constitutes the Tax Collector’s interpretation of the sections of this Chapter only as they apply to the taxpayer making, and the particular facts contained in, the request. (3270/Reso. 6970)

(G) A private taxpayer ruling which addresses a taxpayer’s ongoing business activities will apply only to transactions that occur or tax liabilities that accrue from and after the date of the taxpayer’s ruling request. (3270/Reso. 6970)

(H) The Tax Collector shall attempt to issue private taxpayer rulings within forty-five (45) days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed beyond the forty-five (45) days, the Tax Collector shall notify the requester of the delay and the proposed date of issuance. (3270/Reso. 6970)

(I) Within thirty (30) days after being issued, the Tax Collector shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings are open to public inspection subject to the confidentiality requirements prescribed by Section 5-10-510. (3270/Reso. 6970)

(J) In this Section, "private taxpayer ruling" means a written determination by the Tax Collector issued pursuant to this Section that interprets and applies one (1) or more sections contained in this Chapter and any applicable regulations. (3270/Reso. 6970)

(K) A private taxpayer ruling issued by the Arizona Department of Revenue pursuant to A.R.S. §42-139.21 may be relied upon by the taxpayer to whom the ruling was issued and must be recognized and followed by any City in which such taxpayer has obtained a privilege license if the City has not issued a ruling addressing the facts described in the taxpayer’s ruling request and the statute at issue in the taxpayer’s ruling request is in essence worded and written the same as the applicable section hereunder. (3270/Reso. 6970)
ARTICLE VI - USE TAX

5-10-600: USE TAX; DEFINITIONS:
For the purposes of this Article only, the following definitions shall apply, in addition to the definitions provided in Article I:

ACQUIRE (FOR STORAGE OR USE): Purchase, rent, lease, or license for storage or use.

RETAILER: Means any person selling, renting, licensing for use, or leasing tangible personal property under circumstances which would render such transactions subject to the taxes imposed in Article IV if such transactions had occurred within this City.

STORAGE (WITHIN THE CITY): The keeping or retaining of tangible personal property at a place within the City for any purpose, except for those items acquired specifically and solely for the purpose of sale, rental, lease, or license for use in the regular course of business or for the purpose of subsequent use solely outside the City.

USE (OF TANGIBLE PERSONAL PROPERTY): Consumption or exercise of any other right or power over tangible personal property incident to the ownership thereof, except the holding for the sale, rental, lease, or license for use of such property in the regular course of business.

5-10-601: (RESERVED) (2321)

5-10-602: (RESERVED) (2321)

5-10-610: USE TAX; IMPOSITION OF TAX; PRESUMPTION:

(A) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the City of tangible personal property for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector.

(B) The tax rate shall be at an amount equal to two percent (2.00%) of the: (3491,4553,5478)

1. Cost of tangible personal property, except jet fuel, acquired from a retailer upon every person storing or using such property in this City. (3729/Reso. 7458)

2. Gross income from the business activity upon every person meeting the requirements of Subsection 5-10 620(B) or (C) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.

3. Cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.

4. Cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.

5. Cost of food consumed by the owner or by employees or agents of the owner of a restaurant or bar subject to the provisions of Section 5-10-455 of this Chapter.
(C) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City until the contrary is established by the taxpayer.

(D) Exclusions. For the purposes of this Article, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the City:
1. Stocks, bonds, options, or other similar materials.
2. Lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
3. Platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(E) (Reserved)

(F) Additional Imposition. The tax rate shall be at an amount equal to three (3) cents per gallon of jet fuel upon every person storing or using such property in this City. (3729/Reso. 7458)

5-10-620: USE TAX; LIABILITY FOR TAX:
The following persons shall be deemed liable for the tax imposed by this Article, and such liability shall not be extinguished until the tax has been paid to this City, except that a receipt from a retailer separately charging the tax imposed by this Chapter is sufficient to relieve the person acquiring such property from further liability for the tax to which the receipt refers:

(A) Any person who acquires tangible personal property from a retailer, whether or not such retailer is located in this City, when such person stores or uses said property within the City.

(B) Any retailer not located within the City selling, renting, leasing, or licensing tangible personal property for storage or use of such property within the City may obtain a license from the Tax Collector and collect the use tax on such transactions. Such retailer shall be liable for the use tax to the extent such use tax is collected from his customers.

(C) Every agent within the City of any retailer not maintaining an office or place of business in this City, when such person sells, rents, leases, or licenses tangible personal property for storage or use in this City, shall at the time of such transaction collect and be liable for the tax imposed by this Article upon the storage or use of the property so transferred, unless such retailer or agent is liable for an equivalent excise tax upon the transaction.

(D) Any person who acquires tangible personal property from a retailer located in the City and such person claims to be exempt from the City privilege or use tax at the time of the transaction and upon which no City privilege tax was charged or paid, when such claim is not sustainable.

(E) Every person storing or using tangible personal property under the conditions of a warranty, maintenance, or service contract.

5-10-630: USE TAX; RECORD KEEPING REQUIREMENTS:
All deductions, exclusions, exemptions, and credits provided in this Article are conditional upon adequate proof of documentation as required by Article III or elsewhere in this Chapter.
5-10-640: USE TAX; CREDIT FOR EQUIVALENT EXCISE TAXES PAID TO ANOTHER JURISDICTION:
In the event that an equivalent excise tax has been levied and paid upon tangible personal property which is acquired to be stored or used within this City, full credit for any and all such taxes so paid shall be allowed by the Tax Collector, but only to the extent use tax is imposed upon that transaction by this Article.

5-10-650: USE TAX; EXCLUSION WHEN ACQUISITION SUBJECT TO USE TAX IS TAXED OR TAXABLE ELSEWHERE IN THIS CHAPTER; LIMITATION:
The tax levied by this Article does not apply to the storage or use in this City of tangible personal property acquired in this City, the gross income from the sale, rental, lease, or license of which were included in the measure of the tax imposed by Article IV of this Chapter; provided, however, that any person who has acquired tangible personal property from a vendor in this City without paying the City privilege tax because of a representation to the vendor that the property was not subject to such tax, when such claim is not sustainable, may not claim the exclusion from such use tax provided by this Section.

5-10-660: USE TAX; EXEMPTIONS:
The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Article:

(A) Tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.

(B) Tangible personal property, the value of which does not exceed the amount of one thousand dollars ($1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.

(C) Charges for delivery, installation, or other customer services as prescribed by regulation.

(D) Charges for repair services as prescribed by regulation.

(E) Separately itemized charges for warranty, maintenance, and service contracts.

(F) Prosthetics.

(G) Income-producing capital equipment.

(H) Rental equipment and rental supplies.

(I) Mining and metallurgical supplies.

(J) Motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 9, Title 28, Arizona Revised Statutes.

(K) Tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid privilege license for engaging or continuing in the business of construction contracting and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
(L) Sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(M) Tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(N) Rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 5-10-410 or by a radio station, television station, or subscription television system.

(O) Food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 5-10-455, but not food consumed by owners, agents, or employees of such business.

(P) Tangible personal property acquired by a qualifying hospital, qualifying community health center, or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512. (3476/Reso. 7209)

(Q) Sales of Food. (IN98-1/Election 3-14-00)

Definitions. (IN98-1/Election 3-14-00)

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply: (IN98-1/Election 3-14-00)

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other nonstaple foods. (IN98-1/Election 3-14-00)

2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs. (IN98-1/Election 3-14-00)

3. "Automatic retailer" means a coin-operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers. (IN98-1/Election 3-14-00)

4. "Caterer" means a person engaged in the business of serving meals, food, and drinks on the premises used by his customer, but does not include employees hired by the hour or day. (IN98-1/Election 3-14-00)

5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food, and grocery items kept under refrigeration. (IN98-1/Election 3-14-00)

6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle. (IN98-1/Election 3-14-00)
7. "Food." (IN98-1/Election 3-14-00)

(a) Food is defined as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages, or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax-exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the statute, and are therefore subject to the sales tax, shall be referred to herein as "taxable foods." (IN98-1/Election 3-14-00)

(b) "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the City does not consider food for human consumption: (IN98-1/Election 3-14-00)

i. Pet food and supplies. (IN98-1/Election 3-14-00)
ii. Cosmetics and grooming items. (IN98-1/Election 3-14-00)
iii. Tobacco products. (IN98-1/Election 3-14-00)
iv. Soaps and paper products and household supplies. (IN98-1/Election 3-14-00)
v. Dietary supplements such as vitamins or protein supplements. (IN98-1/Election 3-14-00)
vi. Medicines. (IN98-1/Election 3-14-00)
vii. Fertilizer. (IN98-1/Election 3-14-00)

8. "Food for Consumption on the Premises." (IN98-1/Election 3-14-00)

(a) "Food for consumption on the premises" means the following: (IN98-1/Election 3-14-00)

i. Hot prepared food, including products, items, or ingredients of food which are prepared and sold or intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer. (IN98-1/Election 3-14-00)

ii. Hot or cold sandwiches including frozen sandwiches. (IN98-1/Election 3-14-00)

iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and within parking areas (for in-car consumption). (IN98-1/Election 3-14-00)

iv. Food served with trays, glasses, dishes, or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer. (IN98-1/Election 3-14-00)
v. Beverages sold in cups, glasses, or open containers. Beverages shall include items such as milk shakes and ice cream floats. (IN98-1/Election 3-14-00)

vi. Food sold by caterers. (IN98-1/Election 3-14-00)

vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction, food for consumption on the premises does not include sales of tax-exempt food by a qualified retailer within the premises of a full-time educational institution that charges tuition for a full course of studies. (IN98-1/Election 3-14-00)

(b) Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable. (IN98-1/Election 3-14-00)

9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption. (IN98-1/Election 3-14-00)

10. "Home" means a natural person’s usual or habitual dwelling place, including rest homes, nursing homes, jails, and other such institutions. (IN98-1/Election 3-14-00)

11. "Premises" means the total space and facilities, including buildings, grounds, and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer. (IN98-1/Election 3-14-00)

12. "Qualified Retailer." (IN98-1/Election 3-14-00)

(a) A qualified retailer or qualified retail business is one that may be eligible to sell tax-exempt food without including the sale of tax-exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer. (IN98-1/Election 3-14-00)

(b) Qualified retailers are: (IN98-1/Election 3-14-00)

i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the Food Stamp Program. If a retailer is eligible to participate in the Food Stamp Program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Arizona Department of Revenue (and is approved by the State) to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include: (IN98-1/Election 3-14-00)

(1) Grocery stores; (IN98-1/Election 3-14-00)

(2) Convenience stores; (IN98-1/Election 3-14-00)

(3) Butcher shops; (IN98-1/Election 3-14-00)

(4) Bakeries; (IN98-1/Election 3-14-00)
(5) Dairy stores; (IN98-1/Election 3-14-00)

(6) Cheese stores; (IN98-1/Election 3-14-00)

(7) Farmer’s markets. (IN98-1/Election 3-14-00)

ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations. (IN98-1/Election 3-14-00)

iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups. (IN98-1/Election 3-14-00)

iv. Delicatessen business, if such retailer conducts his business so that the sale of tax-exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax-computing keys which are used to record taxable and tax-exempt sales. (IN98-1/Election 3-14-00)

v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include: (IN98-1/Election 3-14-00)

   (1) Snackmobile; (IN98-1/Election 3-14-00)

   (2) Chuck wagon; (IN98-1/Election 3-14-00)

   (3) Mobile hot dog stands. (IN98-1/Election 3-14-00)

vi. Vending machines and other automatic retailers. (IN98-1/Election 3-14-00)

13. "Staple food" means those food items intended for home preparation and consumption, which includes meats, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. (IN98-1/Election 3-14-00)

14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the sales tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises. (IN98-1/Election 3-14-00)

15. Tax-Exempt Foods. (IN98-1/Election 3-14-00)

   (a) "Tax-exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1998, to be purchased with food coupons issued by the United States Department of Agriculture. (IN98-1/Election 3-14-00)

   (b) Tax-exempt foods shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1998. (IN98-1/Election 3-14-00)
(c) The following are examples of items which the City will consider as tax-exempt food: (IN98-1/Election 3-14-00)

- Bread and flour products
- Vegetables and vegetable products
- Candy and confectionery
- Sugar, sugar products and substitutes
- Cereal and cereal products
- Butter, oleomargarine, shortening, and cooking oils
- Cocoa and cocoa products
- Coffee and coffee substitutes
- Milk and milk products
- Eggs and egg products
- Tea
- Meat and meat products
- Spices, condiments, extracts, and food colorings
- Fish and fish products
- Frozen foods
- Soft drinks and soda (including bottles on which a deposit is required to be paid)
- Fruit and fruit products
- Packaged ice cream products
- Dietary substitutes
- Ice cubes and bottled water including carbonated and mineral water
- Purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax-computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted. (IN98-1/Election 3-14-00)

(R) The following tangible personal property purchased by persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry, or ratites: (2977/Reso. 6722)

1. Seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.

2. Feed for livestock, poultry, or ratites, including salt, vitamins, and other additives to such feed. (2977/Reso. 6722)

3. Livestock, poultry, or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milch cows, breeding bulls, laying hens, riding or work horses. (2977/Reso. 6722)

4. (Reserved)

This exemption shall not be construed to include machinery, equipment, fuels, lubricants, pharmaceuticals, repair and replacement parts, or other items used or consumed in the running, maintenance, or repair of machinery, equipment, buildings, or structures used or consumed in the business of farming, ranching, or feeding of livestock, poultry, or ratites. (2977/Reso. 6722)

(S) Groundwater-measuring devices required by A.R.S. §45-604.
(T) Paintings, sculptures, or similar works of fine art, provided that such works of fine art are purchased from the original artist and provided further that "art creations," such as jewelry, macramé, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether purchased from the artist or from another.

(U) Aircraft acquired for use outside the State as prescribed by regulation. (2977/Reso. 6722)

(V) Sales of food products by producers as provided for by A.R.S. § 3-561, § 3-562, and § 3-563. (4616)

(W) (Reserved)

(X) Sales of food and drink to a person who is engaged in business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during such employees’ hours of employment. (5190)

(Y) (Reserved)

(Z) Tangible personal property used or stored by this City.

(AA) Tangible personal property used in remediation contracting as defined in Section 5-10-100 and Regulation 5-10-100.5. (3420/Reso. 7134)

(BB) Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries, or federal, state, county, or municipal libraries for use by the public as follows: (3476/Reso. 7209)

1. Printed or photographic materials. (3476/Reso. 7209)

2. Electronic or digital media materials. (3476/Reso. 7209)

(CC) Food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. §42-5061 (A) (49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476,4616/Reso. 7209)

(DD) Wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 5-10-470. (3476/Reso. 7206)

(EE) (Reserved)

(FF) Alternative fuel as defined in A.R.S. §1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. §49-926 or §49-480. (3476/Reso. 7209)

(GG) Food, beverages, condiments and accessories to a public educational entity pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food. (3476, 5190/Reso. 7209)
(HH) Personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 5-10-444 of this Code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy. (3476/Reso. 7209)

(II) The diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline. (3729/Reso. 7458)

(JJ) Food, beverages, condiments, and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For purposes of this Subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks, or other disposable containers, or other items which facilitate the consumption of food. (3729/Reso. 7458)

(KK) Sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215. (3729,4616/Reso. 7458, 3921)

(LL) The storage, use or consumption of tangible personal property in the city or town by a school district or charter school. (5059)

(MM) Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the Corporation Commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources. (5190)

(NN) Sales of magazines or other periodicals or other publications by this state to encourage tourist travel. (5190)

(OO) Sales of paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing. (5190)

(PP) Sales of overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. (5190)

(QQ) Sales of coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in A.R.S. Section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service. (5190)

(RR) Sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in A.R.S. Section 41-1514.02. This Subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction. (5190)
ARTICLE VII. ACCESS TO CARE PROGRAM

SEC. 5-10-700. LEGISLATIVE INTENT. (5150)

This ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of the City of Mesa by:

(A) Establishing a funding source for the non-federal share of Arizona Health Care Cost Containment System (AHCCCS) payments to acute care hospitals within the City of Mesa that provide significant amounts of uncompensated care to uninsured and low income patients, pursuant to S.B. 1357; (5150)

(B) Establishing a funding source for the non-federal share of the cost of an expansion of coverage through the AHCCCS program to uninsured individuals, pursuant to S.B. 1357; (5150)

(C) Promoting access to health care for residents of the City of Mesa, including low-income, uninsured and otherwise vulnerable populations, by ensuring the financial stability and viability of acute care hospital systems in the City; and (5150)

(D) Promoting economic development and protecting and expanding jobs in the health sector and related fields within the City of Mesa. (5150)

SEC. 5-10-701. DEFINITIONS. (5150)

For the purposes of this Article only, the following definitions shall apply: (5150)

“Access to Care Fund” means the fund established pursuant to Section 5-10-705. (5150)

“Access to Care Fund Remainder (“ATC Fund Remainder”)” means the amount remaining in the Access to Care Fund after reservation of the administrative costs pursuant to Section 5-10-725 (A). (5150)

“Access to Care Tax (“ATC Tax”)” means the tax imposed pursuant to Section 5-10-710. (5150)

“Access to Care Program” means the program consisting of the ATC tax, the uncompensated care payments, and related expanded AHCCCS coverage, to be established by AHCCCS and approved by CMS. (5150)

“Administrative Costs” means the costs to the tax collector of the collecting, administering, enforcing and transferring the ATC tax, which may include: time, materials, overhead, and litigation costs. (5150)

“AHCCCS” means the Arizona Health Care Cost Containment System, an agency of the state, which administers the medicaid program in Arizona under Title XIX of the SSA. (5150)

“CFR” means the Code of Federal Regulations. (5150)

“CMS” means the Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services. (5150)
“Coverage Amount” means an amount specified by AHCCCS to pay for the non-federal share of the expanded coverage that is part of the Access to Care Program. (5150)

“Delinquency Date” means the day after the due date. (5150)

“Due Date” means that day that is 30 days prior to the end of each quarter during the UC payment period, unless otherwise specified pursuant to Section 5-10-715 (E). (5150)

“Effective Date” means 30 days after the date of passage of this ordinance. (5150)

“Inpatient Discharges” means the annual number of days of inpatient hospital care provided to patients, calculated pursuant to Section 5-10-710. (5150)

“Medicare Cost Report” means the hospital cost report required for hospitals participating in the Medicare Program under Title XVIII of the SSA, using CMS form 2552-96. (5150)

“Non-federal Share” means the portion of AHCCCS expenditures that are not reimbursed by the federal government pursuant to Section 1903 of the SSA and are required to be paid for from state or local sources, pursuant to Section 1903 (A) (2) of the SSA. (5150)

“Participating Hospital” means a health care institution located in the City of Mesa that is licensed as a hospital by the Arizona Department of Health Services under Arizona Revised Statutes Title 36, Chapter 4, Article 2. (5150)

“Quarter” means a three month period from January to March, April to June, July to September, or October to December. (5150)

“S.B. 1357” means Senate Bill 1357, enacted by the Arizona Legislature, during its Fiftieth Legislature, First Regular Session of 2011. (5150)

“Safety Net Care Pool” means the funding pool established pursuant to the AHCCCS demonstration project authorized under Section 1115 of the SSA. (5150)

“Shortfall Amount” means the amount of any ATC tax payment that a participating hospital owes but does not pay by the due date. (5150)

“SSA” means the Social Security Act. (5150)

“Transfer Date” means the date that is 15 days prior to the end of each quarter during the UC payment period, unless AHCCCS specifies a different date, for transfer of funds from the City to AHCCCS pursuant to Section 5-10-725. (5150)

“Transfer Funds” means the funds to be transferred to AHCCCS as specified in Section 5-10-725 (B). (5150)

“Uncompensated Care Payments” means payments, to be administered by AHCCCS and approved by CMS, to participating hospitals to reimburse some or all of their uncompensated care costs of treating AHCCCS and uninsured patients. (5150)
“UC Payment Transfer Amount” means the ATC fund remainder minus the coverage amount, to be used to pay for the non-federal share of uncompensated care payments to participating hospitals for the current quarter, except that the UC payment transfer amount shall not exceed the amount specified by AHCCCS as required to fund uncompensated care payments for the quarter. (5150)

“UC Payment Period” means the period beginning on the first day of the period for which CMS approves uncompensated care payments for participating hospitals and ending on the last day of the period for which AHCCCS is authorized by state statute and CMS to make uncompensated care payments to participating hospitals. (5150)

SEC. 5-10-705. CREATION OF ACCESS TO CARE FUND. (5150)

(A) An Access to Care Fund is created as a restricted subfund within the City. The fund shall be used to account for the Access to Care Program monies and shall contain only the following: (5150)

1. Proceeds from ATC tax payments; (5150)
2. Penalties and interest for late ATC tax payments; and (5150)
3. Monies repaid to the City by AHCCCS in connection with the ATC tax or the uncompensated care payments. (5150)

(B) No monies in the Access to Care Fund shall revert to, or lapse into any other fund, including the City General Fund, except the amounts for administrative costs as provided for in Section 5-10-720 (A) and amounts from penalties and interest as provided for in Section 5-10-720 (E). (5150)

SEC. 5-10-710. IMPOSITION OF ACCESS TO CARE TAX AND RATE. (5150)

(A) As of the effective date, there is hereby levied and imposed an ATC tax equal to $461.91 per inpatient discharge for each participating hospital. (5150)

(B) Inpatient discharges for each participating hospital is calculated as the sum of the following lines from Worksheet S-3, Part I, Column 15, of the participating hospital’s Medicare cost report lines 12, 14 & 14.01. (5150)

(C) All data required to calculate the ATC tax and its application shall be derived from each participating hospital’s Medicare cost reports for the hospital fiscal year ending between April 1, 2010 and March 31, 2011. (5150)

SEC. 5-10-715. COLLECTION OF TAX (5150)

(A) Except as specified in (E) and Section 5-10-735, the ATC tax shall be due and payable on the due date on a quarterly basis with a tax payment for each quarter within the UC payment period. Each tax payment shall equal one-fourth of the total amount calculated pursuant to Section 5-10-710 (A), except that the tax payment amount shall be prorated if the UC payment period begins on a day other than the first day of a quarter or ends on a day other than the last day of a quarter, based on the number of days in such quarter that are with in the UC payment period. (5150)
(B) If the UC payment period is longer than one year, additional quarterly tax payments shall be due, calculated in the manner specified in (A). (5150)

(C) Each participating hospital shall file an ATC tax form with the City in such form and on such date as the Tax Collector shall specify, providing the data required to determine the amount of the ATC tax payment due. The Tax Collector may require the tax form to be submitted prior to the date on which all conditions specified in Section 5-10-735 have occurred. (5150)

(D) If any participating hospital fails to remit the full amount of the tax payment owed by the due date, the Tax Collector shall promptly notify the participating hospital of the shortfall amount. The participating hospital shall remit to the Tax Collector forthwith the shortfall amount along with penalties and interest due pursuant to Section 5-10-750. (5150)

(E) The Tax Collector shall adjust the due date(s) for any ATC tax payments due within the UC payment period prior to CMS approval as necessary to implement the Access to Care Program as soon as practicable after CMS approval described in Section 5-10-735 and as agreed to with AHCCCS. The Tax Collector shall provide written notice to the participating hospitals indicating the due date(s) for the applicable tax payments at least 5 days prior to such due date(s). (5150)

(F) The Tax Collector shall account for all ATC tax payments and all shortfall amounts remitted pursuant to Section 5-10-715 (D) in the Access to Care Fund. (5150)

SEC. 5-10-720. USE OF ACCESS TO CARE TAX FUND (5150)

Monies in the Access to Care Fund may be utilized for the following purposes: (5150)

(A) Up to $6,250.00 of the collected tax payments each quarter may be used by the City to cover the administrative costs. Such amount may be increased by the City upon written notice to the participating hospitals 30 days prior to the next transfer date if the City incurs unanticipated costs including costs for administration, litigation or bankruptcy proceedings related to the tax. (5150)

(B) To transfer funds to AHCCCS pursuant to Section 5-10-725 and an intergovernmental agreement for the purpose of providing local funding for the non-federal share of: (5150)

1. Uncompensated care payments to participating hospitals; and (5150)

2. Expanded health care coverage to individuals through AHCCCS. (5150)

(C) To refund to participating hospitals any ATC tax overpayment or amounts otherwise collected in error; (5150)

(D) To refund to participating hospitals pursuant to Section 5-10-745 any amounts repaid by AHCCCS to the Tax Collector after recoupment of uncompensated care payments funded by tax proceeds transferred by the City; (5150)

(E) With respect only to penalties and interest collected pursuant to Section 5-10-750, to transfer to the City’s General Fund to be used for any City-authorized purpose or any budgeted purpose consistent with the General Fund rules. (5150)
SEC. 5-10-725. TRANSFER TO AHCCCS. (5150)

(A) From the ATC tax payments collected each quarter, the Tax Collector shall retain the administrative costs. (5150)

(B) From the ATC Fund Remainder, the Tax Collector shall transfer to AHCCCS each quarter on the transfer date the transfer funds, except as provided under Subsections (C) or (D). The transfer funds are equal to the sum of: coverage amount + UC payment transfer amount. (5150)

(C) Under no circumstances shall the Tax Collector be required to transfer a total amount of transfer funds greater than the ATC Fund Remainder. If the transfer funds required under Subsection (B) exceed the fund remainder, the UC payment transfer amount shall be reduced such that the amount of the transfer funds equals the ATC Fund Remainder. (5150)

(D) In the event that the ATC Fund Remainder is greater than the transfer funds such that there are amounts remaining in the fund after a quarterly transfer, the Tax Collector shall return to the participating hospitals within 15 days after the transfer date their pro rata share of the ATC Fund Remainder based on the ATC quarterly tax amounts paid under Section 5-10-715 (A). The pro-rata share shall be based on the prior quarter. Additionally, in the event a participating hospital owes the Tax Collector monies for the previous or current quarter, the Tax Collector shall offset that participating hospital’s pro-rata share by the amount owed. (5150)

(E) In the event that a participating hospital owes a shortfall amount pursuant to Section 5-10-715 (D), the Tax Collector shall not transfer to AHCCCS any such shortfall amounts paid until 95 business days after receipt of the shortfall amount from the participating hospital. The Tax Collector shall transfer shortfall amounts to AHCCCS on the next transfer date after the 95 day period along with the transfer funds for the then-applicable quarter. In the case of shortfall amounts from the last ATC tax payment owed before the ATC tax terminates, the Tax Collector shall transfer the shortfall amounts within 15 days after the 95 day period. (5150)

SEC. 5-10-730. NO IMPACT ON PATIENTS OR PAYERS (5150)

Participating hospitals shall not pass the cost of the tax on to patients or third party payers liable to pay for the care on a patient’s behalf. (5150)

SEC. 5-10-735. REQUIREMENTS FOR IMPLEMENTATION (5150)

The tax shall not be due or payable unless and until all of the following occurs: (5150)

(A) CMS approves the uncompensated care payments and the ATC tax; and (5150)

(B) AHCCCS agrees to return to the City the non-federal share of any uncompensated care payments recouped by AHCCCS from participating hospitals, unless such recouped payments are redistributed by AHCCCS to other participating hospitals pursuant to the terms and conditions of the federal approval of the uncompensated care payments; and (5150)

(C) The City enters into an intergovernmental agreement with AHCCCS. (5150)
SEC. 5-10-740. TERMINATION. (5150)

(A) The ATC tax shall terminate on September 30, 2013, unless the UC payment period extends beyond that date due to an extension of AHCCCS’ authorization to make uncompensated care payments to participating hospitals and AHCCCS’ authorization to accept City funds for the non-federal share of AHCCCS payments pursuant to S.B. 1357. In the event that the ATC tax extends beyond September 30, 2013, the ATC tax shall terminate on the earliest of:

1. The date on which AHCCCS’ authorization to make uncompensated care payments to participating hospitals ends; or (5150)

2. The date on which AHCCCS’ authorization to accept City funds for the non-federal share of AHCCCS payments pursuant to S.B. 1357 expires; or (5150)

3. December 31, 2013. (5150)

(B) The ATC tax shall terminate prior to the date in Subsection (A) upon any of the following conditions: (5150)

1. The ATC tax is determined not to be a permissible source of non-federal share funding; or (5150)

2. The ATC tax is otherwise determined to be unlawful under city, state or federal law; or (5150)

3. A statewide hospital tax or other assessment is adopted and takes effect. (5150)

SEC. 5-10-745. IMPACT OF TERMINATION OR RECOUPMENT. (5150)

(A) In the event that the AHCCCS refunds all or part of any transfers made to it pursuant to Section 5-10-725 (B), the City shall return to the participating hospitals, within 15 days of return of the funds from AHCCCS, their pro rata share of the returned funds based on ATC tax amounts paid under Section 5-10-710. (5150)

(B) In the event that the ATC tax terminates under Section 5-10-740, the Tax Collector shall refund to each participating hospital within 15 days of termination the pro rata portion of any monies remaining in the ATC fund that have not been spent or irrevocably allocated for their designated purposes. (5150)

SEC. 5-10-750. INTEREST AND PENALTIES. (5150)

(A) In the event a participating hospital owes a shortfall amount to the Tax Collector pursuant to Section 5-10-715 (D), the participating hospital must pay interest on such shortfall amount from the delinquency date until it is remitted to the Tax Collector. The interest rate shall be determined pursuant to Section 5-10-540. (5150)

(B) In addition to interest being assessed under Subsection (A), any participating hospital that fails to pay any of the ATC tax imposed by this Article which were due or found to be due before the delinquency date shall be subject to and shall pay two (2) percent civil penalties on the shortfall amount. (5150)

(C) Penalties provided for under Section 5-10-540 are not applicable. (5150)

(D) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector. (5150)
SEC. 5-10-755. EXAMINATION OF BOOKS AND RECORDS; FAILURE TO PROVIDE RECORDS.

(A) The Tax Collector and the participating hospitals shall have all the rights and obligations as stated in Section 5-10-510. (5150)

(B) Nothing in this ordinance may be read as a waiver of any rights the Tax Collector may have under the Code or by City Charter with regards to the ability to enforce and/or collect all monies owed by the participating hospitals except where expressly stated. (5150)

(C) All other provisions in the Code or City Charter are applicable unless expressly stated otherwise. (5150)
REGULATIONS; PRIVILEGE AND EXCISE TAXES

5-10-100.1: BROKERS:

(A) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall wherever necessary be treated as taxpayers for all purposes and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 5-10-405 relating to advertising commissions.

(B) Brokers for Vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf by reason of the activity being deemed a "casual" one. For example:

1. An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

2. A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(C) Brokers for Vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(D) The liability of a broker does not relieve the principal of liability, except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

(E) (Reserved) (2321)

(F) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "out-of-city sales"; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction. (2321)

5-10-100.2: DELIVERY, INSTALLATION, OR OTHER DIRECT CUSTOMER SERVICES:

(A) Delivery charges exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer’s books and records show the separate delivery charges.

1. Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge."

2. Freight-In. Charges for delivery from place of production or the manufacturer to the vendor, either directly or through a chain of wholesalers or jobbers or other middlemen, are deemed "freight-in" and are not considered delivery.
"Installation," as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or “built-in appliances” to a camper or motorized recreational vehicle.

Repair of tangible personal property is not included in this definition. See Regulation 5-10-465.1.

"Direct customer services" are services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of Subsection (E) below are referred to by the words identify or identification.

1. A retailer sells a customer a one hundred-dollar ($100.00) "plug-in" appliance, with a twenty-five-dollar ($25.00) delivery and installation charge. If the retailer identifies the twenty-five-dollar ($25.00) delivery and installation charge, it is a charge for direct customer services.

2. A caterer charges his customer one thousand dollars ($1,000.00) for the food and drink served, three hundred dollars ($300.00) for setup and site cleanup, and five hundred dollars ($500.00) for bartender and waiters. If all charges are properly identified, only the three hundred dollars ($300.00) for setup and cleanup is a charge for direct customer services, and the one thousand five hundred dollars ($1,500.00) for food and service is restauranting gross income.

3. Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.

4. All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.

5. An equipment rental company charging twenty-five dollars ($25.00) for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.

6. Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.

Record Keeping Requirements.

1. Any person who engages in transactions involving these services must:

   (a) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge and

   (b) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified to the satisfaction of the Tax Collector.

2. Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or a similar expression does not satisfy the requirements of this Subsection.
5-10-100.3: RETAILERS:
When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

5-10-100.4: OUT-OF-CITY/OUT-OF-STATE SALES; SALES TO NATIVE AMERICANS:
(3729/RESO. 7458)
Sales to Native Americans or tribal councils by vendors located within the City shall be deemed sales within the City, unless all of the following conditions exist: (3729/Reso. 7458)

1. The vendor has properly accounted for such sales, in a manner similar to the record keeping requirements for out-of-City sales; and

2. All of the following elements of the sale exist:
   a. Solicitation and placement of the order occurs on the reservation; and
   b. Delivery is made to the reservation; and
   c. Payment originates from the reservation. (2321)

5-10-100.5: REMEDIATION CONTRACTING:
The following activities are considered remediation contracting and are exempt: (3420/Reso. 7134)

1. Excavation, transportation, treatment, and/or disposal of contaminated soil for purposes of site remediation (rather than characterization); (3420/Reso. 7134)

2. Installation of groundwater extraction and/or injection wells for purposes of groundwater remediation; (3420/Reso. 7134)

3. Installation of pumps and piping into groundwater extraction wells for remediation purposes; (3420/Reso. 7134)

4. Installation of vapor extraction wells for the purpose of soil or groundwater remediation; (3420/Reso. 7134)

5. Construction of remediation systems, such as groundwater treatment plants, vapor extraction systems, or air injection systems; (3420/Reso. 7134)

6. Connection of remediation systems to utilities; (3420/Reso. 7134)

7. Abandonment of groundwater or vapor extraction wells; (3420/Reso. 7134)

8. Removal/demolition of remediation systems; (3420/Reso. 7134)

9. Capping/closure construction activities; and (3420/Reso. 7134)
10. Service or handling charges for subcontracted remediation contracting activities. (3420/Reso. 7134)

5-10-110.1: (REPEALED BY 2977/RESO. 6722)

5-10-110.2: (REPEALED BY 2977/RESO. 6722)

5-10-115.1: COMPUTER HARDWARE, SOFTWARE, AND DATA SERVICES:

(A) Definitions.

1. COMPUTER HARDWARE: (Also called computer equipment or peripherals.) The components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

2. COMPUTER SOFTWARE: (Also called computer program.) Tangible personal property, and includes:

   (a) OPERATING PROGRAM (SOFTWARE): (Also called executive program {software}.) The programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer’s processing capabilities.

   (b) APPLIED PROGRAM (SOFTWARE): The programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

3. STORAGE MEDIUM: Any hard disk, compact disk, floppy disk, diskette, disk pack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

4. TERMINAL ARRANGEMENT: (Also called on-line arrangement.) Any agreement allowing access to a remote central processing unit through telecommunications via hardware.

5. COMPUTER SERVICES AGREEMENT: (Also called data services agreement.) Any agreement allowing access to a computer through a third-party operator.

(B) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property, and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

1. Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee’s use of such hardware or storage media on the lessor’s premises.

2. Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:
(a) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(b) The entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.

(c) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(d) The entire amount charged for transfer of a prewritten (canned) program by remote telecommunications from the transferor's place of business to or through the customer's computer.

(e) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

   i. If such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

   ii. If such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

   iii. If such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program, and charges for consultation are deemed to be charges for professional services.

(C) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

1. Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in Subsection (E) below.

2. Additional copies of records, reports, manuals, tabulations, etc. "Additional copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(D) Charges for the use of communications channels in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(E) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 5-10-100.2(E):
1. "Custom (computer) programming," which is any computer software written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(a) Custom computer programming is deemed a professional service regardless of the form in which the programming is transferred. (3954/Reso.7756)

(b) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

(c) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

2. Training services related to computer hardware or software, provided further that:

(a) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without a separately itemized charge for the materials provided.

(b) Training deemed a direct customer service does not include:

i. Training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.

ii. Training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software or as part of a terminal arrangement or data services agreement.

3. The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer’s place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

4. Compiling and producing as part of a terminal arrangement or computer services agreement original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(F) The purchase, rental, lease, or license for use of computer hardware, storage media, or computer software which is not deemed custom programming is deemed the use or storage of tangible personal property for the purpose of this Chapter, and the amount which may be subject to Use Tax shall be determined in the same manner as the determination of the gross income from the sale, rental, lease, or license for use of such.

5-10-120.1: (RESERVED)

5-10-200.1: WHEN DEPOSITS ARE INCLUDABLE IN GROSS INCOME: (2977/RESO. 6722)

(A) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee. (2977/Reso. 6722)
(B) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt. (2977/Reso. 6722)

5-10-250.1: EXCESS TAX COLLECTED:
If a taxpayer collects taxes in excess of the combined tax rate from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. Tax paid on an activity that is not subject to tax or that qualifies for an exemption, deduction, exclusion or credit is not excess tax collected. (4582)

5-10-270.1: PROPRIETARY ACTIVITIES OF MUNICIPALITIES ARE NOT CONSIDERED ACTIVITIES OF A GOVERNMENTAL ENTITY:
The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 5-10-270:

(A) Rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

(B) Producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

(C) Sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

(D) Providing wastewater removal to consumers or ratepayers, by means of sewers or pipeline, or by any other method. (4990)

5-10-270.2: PROPRIETARY CLUBS:

(A) Equity Requirements. In order to qualify for exclusion under Section 5-10-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one (1) or more of its employees and it is not engaged in any business activity connected with the operation of the club.

(B) Gross Revenue Requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of Subsection 5-10-270(C)1,

1. The following shall be excluded:

   (a) Membership dues.

   (b) Membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.

   (c) Assessments.

   (d) Special fund-raising events, raffles, etc.

   (e) Donations, gifts, or bequests.
(f) Gate receipts, admissions, and program advertising for not more than one (1) tournament in any calendar year.

2. The following must be included:

(a) Green fees, court use fees, and similar charges for the actual use of a facility or part thereof.

(b) Pro shop sales if the shop is owned by the club.

(c) Golf cart rental if the carts are owned by the club.

(d) Rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.

(e) All receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.

(f) Locker and locker room fees and attendants’ charges if paid to the club.

(g) Tournament entry fees other than entry fees for the one (1) annual tournament exempt under Subsection (B)1(f) above.

5-10-405.1: LOCAL ADVERTISING EXAMPLES:
For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

1. Retail sales and rental establishments doing business within the State when only one (1) commonly designated business entity is identified by name in the advertisement.

2. Financial institutions doing business within the State, whether part of a national chain or local business only.
3. Sales of real estate located within the State.

4. Health care facilities located within the State.

5. Hotels, motels, and apartments, whether a national chain or local, so long as the advertisement identifies any location within the State.

6. Brokers doing business within the State, whether stockbrokers, real estate brokers, insurance brokers, etc.

7. Nonprofit organizations which even though tax exempt, have an office, whether national, local, or branch, within the State.


9. Restaurants or food service establishments which have one (1) or more branches, outlets, or franchises within the State, even though the local franchisee or licensee may not be responsible for the placement of the advertisement.

10. Services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling services, utilities, contractors, auction houses, etc.

11. Coupons redeemable only at a single commonly designated business entity within the State.

12. Theater, sports, and other entertainment events held at locations within the State.

5-10-405.2: ADVERTISING ACTIVITY WITHIN THE CITY:

(A) In General. Except as provided elsewhere in this Regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities, such as broadcasting studios, printing plants, or distribution centers, are located within the City limits. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City. (2321)

(B) Billboards and other outdoor advertising companies shall be considered to be doing business within the City to the extent they have billboards or similar displays within the City. (2321)

(C) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 5-10-405, and such tax shall be allocated in the manner prescribed by Subsection (E) of Section 5-10-435. (2321)
INVALID UNLESS COMPLETED IN FULL

VENDOR'S NAME ____________________________ Sales Invoice No. ____________________________

Customer's Exemption Claim
City of Mesa Privilege License (Sales) Tax

Customer's Business Name: ____________________________

Customer's Business Address: ____________________________
Specific Business Activity: (e.g., if retailer, lessor, or manufacturer, specify items leased, sold, or made, i.e., cars, computers, clothes, etc.)

Customer's License Nos: ____________________________
City: ____________________________ State: ____________________________

ITEMS CLAIMED AS EXEMPT FROM TAX

__________ : All Items on this Invoice or Purchase Order
or
__________ : Only Those Items Marked with an "E"

REASON FOR CLAIMED EXEMPTION:

: The items claimed as exempt are sold, rented, leased, or licensed by the above named customer in the normal course of its business activity
or
: The items claimed as exempt are exempt from the City of Mesa Privilege Tax for the following specific reason(s):__

CUSTOMER'S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under City Code Section 5-10-580.

Name ____________________________ Date ____________________________

Title ____________________________

Tax Regulations Page 10
5-10-407.1: (RESERVED) (2321)

5-10-415.1: DISTINCTION BETWEEN THE CATEGORIES OF CONSTRUCTION CONTRACTING:
For the purposes of this Chapter, transactions involving improvements to, or sales of, real property are designated into one (1) of the following categories, and these categorizations shall apply whether or not a person designates himself as a contractor, construction manager, developer, or otherwise:

(A) A person performing improvements to real property is one (1) of the following:

1. An "owner-builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder."

2. A "construction contractor" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has provided a written declaration stating that:
   (a) The owner-builder is improving the property for sale;
   (b) The owner-builder is liable for the tax for such construction contracting activity; and
   (c) The owner-builder has provided the contractor his City Privilege License number.

3. A "subcontractor" (as provided in Section 5-10-415(C)).

(B) An owner or lessor ("owner-builder") of improved real property is one (1) of the following:

1. A "speculative builder" as provided in Section 5-10-100;

2. An "owner-builder who is not a speculative builder" in all other cases.

(C) The terms "owner," "lessor," and "lessee-in-possession" shall be deemed to include any authorized agent for such person.

5-10-415.2: DISTINCTION BETWEEN CONSTRUCTION CONTRACTING AND CERTAIN RELATED ACTIVITIES:

(A) Certain Rentals, Leases, and Licenses for Use in Connection with Construction Contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

1. Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.

2. Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

3. Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.

(B) Distinction Between Construction Contracting, Retail, And Certain Direct Customer Service Activities.
1. When an item is attached or installed on real property, it is a construction contracting activity, and any subsequent repair, removal, or replacement of that item is construction contracting.

2. Items attached or installed on tangible personal property are retail sales.

3. Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).

4. Demolition, earth moving, and wrecking activities are considered construction contracting.

(C) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint. (2977/Reso. 6722)

(D) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity. (2977/Reso. 6722)

1. "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service. (2977/Reso. 6722)

2. Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings. (2977/Reso. 6722)

3. Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges. (2977/Reso. 6722)

4. The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity. (2977/Reso. 6722)

5-10-415.2: CONSTRUCTION CONTRACTING; TAX RATE EFFECTIVE DATE: (4169/RESO. 8205)

(A) In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the "enactment date" as defined in this Section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax. (4169/Reso. 8205)

(B) In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the Tax Collector, to verify that a contract was entered into before the enactment date. (4169/Reso. 8205)

(C) For purposes of this Section, "enactment date" shall be: (4169/Reso. 8205)

1. In the event an election is held, the date of the election. (4169/Reso. 8205)

2. In the event no election is held, the date of final adoption by the Mayor and Council. (4169/Reso. 8205)

3. Notwithstanding the above, nothing in this Section shall be construed to prevent the City from establishing a later enactment date. (4169/Reso. 8205)
5-10-416.1: SPECULATIVE BUILDERS; HOMEOWNER’S BONA FIDE NONBUSINESS SALE OF A FAMILY RESIDENCE:

(A) A sale of a custom home, regardless of the stage of completion of such home, shall be considered a "homeowner’s bona fide nonbusiness sale" and not subject to the tax on speculative builders if: (2977/Reso. 6722)

1. The property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale;

2. The seller has not sold more than two (2) such residences (or if the residence is a vacation residence, two [2] such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and

3. The seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale. (2977/Reso. 6722)

(B) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner’s bona fide nonbusiness purpose, and all construction contractors shall be required to report and pay the tax imposed on all such improvements. (2977/Reso. 6722)

(C) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.

(D) "Owner" and "homeowner" as used in this regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings for the estate of a deceased or incompetent person or a minor may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

5-10-416.2: RECONSTRUCTION CONTRACTING:

(A) "Reconstruction (of real property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:

1. A structure existed on said real property prior to the reconstruction activity;

2. The "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure);

3. The total cost of all construction contracting activities performed on said real property in the twenty-four- (24-) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

4. The structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property and is included, in whole or in part, in the property sold.
(B) Except as provided in Subsection (C) below, "prior value" means the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where according to Title 42 of the Arizona Revised Statutes a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s). (3270/Reso. 6970)

(C) "Alternative prior value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, as a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved, which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long-term lending - not interim or construction financing-will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below. (2977/Reso. 6722)

(D) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty), whichever is earlier, to a purchaser or grantee of any single-residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single-residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further, in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens, or security interests) of a share or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases, a person shall include a husband and wife as a community or any co-occupants of a single unit as joint tenants.

5-10-425.1: DISTINCTION BETWEEN JOB PRINTING AND CERTAIN RELATED ACTIVITIES:

(A) Computerized Printing. Computerized versions of all items which would be taxable under Section 5-10-425 if performed without computerized assistance are considered taxable under that Section and therefore are not exempt services.

(B) Book Publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.

(C) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

5-10-435.1: DISTINCTION BETWEEN PUBLISHING OF PERIODICALS AND CERTAIN RELATED ACTIVITIES:

(A) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.
(B) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

5-10-435.2: ADVERTISING INCOME OF PUBLISHERS AND DISTRIBUTORS OF NEWSPAPERS AND OTHER PERIODICALS:
Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 5-10-405 and such tax shall be allocated in the manner prescribed by Subsection (E) of Section 5-10-435. (2321)

5-10-445.1: WHEN THE RENTAL, LEASING, AND LICENSING OF REAL PROPERTY IS EXEMPT AS "CASUAL":

(A) The person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased, or licensed or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is deemed not to be in the business of renting, leasing, or licensing real property and is therefore exempt from the tax imposed by Section 5-10-445 on such income. However, a person who has one (1) or more units of any other real property is deemed to be in the business of renting, leasing, or licensing real property, and subject to the tax imposed by Section 5-10-445 on rental, lease, and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than two (2) lodging spaces within the State. (2535,2977,4841/Reso. 6722)

(B) (Reserved)

5-10-445.2: (REPEALED BY 2977/RESO. 6722)

5-10-445.3: RENTAL, LEASING, AND LICENSING OF REAL PROPERTY AS LODGING; ROOM AND BOARD; FURNISHED LODGING:

(A) Room and Board.

1. Rooming houses, lodges, or other establishments providing both lodging and meals shall maintain a record of the separate charges made for the lodging and the meals.

2. The charge for lodging shall be subject to the tax imposed by Section 5-10-444 or Section 5-10-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 5-10-455. (2977/Reso. 6722)

(B) Furnished Lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property unless:

1. Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished;

2. The lessor separately charges tenants for lodging and for furnishings; and

3. The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.
If all of the above conditions are met, such person shall report both sources of income separately to the City.

5-10-447.1: GROSS INCOME FROM RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY AS LODGING OR LODGING SPACE TO TRANSIENTS: (3175)

(A) If the charge made by a hotel to a transient includes any charge for services or accommodations in addition to that of lodging and/or the use of lodging space, then such portion of the total charge as represents only the charge for the use of the room and/or lodging space shall be distinctly set out and billed to such transient by such hotel as a separate item, or the entire charge shall be deemed charge for use of lodging space subject to the tax imposed by Section 5-10-447. (3175)

(B) A separately itemized charge for use of the furnishings contained in lodging or lodging space rented, leased, or licensed to a transient shall be deemed gross income from the business of renting, leasing, and licensing lodging to a transient. Furthermore, in regard to such tangible personal property, such person is deemed not in the business of rental, leasing, and licensing of tangible personal property for all purposes of this Chapter. (3175)

(C) Complimentary Food and Drink. Persons engaged in the business of rental, leasing, and licensing of lodging to transients shall include charges for complimentary food and drink as gross income from the business of rental, leasing, and licensing of lodging to transients and shall not be deemed in the restaurant business for all purposes of this Chapter, unless such charges: (3175)

1. Are made only at the request of the transient or as a separate, optional charge for consuming specific food or drink (for example, "room service" charges); and (3175)

2. Are commensurate with charges for like quantity and type of food consumed by patrons of persons engaged in the restaurant business. (3175)

5-10-450.1: DISTINCTION BETWEEN RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY AND CERTAIN RELATED ACTIVITIES:

(A) Certain Rentals, Leases, and Licenses For Use in Connection With Construction Contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

1. Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.

2. Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

3. Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

(B) Distinction Between Equipment Rental, Leasing, or Licensing for Use and Transporting for Hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.
5-10-450.2: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; MEMBERSHIP FEES; OTHER CHARGES:

(A) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.

(B) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.

(C) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is considered part of gross income from rental, leasing, or licensing of tangible personal property subject to tax. However, if the contract is optional and is a separate business transaction, the sale of a warranty, maintenance, or service contract is exempt from the tax imposed by Section 14-450.

5-10-450.3: RENTAL, LEASING, AND LICENSING FOR USE OF EQUIPMENT WITH OPERATOR:
In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

5-10-450.4: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; SEMI-PERMANENTLY OR PERMANENTLY INSTALLED TANGIBLE PERSONAL PROPERTY:

(A) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.

(B) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.

(C) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.

(D) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.

1. For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.

2. Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, fork lift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, towbars, sump pumps, arc welders.
(E) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one (1) of the other types of portable equipment or property described in Subsection (D) above.

5-10-450.5: RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY; DELIVERY, INSTALLATION, REPAIR, AND MAINTENANCE CHARGES:

(A) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 5-10-450, provided that the provisions of Regulation 5-10-100.2 have been met.

(B) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt. (3270/Reso. 6970)

(C) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property shall be exempt. (3270/Reso. 6970)

5-10-455.1: GRATUITIES RELATED TO RESTAURANT ACTIVITY:
Gratuities charged by or collected by persons subject to the tax imposed by Section 5-10-455 may be excluded from gross income if:

(A) Such charge is separately stated upon the bill, invoice, etc. provided the customer and such amounts are maintained separately in the books and records of the taxpayer and

(B) Such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

5-10-460.1: DISTINCTION BETWEEN RETAIL SALES AND CERTAIN OTHER TRANSFERS OF TANGIBLE PERSONAL PROPERTY:

(A) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 5-10-460:

1. Tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 5-10-415 through 5-10-418.

2. (Reserved)

3. Job printing per Section 5-10-425.

4. Mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground per Section 5-10-430.

5. Publication of newspapers, magazines, and other periodicals per Section 5-10-435.
6. Rental, leasing, and licensing of real or tangible personal property per Sections 5-10-445 or 5-10-450.

7. Restaurants and bars per Section 5-10-455.

8. Telecommunications services per Section 5-10-470.

9. Utility services per Section 5-10-480.

10. Wastewater removal services per Section 5-10-485. (4990)

(B) Distinction between construction contracting, retail, and certain direct customer service activities.

1. When an item is attached or installed on real property, it is a construction contracting activity, and any subsequent repair, removal, or replacement of that item is construction contracting.

2. Items attached or installed on tangible personal property are retail sales.

3. Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).

4. Demolition, earth moving, and wrecking activities are considered construction contracting.

(C) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(D) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(E) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

1. "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.

2. Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.

3. Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.

4. The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

5-10-460.2: RETAIL SALES; TRADING STAMP COMPANY TRANSACTIONS:

A trading stamp transaction is defined as follows: the trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale, and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.
The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any privilege or use tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

5-10-460.3: RETAIL SALES; MEMBERSHIP FEES OF RETAILERS:
Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

5-10-460.4: RETAIL SALES; PROFESSIONAL SERVICES:

(A) "Professional services" refers to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, work papers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.

(B) Creative ("idea") labor and design labor that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer’s books and records, are not includable in gross income.

(C) "Professional services" shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential."

1. Incidental transfers of tangible personal property shall be regarded as "inconsequential" if:

   (a) The purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction and

   (b) The tangible personal property transferred is not itself in a form which is subject to retail sale.

2. In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property and subject to all applicable taxes imposed by this Chapter upon such transfer.

(D) Examples:

1. The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public accountant is regarded as inconsequential to the charges for professional services.

2. An appraisal report issued by an appraiser, reflecting such appraiser’s efforts to appraise real estate, is regarded inconsequential.

3. Use of a hair care product on a client’s hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client’s use thereafter and without the professional’s assistance, the transfer of the bottle of hair care product is deemed not inconsequential.
4. If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

5-10-460.5: RETAIL SALES; MONETIZED BULLION; NUMISMATIC VALUE OF COINS:

(A) Monetized Bullion: Coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.

(B) Any coin shall be considered to have been transferred or acquired primarily for its "numismatic value" if the sale or acquisition price:

1. Is equal to or greater than twice (two \{\{2\}\} times) the value of the metallic content of the coin as of the date of transfer or acquisition and

2. Is equal to or greater than twice (two \{\{2\}\} times) its face value in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

5-10-460.6: RETAIL SALES; CONSIGNMENT SALES:

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

5-10-465.1: RETAIL SALES; REPAIR SERVICES:

(A) Fair Market Value of Parts and Labor Charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part which ordinarily sells to the customer at ten dollars ($10.00), at five dollars ($5.00) and including the difference as "service" or "labor." In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit to estimate the gross income subject to tax.

(B) Notwithstanding Regulation 5-10-350.1(E):

1. In the case where the taxpayer does not normally and regularly sell items of tangible personal property apart from a repair transaction, the taxpayer may determine the sale price of the tangible personal property transferred by means of a "computed charge." The "computed charge" shall be the sum of the cost of the item of tangible personal property transferred, plus a "reasonable markup." The "reasonable markup" shall be that amount needed to achieve a representative retail price for which such items of tangible personal property are normally sold at retail by comparable businesses within the State (not under circumstances involving the combination of such sale with the providing of repair services). The taxpayer shall have the initial responsibility of determining such reasonable markup and providing to the Tax Collector, if requested, the basis for his determination.
2. In the event that there is a disagreement between the Tax Collector and the taxpayer as to the proper
determination of the "computed charges," the burden shall be upon the taxpayer to satisfy the Tax Collector,
the Hearing Officer in the event of a hearing, or the court in any subsequent court action involving an
assessment of the validity of the taxpayer’s method of determination of such "computed charges." The
determination by the Tax Collector as to the proper "computed charge" shall be considered valid and shall be
sustained unless it is proven by the taxpayer that such determination is arbitrary and unreasonable.

5-10-465.2: RETAIL SALES; WARRANTY, MAINTENANCE, AND SIMILAR SERVICE
CONTRACTS:

(A) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by
Section 5-10-460.

(B) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance
agreement between a vendor and a vendee shall be subject to tax under Section 5-10-460 only to the extent of
gross income received from separately itemized charges made for the items of property transferred.

(C) The gross income derived from a maintenance insurance agreement, which agreement is entered into between
the purchaser and any person other than the seller, is not subject to tax imposed by Section 5-10-460. If the
provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured
in the performance of the agreement, such sales are subject to all applicable taxes imposed by this Chapter.

(D) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service
contract exempted under Section 5-10-465 are subject to tax as retail sales.

(E) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer’s
warranty is not taxable under Section 5-10-460.

5-10-465.3: RETAIL SALES; SALE OF CONTAINERS, PAPER PRODUCTS, AND LABELS:

(A) The sale of a container or similar packaging material which contains personal property and which is
transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such
nontaxable containers include, but are not limited to: (2977/Reso. 6722)

1. Packaging materials sold to a manufacturer of video equipment for containment of the product during
shipment.

2. Cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or
contained meat.

3. Bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where
such bags or containers are used to contain and measure the amount purchased by the customer. (2977/Reso.
6722)

4. Shopping bags and similar merchandising bags sold to grocery stores, department stores, or other retailers.
(2977/Reso. 6722)

5. Gift wrappings and gift boxes sold to department stores or other retailers. (2977/Reso. 6722)
(B) Sales of nonreturnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks, and other similar food accessories to a restaurant or others taxable under Section 5-10-455 for the transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink, or condiment are sales for resale and not taxable. (2977/Reso. 6722)

(C) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale. (2977/Reso. 6722)

(D) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made. (2977/Reso. 6722)

(E) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it and is not exempt as a sale for resale. (2977/Reso. 6722)

5-10-465.4: RETAIL SALES; AIRCRAFT ACQUIRED FOR USE OUTSIDE THE STATE:
"Aircraft acquired for use outside the State" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to: (2977/Reso. 6722)

(A) Any foreign government for use by such government outside of this State. (2977/Reso. 6722)

(B) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This Subsection also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State. (2977/Reso. 6722)

5-10-470.1: TELECOMMUNICATION SERVICES:

(A) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:

1. Charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 5-10-415, 5-10-416, or 5-10-417 (construction contracting); 5-10-445 (real property rental); 5-10-450 (tangible personal property rental); or 5-10-460 (retail sales); depending upon the nature of the work performed.

2. Separately billed advertising charges which are subject to the provisions of Section 5-10-405 or 5-10-435.

(B) Mobile Equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones; portable hand-held, two-way radios; paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider’s customers are "within this City" as follows:

1. By the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.

2. In all other cases, the business location of the telecommunications provider.
5-10-475.1: DISTINCTION BETWEEN TRANSPORTING FOR HIRE AND CERTAIN RELATED ACTIVITIES:

The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

5-10-520.1: REPORTS MADE TO THE CITY:

(A) Each taxpayer shall provide, as a minimum, all of the following when reporting taxes due as provided in this Chapter:

1. Legal business name of the taxpayer or his agent.

2. Mailing address of the taxpayer.

3. City privilege license number of the taxpayer.

4. Period of time for which the report is intended.

5. For each category of income to which the taxpayer is subject for the reporting period as provided on the official City tax return:

   (a) All amounts subject to, excluded from, exempt from, or deductible from the tax imposed upon that category of business activity, summarized in total as "gross receipts" of that category of business activity.

   (b) The total amount claimed as excludable, exempted, or deducted from such "gross receipts," itemized as provided on the official City tax return and summarized in total as "total deductions" for that category.

   (c) The difference between such "gross receipts" and "total deductions" as "net taxable" for that category.

   (d) The tax due and payable for that category.

6. That total amount subject to use tax, summarized as "net taxable," and the use tax due and payable for that reporting period.

7. Any excess tax collected which is due and payable.

8. Any claimed tax credits against taxes due and payable.

9. Total amount remitted with the return.

10. A statement verifying that the information provided on the return is accurate to the best of the preparer’s knowledge. Such statement must be accompanied by a dated signature of the preparer and also show the preparer’s title or relationship to the taxpayer.

11. The Tax Collector may prescribe and will notify taxpayers of alternative methods for signing, subscribing, or verifying any report or statement required to be filed, including but not limited to electronic signatures and/or security codes, and such methods shall have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe, or verify the return, statement, or other document. (4169/Reso. 8205)
5-10-520.2: CHANGE OF METHOD OF REPORTING:

(A) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving written approval of the Tax Collector. The approval shall state the effective date of the change.

(B) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.

(C) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the City. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.

(D) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a privilege license shall be deemed to have chosen the accrual method of reporting.

5-10-555.1: ADMINISTRATIVE REQUEST FOR THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS; SERVICE THEREOF; REMEDIES AND PENALTIES FOR FAILURE TO RESPOND:

(A) If a taxpayer refuses or fails to comply in whole or in part with a request to provide records authorized by Section 5-10-555, the Tax Collector may issue his written administrative request which shall:

1. Designate the individual to provide information.

2. Describe specifically or generally the information to be provided and any documents sought to be examined.

3. State the date, time, and place in which the individual shall appear before the Tax Collector to provide the information and to produce the documents sought.

4. Be directed to:

   (a) Any director, officer, employee, agent, or representative of the person sought to be examined;

   (b) Any independent accountant, accounting firm, or bookkeeping or financial service retained or employed by such person for any purpose connected with business activity subject to taxation; or

   (c) Any other person who, in the opinion of the Tax Collector, has knowledge of facts bearing upon any tax liability of the person or taxpayer from whom information is sought.

(B) The failure of a taxpayer to comply with reasonable requests for records without good reason or cause may, in the exercise of judicial discretion by a court, be held to constitute a failure to exhaust administrative remedies.
5-10-571.1: COLLECTION OF TAX IN JEOPARDY:
Evidence that collection of tax due is in jeopardy shall include documentation that:

(A) The taxpayer is going out of business.

(B) The taxpayer has no City privilege license or has no permanent business location in the State.

(C) The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.

(D) The taxpayer has remitted payment by check which has been dishonored.

(E) The taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 5-10-555.1.
CHAPTER 11

TEENAGE DANCE HALLS

SECTION:

5-11-1: DEFINITION
The term "teenage dance hall" whenever used in this Chapter shall, unless a different meaning appears from the context, mean an establishment open to persons under nineteen (19) years of age unaccompanied by adults where music is furnished for the purpose of dancing, at which an admission or minimum fee is charged, and includes the building or pavilion or other place provided for dancing, together with all surrounding premises used for parking or any other activity or purpose related to the dancing operation. This definition shall not include an establishment operated or conducted exclusively by and under the auspices of one (1) or more bona fide charitable, fraternal, or religious organizations or schools and the proceeds of which do not inure to the benefit of any private person or individual. (541,1188)

5-11-2: HOURS OF OPERATION
It shall be unlawful for a teenage dance hall to be operated except during the following hours:
(541,1188)

Four thirty (4:30) P.M. to twelve (12:00) midnight on any day Monday through Thursday; (541,1188)

Four thirty (4:30) P.M. Friday to one (1:00) A.M. the following Saturday; (541,1188)

Four thirty (4:30) P.M. Saturday to one (1:00) A.M. the following Sunday. (541,1188)

5-11-3: AGE OF PATRONS
It shall be unlawful for a person under the age of fifteen (15) years to be admitted to or to be present at a teenage dance hall while it is in operation. The owner, manager, or other person operating a teenage dance hall shall be presumed to know the age of those seeking admission thereto and of those present thereat. (541)

5-11-4: ALCOHOLIC BEVERAGE OR TOBACCO
It shall be unlawful for any alcoholic beverage or tobacco in any form to be consumed, dispensed, or possessed by or to any person at a teenage dance hall. (541)
**5-11-5:** **PERSONS UNDER THE INFLUENCE OF ALCOHOL:**
It shall be unlawful for a person to be admitted to or be present at a teenage dance hall who is under the influence of alcohol or who has consumed any alcoholic beverage in any form within the twelve (12) hours immediately preceding or who is disorderly or boisterous. (541)

**5-11-6:** **LOITERING:**
It shall be unlawful for a person to loiter on or around the parking area or other premises of a teenage dance hall, except for persons who are then presently lawfully admitted thereto. (541)

**5-11-7:** **LIGHTING:**
Teenage dance halls shall at all times during the operation thereof be illuminated with the following minimum lighting: (541)

(A) On the dance floor or pavilion and in all places inside an enclosed structure which are used by patrons, at least one (1) footcandle per square foot. (541)

(B) On all outside premises, at least three (3) footcandles per square foot. (541)

**5-11-8:** **SUPERVISION AND SECURITY:**
The owner, manager, operator, or other person in charge of a teenage dance hall shall at all times during the operation thereof provide adequate security and adult supervision to keep all patrons thereof orderly. As a minimum, at least two (2) responsible persons over the age of twenty-one (21) years shall be present at all times, and one regular or reserve police officer of the City, approved in advance by the Chief of Police, shall be present at all times deemed necessary by the Chief of Police. (541,1188)

**5-11-9:** **POSTING REGULATIONS:**
A copy of Chapter 11 of Title 5 of this Code, printed in at least ten (10) point type, shall at all times be posted in a conspicuous place at each teenage dance hall. (541,1188)

**5-11-10:** **LICENSE:**
It shall be unlawful for any person to conduct, operate, or carry on a teenage dance hall without first procuring from the Finance Director a license to do so, which license shall be issued only upon approval of the Council. Each and every day or fractional part of a day that a teenage dance hall is conducted or carried on without such license shall constitute a violation of this Chapter. (541,1605,1195,2034)

(A) A person applying for a teenage dance hall license shall make payment of the application fee established in the current Schedule of Fees and Charges and shall make written application filed with the Finance Director on such form as he may prescribe, setting forth the following information: (541,1195,1605,4982)

1. The name and address of the applicant and of each owner, manager, and operator connected with the proposed teenage dance hall. (541,1195,2034)

2. The place where such proposed teenage dance hall is to be located. (541,1195,2034)
3. Whether the applicant or any owner, manager, or operator connected with the proposed teenage dance hall has ever previously been issued a teenage dance hall license which has been revoked, suspended, or forfeited. (541,1195,2034)

4. Any other information called for on the application to aid in determining the moral character of the applicant, owner, principal, agent, or their employees, relating to the proposed dance hall. (541,1195,2034)

A teenage dance hall license shall not be approved or issued unless the location for which it is to be issued is zoned "C-3" or less restrictive zoning and unless said location is a distance of more than three hundred feet (300') from any area having more restrictive zoning. (541,1195,2034)

A teenage dance hall license shall not be assignable or transferable from the person or place set forth in the application, and any attempted assignment or transfer thereof shall be void and shall work a forfeiture of such license and all license fees and taxes paid therefor. (541,1195,2034)

(B) A first year license fee as established by the current Schedule of Fees and Charges shall be paid at the time of application. Additionally, an annual renewal fee as established by the current Schedule of Fees and Charges shall be payable in advance by the applicant at the office of the Finance Director for subsequent years. Every license shall expire on December 31 of each year. Failure to pay the license renewal fee prior to the beginning of each calendar year shall automatically cause the license to be revoked. (541,1195,1605,2034,4982)

(C) Every person having a teenage dance hall license shall at all times keep it posted in a conspicuous place on the premises to which it applies. (541,1195,2034)

(D) The Finance Director shall have the power to revoke at any time a license granted in accordance with this Chapter for any of the following causes: (541,1195,1605,2034)

1. Fraud, misrepresentation, or false statement contained in the application for license; (541,1195,2034)

2. Fraud, misrepresentation, or false statement made in the course of carrying on his business; (541,1195,2034)

3. Any violation of this Chapter; (541,1195,2034)

4. Conviction of any crime or misdemeanor involving moral turpitude; (541,1195,2034)

5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public. (541,1195,2034)

(E) Within five (5) days, excluding weekends and legal holidays, a licensee may appeal to the City Manager from the revocation by the Finance Director of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (1195,2034,2383)
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CHAPTER 12

MASSAGE ESTABLISHMENT OPERATIONS

(621,626,632,1605,1627,2282,2697,3184,4315,4957,5031,5285)

SECTION:

5-12-1: PURPOSE; DEFINITIONS (5285)
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5-12-1: PURPOSE; DEFINITIONS: (5285)

(A) The purpose of this Chapter is to:

(1) Enhance the professionalism of the massage service industry, to protect the health and safety of the public by requiring massage therapists to have thorough knowledge of anatomy, physiology and an understanding of the relationship between the structure and the functions of the tissues being treated; and (4957, 5031)

(2) Assure the integrity of the massage service industry by reducing unprofessional and unlawful practices. (4957, 5031, 5285)

(B) The below words and phrases, wherever used in this Chapter, shall be construed as defined in Section 5-12-1 unless, from the context, a different meaning is intended. 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: (4957, 5031, 5285)
5-12-1

(1) **APPLICANT:** A person who applies for a massage establishment license who, upon approval of the application, will be the licensee. (4957, 5031, 5285)

(2) **CITY:** The City of Mesa, Arizona. (5285)

(3) **CLIENT:** An individual who enters into an agreement for massage therapy for a fee, income or compensation of any kind within the City. (4957, 5031, 5285)

(4) **CONTROLLING PERSON:** Means (A) any individual who has a ten percent (10%) or greater interest in the ownership or the earnings of the business and (B) any of the following persons for a licensee/applicant: (4957, 5031, 5285)

(a) The president or other executive officers of a corporation; (5285)

(b) Each general partner of a limited partnership or any partner of a non-limited partnership; (5285)

(c) The managing members or officers of a limited liability company/corporation; or (5285)

(d) A sole proprietor. (5285)

(5) **DESIGNATED AGENT:** The individual designated by the applicant who will be the responsible party to receive City notices pursuant to this Chapter. If an applicant is an individual (natural person) the applicant may name themselves as the designated agent. (4957, 5031, 5285)

(6) **EMPLOY:** To hire, engage, or authorize the services of any individual, on a full-time, part-time, or contract basis, without regard to compensation, whether or not the person employed, hired or engaged is denominated an employee or independent contractor. (4957, 5031, 5285)

(7) **EMPLOYEE:** Any person who performs any service at a massage facility on a full-time, part-time or contract basis, whether or not the person is designated an employee or independent contractor. Employee does not include a person exclusively at the massage facility for repair or maintenance of the massage facility or for the delivery of goods to the licensee. (4957, 5031, 5285)

(8) **HEARING OFFICER:** The Business Services Department Director or his/her designee. (5285)

(9) **KNOWINGLY:** With respect to conduct or a circumstance described herein, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission. (4957, 5031, 5285)

(10) **LICENSE:** A license issued pursuant to this Chapter. (5285)

(11) **LICENSEE:** The person who receives a massage establishment license, and in whose name a license has been issued by the Licensing Office pursuant to this Chapter. (4957, 5031, 5285)

(12) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Business Licensing and Revenue Collections Administrator. (5285)

(13) **MASSAGE ESTABLISHMENT:** Any place of business or establishment wherein any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16) are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16). (5285)
(14) **MASSAGE OR TOUCHING TECHNIQUES:** Any of the following named subjects and methods of treatment intended for use upon or in connection with the human body: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, table or cabinet baths; herbal wraps; and touching procedures upon the external parts of the body by use of the hands, forearms, elbows, knees or feet, or by any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement. (4957, 5031, 5285)

(15) **MASSAGE THERAPIST:** A person who is licensed pursuant to Chapter 42 of Title 32 of the Arizona Revised Statutes to engage in the practice of massage therapy. (4957, 5031, 5285)

(16) **MASSAGE THERAPY:** Includes any of the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits, including, but not limited to, stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage, tapotement, and any other non- incidental touching such as: (4957, 5031, 5285)

(a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head. (4957, 5031, 5285)

(b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical, electrical, water or vibratory devices. (4957, 5031, 5285)

(c) Any combination of range of motion, directed, assisted or passive movements of the joints. (4957, 5031, 5285)

(d) Hydrotherapy, including, but not limited to, tub, shower or cabinet baths, and the application of water, hot and cold packs or wraps. (4957, 5031, 5285)

(e) Any other therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin. (4957, 5031, 5285)

The following techniques and procedures are beyond the scope of a license issued pursuant to this Chapter: diagnosis, prescription of medicines or drugs, administering of injections, colon irrigation, performing minor surgery, and administering cranial, costal, or spinal adjustments as taught in medical, osteopathic, or chiropractic colleges. (Costal or spinal massage is permissible with a massage therapy license.) (4957, 5031, 5285)

(17) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. It includes a trustee, receiver, an assignee, or similar representative. (4957, 5031, 5285)

(18) **POLICE DEPARTMENT:** The City of Mesa Police Department. The Chief of Police refers to the Chief of the Mesa Police Department or his designee. (5285)

(19) **PRIVATE ANATOMICAL AREAS:** The genitals, perineum, and anal region of any person and the area of the breast that includes the areola and the nipple of any female person. (4957, 5031, 5285)

(20) **RESPONSIBLE PARTY:** Any person who violates a provision of this Chapter subject to a civil violation as set forth in Section 5-12-17. (5285)

(21) **SCHEDULE OF FEES AND CHARGES:** The then current adopted City of Mesa Schedule of Fees and Charges. (5285)
5-12-2: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS
ADMINISTRATOR; DUTIES, APPEALS: (4957, 5031, 5285)

(A) It shall be the duty and responsibility of the Business Licensing and Revenue Collections Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator or his/her designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (4957, 5031, 5285)

(B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee under this Chapter may appeal within ten (10) calendar days after being sent notice of such decision by mail. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the Business Services Director. The Business Services Director, or designated representative, shall schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. A hearing under Section 5-12-2(B) will occur in the same manner as set forth in Section 5-12-17 below. (4957, 5031, 5285)

5-12-3: NEW LICENSE APPLICATION; FEE: (4957, 5031, 5285)

(A) Any person desiring to obtain a license shall apply to the Licensing Office, who shall refer such application to the Chief of Police or his/her designated representative for appropriate investigation. Each application shall be accompanied by the fee required in accordance with the Schedule of Fees and Charges. (4957, 5031, 5285)

(B) Upon approval, and prior to the issuance of a license, the applicant shall pay a first year license fee in accordance with the Schedule of Fees and Charges. (5031, 5285)

5-12-4: MASSAGE THERAPISTS; LICENSING OF MASSAGE ESTABLISHMENTS REQUIRED; EXCLUSIONS. (4957, 5031, 5285)

(A) A person desiring to practice or in any manner to claim to practice massage therapy must first obtain and maintain in effect a current, unrevoked and unsuspended massage therapist license as required by Arizona Revised Statutes and as required by this Chapter. (4957, 5031, 5285)

(B) A person desiring to conduct or operate a massage establishment must first obtain and maintain in effect an unrevoked and unsuspended massage establishment license as required by this Chapter. (4957, 5031, 5285)

(C) Any person licensed as provided in this Chapter must operate under the name or conduct business under the designation specified in such license. (4957, 5031, 5285)

(D) Any massage establishment licensed as provided in this Chapter must only conduct business at the location(s) specified in such license. (4957, 5031, 5285)

(E) The provisions of Section 5-12-4(B) shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person’s license. (4957, 5031, 5285)
5-12-5: MASSAGE ESTABLISHMENT LICENSE APPLICATION; CONTENTS; BUSINESS HOURS: (4957, 5031, 5285)

Each application for a license shall consist of the information set forth in this Section 5-12-5. Each applicant must provide the required information applicable to the applicant in order for a license to be processed. (5285)

1. Applicant’s full legal name, business name, business phone number, legal form of applicant, current residential phone number, and current residence or legal address of the applicant. (4957, 5031, 5285)

2. If applicant is a natural person or sole proprietorship, applicant’s physical description, and date and place of birth. (4957, 5031, 5285)

3. Any other names by which the applicant is or has been known. (4957, 5031, 5285)

4. The address at which the applicant desires to do business. (4957, 5031, 5285)

5. The mailing address for the purpose of receiving City notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this Chapter. (4957, 5031, 5285)

6. Business hours of the massage establishment. The business hours submitted pursuant to this Chapter must be in accordance with Section 5-12-8(P). (4957, 5031, 5285)

7. If applicant is a natural person or sole proprietorship, applicant’s addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application. (4957, 5031, 5285)

8. The name of the designated agent. The designated agent must be able to receive correspondence at the address set forth in Section 5-12-5(5) above. (4957, 5031, 5285)

9. The name of all controlling persons for the applicant. (4957, 5031, 5285)

10. If applicant is a natural person or sole proprietorship, applicant’s business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment. (4957, 5031, 5285)

11. If applicant is a natural person or sole proprietorship, a current driver’s license with picture or other current picture identification document issued by a governmental agency, demonstrating applicant has reached the age of eighteen (18) years. (4957, 5031, 5285)

12. The business license history of the applicant: whether the applicant, while operating under a business license issued by a governmental jurisdiction, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation. (4957, 5031, 5285)

13. Applicant’s felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, excluding those for civil traffic offenses, and the grounds for such convictions. (4957, 5031, 5285)

14. The Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership, together with any amendments thereto, for an applicant that is a business entity. (4957, 5031, 5285)
(15) A schedule (list) of services to be offered at the massage establishment. (4957, 5031, 5285)

(16) A clearly legible sketch or diagram showing the configuration of the overall business premises of the massage establishment that includes, at a minimum, all of the following: (5285)

(a) The location of all interior doors, walls, curtains and room dividers. (4957, 5031, 5285)

(b) A description of the use of each interior space or room, including a designation, by type of use, of each room or space available for massage or touching techniques or massage therapy by a massage therapist. (4957, 5031, 5285)

(c) A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant and a description of its intended and actual use. (4957, 5031, 5285)

The sketch or diagram need not be professionally prepared, but shall be drawn on one (1) page measuring 8 ½ inches by 11 inches with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. For purposes of this Section 5-12-5(16) a “wall” shall include any interior barrier, including transparent glass, which extends more than fifty-four (54) inches from the level of the finished floor. (4957, 5031, 5285)

(17) Such other identification and information as the Licensing Office may require. (4957, 5031, 5285)

5-12-6: INFORMATION UPDATE: (4957, 5031, 5285)

Except as otherwise provided herein, any change in the information required to be submitted by this Chapter shall be submitted to the Licensing Office on the form prescribed by the Licensing Office for that purpose. (4957, 5031, 5285)

5-12-7: LICENSE APPLICATION INVESTIGATION: (4957, 5031, 5285)

(A) Any applicant for a license shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as prescribed in this Chapter. (5285)

(B) Each person applying for a license shall submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5285)

(C) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license. (5285)

(D) The Police Department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license in accordance with this Chapter. (4957, 5031, 5285)
5-12-8: MASSAGE ESTABLISHMENT LICENSE; SPECIAL REQUIREMENTS: (4957, 5031, 5285)

(A) No license shall be issued: (i) if the applicant or a controlling person has been convicted during the ten (10) year period immediately preceding the date of application of any felony or misdemeanor offense having a reasonable relationship to a massage establishment; (ii) if the application was falsified; (iii) if the applicant or a controlling person has an outstanding warrant for his or her arrest; or (iv) if the applicant or a controlling person is not in compliance with any provision of this Chapter. (4957, 5031, 5285)

(B) No license shall be issued if the applicant or controlling person was convicted during the ten (10) year period immediately preceding the date of the application of any offense: (i) prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes); (ii) prescribed by Mesa City Code, Title 6, Police Regulations; or (iii) any offense committed outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code. (4957, 5031, 5285)

(C) No license shall be issued if the applicant or controlling person has any felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment. A renewal license may be issued if the licensee or controlling person has a felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment; however, the issuance of such renewal license shall not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge. (5031, 5285)

(D) An applicant for a license, a controlling person for a licensee, or a licensee shall permit representatives of the Police Department, and any other federal, state, county, or local agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is lawfully occupied or open for business. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects and exit the room. Personal effects of a patron shall stay in the room within eyesight of the patron or, at the patron’s request, shall be placed in a locker to which the patron has the key. (4957, 5031, 5285)

(E) A licensee shall comply with the following requirements at all times: (4957, 5031, 5285)

(1) A readable sign shall be permanently affixed to or immediately next to the main entrance of the massage establishment and shall identify the licensee’s trade name or business name as it appeared on the license application. (4957, 5031, 5285)

(2) Lighting of ten (10) foot candles, measured at a height of thirty (30) inches at the approximate center of the room or enclosure, shall be provided in each room or enclosure where services are performed on patrons. (4957, 5031, 5285)

(3) Ventilation shall be provided in accordance with Title 4 of the Mesa City Code. (4957, 5031, 5285)

(4) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or (B)(16). (4957, 5031, 5285)
(5) Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times. (4957, 5031, 5285)

(6) Closed cabinets shall be provided and used for the storage of clean linens. (4957, 5031, 5285)

(7) Notwithstanding any other requirement of this Chapter, a minimum of one (1) shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps. (4957, 5031, 5285)

(8) Any pool or spa shall be issued a permit and inspected as required by Title 4 of the Mesa City Code or Maricopa County Code, as applicable. (4957, 5031, 5285)

(9) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use. (4957, 5031, 5285)

(10) Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron. (4957, 5031, 5285)

(11) All wash basins within an establishment shall: (i) have hot and cold running water, tempered by means of a mixing valve faucet; (ii) provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and (iii) provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps. (4957, 5031, 5285)

(12) A massage establishment shall not have any entrance or exit way providing a direct passageway to any type of sleeping or living quarters. (5285)

(13) A massage establishment must have a public entrance door or a window made of glass or transparent material with an unobstructed line of sight connected to the sales transaction area of the massage establishment, unless the establishment has no doors or windows on the exterior of the building in which the massage establishment is located. The line of sight may not be obstructed by any means including, but not limited to, the use of furnishings, window dressing, plywood, paper, or other opaque materials. (5285)

(a) The unobstructed line of sight must permit a view of and from the sales transaction area through all exterior windows and public entrance and exit doors located in the sales transaction area. (5285)

(b) The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground. (5285)

(c) Any substance or material in conjunction with glazing material (i.e. window tint) placed on a transparent door or window required under Section 5-12-8(E)(13) to be unobstructed must have a light transmission of more than thirty-three percent (33%) plus or minus three percent (3%) and a luminous reflectance no greater than thirty-five percent (35%) plus or minus three percent (3%). (5285)

(d) The requirements set forth in Section 5-12-8(E)(13) do not apply to doors and windows within a massage establishment adjoining rooms where massage therapy is performed. (5285)
(e) A licensee does not have to meet the requirements of Section 5-12-8(E)(13) if the licensee:

(i) Operates a massage establishment in which the licensee is the only massage therapist performing
massage therapy at the massage establishment; and

(ii) The massage establishment consists of only one (1) room, not including any shower/bathing or
bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the
Licensing Office pursuant to Section 5-12-5(16).

(F) The name of any person provided to the Licensing Office pursuant to Section 5-12-8(O) whose employment
at the massage establishment has terminated shall be reported to the Licensing Office, on the form prescribed
by the Licensing Office for that purpose, within ten (10) calendar days after termination.

(G) An applicant and licensee shall be in compliance with Titles 4, 11, and 7 of the Mesa City Code.

(H) Notwithstanding any other provision of this Chapter, the Business Licensing and Revenue Collections
Administrator or his/her designee may, in his or her discretion, delay the granting or denial of a license, upon
the submission of a complete application, for a period of up to ninety (90) calendar days if there exists, or did
exist within the sixty (60) calendar day period immediately prior to the date the application was first
submitted, an active massage establishment license at the location for which the application was submitted
and there also exists a Police Department report documenting a violation of this Chapter at that establishment
or a criminal prosecution involving the existing establishment relating to compliance with any of the
provisions of this Chapter or applicable state law. For purposes of this Section 5-12-8(H), an active massage
establishment license includes a license that has been suspended or revoked, provided that a revoked license
is no longer active after passage of the period of time for appeal with no appeal taken or, in the event an
appeal is taken, after the Hearing Officer has rendered a decision and the decision is in the City’s favor.
Notwithstanding any other provision of this Section 5-12-8(H), any license subject to a judicial stay or
injunction is an active license.

(I) The applicant for a license for a location at which a massage establishment license was revoked or suspended
within the previous six (6) months shall provide to the Licensing Office a sworn statement, in a form
prescribed by the Licensing Office, verifying that no person who would be deemed a controlling person for
the massage establishment whose license was revoked or suspended is involved in the ownership, control or
management of the applicant. The Licensing Office may also request such documents as are reasonably
believed necessary to verify any of the information in the sworn statement. The failure to provide this sworn
statement or supporting information shall be cause for denial of the license application.

(J) A license shall not be issued for a physical space at which a licensed massage establishment is in operation.
For purposes of this Section 5-12-8(J), there shall be a rebuttable presumption that a location with an active
license has a massage establishment in operation. Section 5-12-8(J) shall not preclude a new applicant from
initiating the application process for a physical space at which a licensed massage establishment is in
operation however a license shall not be issued to a new licensee meeting the requirements of this Chapter
until the previous license is surrendered, expired or revoked.

(K) Any massage establishment application that is not in full compliance with this Chapter sixty (60) calendar
days after initial filing of the application shall be denied, provided the Licensing Office may grant an
additional period of up to ninety (90) calendar days upon written request of the applicant, prior to the
expiration of the sixty-day period, if applicant demonstrates the occurrence of circumstances that were
beyond the applicant’s control or other, similar good cause. Nothing in this Section 5-12-8(K) shall be
construed to prevent the Licensing Office from denying a license as soon as a legal basis exists to do so.

(L) A licensee shall not operate under any name or conduct business under any designation not specified in such
license and the application submitted for such license.
A licensee shall not conduct business at any location not specified on such license. (5285)

A licensee shall not implement changes in the services offered by a massage establishment, change the use or configuration of the premises of the massage establishment, change the designated agent, or change the business hours of the massage establishment without providing written notice to the Licensing Office and receiving written approval or written acknowledgement from the Licensing Office of such change. (5285)

A licensee shall not employ a massage therapist whose true name and Arizona state-issued massage therapist license number has not previously been provided to the Licensing Office on the form prescribed by the Licensing Office for that purpose. (5285)

No massage establishment shall remain open for business, provide massage therapy services, dispatch massage therapists, or permit massage therapists to work off the premises on behalf of the massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M. Clients cannot be on the premises of the massage establishment after 10:30 P.M. All massage therapy must be concluded by 10:00 P.M., however other business activities related to the massage establishment may continue until 10:30 P.M. A massage establishment may only be open for business during hours that have been approved by the Licensing Office as required by this Chapter. (5285)

The ownership control of the licensee shall not change during the term of the license such that a person, other than those listed on the application, would be deemed a controlling person for the licensee and either: (i) the new controlling person was not reported to the Licensing Office within ten (10) calendar days after he/she became a controlling person; or (ii) the new controlling person fails to meet the requirements that must be met by a controlling person as set forth in this Chapter. (5285)

The licensee must maintain in the records of the Licensing Office, the name of an individual as a designated agent. (5285)

Every license shall be issued in accordance with applicable law including, but not limited to, A.R.S. § 41-1080. No license shall be issued to an individual if the individual does not present one or more of the documents listed in A.R.S. § 41-1080, indicating the individual’s presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act. (4957, 5031, 5285)

A licensee shall post their license in a conspicuous place upon the business premises of the massage establishment in a location that is clearly visible to the general public upon entry into the business. Every on duty person to whom an Arizona state-issued massage therapist license has been granted shall: (i) display the license or a clearly legible copy of the license in a conspicuous place upon the business premises in which they perform massage therapy that is clearly visible to the general public upon entry to the business; or (ii) maintain the license or a clearly legible copy of the license inside the massage establishment in a manner that allows for the license to be made readily available for inspection by the general public. The massage establishment licensee is responsible for ensuring all state-issued massage therapist licenses are properly displayed and current for any persons performing massage therapy on the premises of the massage establishment. (4957, 5031, 5285)
(B) A licensee shall maintain on the business premises of a massage establishment all of the following records for each massage therapist employed at the massage establishment from the date of first employment through a period of ninety (90) calendar days after the date of last employment: (4957, 5031, 5285)

1. A copy of the state-issued massage therapist license. (4957, 5031, 5285)

2. A copy of a government issued identification document with photo of the massage therapist. The copy of the government issued identification must clearly depict the photo of the individual and all information must be legible. (5031, 5285)

(C) A licensee shall maintain on the business premises of a massage establishment a copy of the most recent sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (4957, 5031, 5285)

(D) A licensee or employee of a massage establishment shall make the records required to be maintained by Section 5-12-10 available for inspection upon demand by any law enforcement officer or City regulatory license inspection official during any period of time that the massage establishment is open to the public or lawfully occupied. (4957, 5031, 5285)

5-12-11: REQUIRED LOGS: (4957, 5031, 5285)

A licensee shall ensure a log is maintained at the massage establishment of all massage therapy administered. The log shall contain the following information: date, time, therapist name, type of each massage therapy administered, and the address where each massage therapy was administered. The log shall be retained for a minimum of one (1) year following any massage therapy. The massage therapy log shall be subject to inspection upon request by an agent or representative of the City. The inspection of the massage therapy log will occur at the Police Department or other mutually agreeable location. (4957, 5031, 5285)

5-12-12: CHANGE OF LOCATION: (4957, 5031, 5285)

A change of location of a massage establishment shall be approved by the Licensing Office, provided that the licensee is in compliance with all City ordinances and regulations, completes the appropriate location change application and submits a fee in accordance with the Schedule of Fees and Charges. Notwithstanding any other provision of this Chapter, no massage establishment shall be operated or maintained at a location until approved by the Licensing Office and the establishment has a current unsuspended and unrevoked license with the correct name and address posted in a conspicuous place in the establishment as required in Section 5-12-10. (4957, 5031, 5285)

5-12-13: NON-TRANSFERABILITY OF LICENSE: (5031, 5285)

Licenses issued pursuant to this Chapter are non-transferable; upon the sale or transfer of a massage establishment from person to person, the establishment license shall become null and void. (5031, 5285)
5-12-14: TERM OF LICENSE; LICENSE RENEWAL: (4957, 5031, 5285)

(A) Any license issued pursuant to this Chapter shall be valid for a term of one (1) year from the date of issuance. Any license issued pursuant to this Chapter, unless revoked, may be renewed by a licensee in accordance with this Chapter and such renewal shall be valid for a term of one (1) year. The completed renewal application must be submitted by the licensees no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee as set forth in the Schedule of Fees and Charges. In addition, a current listing of massage therapists working at the establishment, including corresponding state-issued license numbers and dates of expiration, must be submitted with the renewal application. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. (4957, 5031, 5285)

(B) If a licensee fails to submit a complete renewal application with the applicable fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license shall expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license, who wish to continue operating a massage establishment, must file a new application for license and may not operate a massage establishment until a new license has been issued. (4957, 5031, 5285)

5-12-15: FEES (4957, 5031, 5285)

All fees are nonrefundable, are not prorated, and are set forth in the Schedule of Fees and Charges. (4957, 5031, 5285)

5-12-16: CRIMINAL VIOLATIONS: (4957, 5031, 5285)

(A) It is unlawful:

(1) For any person to knowingly conduct or operate a massage establishment on the same business premises, as established under Section 5-12-5(16), whereon is also conducted or operated a sexually oriented business (as defined in Title 6 of the Mesa City Code), bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater, or telephone answering service. (4957, 5031, 5285)

(2) For any person to fail or refuse to permit a lawful inspection authorized by this Chapter immediately upon request. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects and exit the room. (5285)

(3) For any person to conduct massage therapy behind a locked door. It is not a violation of Section 5-12-16(A)(3) for a licensee to perform massage therapy behind a locked door if the licensee either: (5285)

(a) Utilizes a locking system approved in writing by the Police Department which provides the Police Department with the ability to unlock the doors during regular business hours of the massage establishment for the purpose of conducting a lawful inspection authorized by this Chapter. (5285)

(b) Meets both of the following requirements: (5285)

(i) Operates a massage establishment in which the licensee is the only massage therapist performing massage therapy at the massage establishment; and (5285)

(ii) The massage establishment consists of only one room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)
(4) For any person to administer massage therapy for a gratuity or compensation of any kind to a person whose genital organs or anus are not covered by opaque material. (5285)

(5) For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service: (5285)

(a) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires. (4957, 5031, 5285)

(b) In such a manner that the person touches the private anatomical areas of the individual receiving the treatment. (4957, 5031, 5285)

(c) While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material. (4957, 5031, 5285)

(6) For any person on the premises of a massage establishment to intentionally view a completely or partially disrobed massage establishment client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031, 5285)

(7) For any person, while on the premises of a massage establishment, to knowingly ask or direct a person to:

(a) Touch his or her own anus, genitals or breasts. (4957, 5031, 5285)

(b) Touch the anus, genitals or breasts of any person on the premises; or (4957, 5031, 5285)

(c) Expose his or her genitals, anus or breasts to any person on the premises with the intention of appealing to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031, 5285)

(8) For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a patron in direct or indirect contact with the anus, genitals or breasts of any other person on the premises. (4957, 5031, 5285)

(9) For any person to knowingly operate or maintain a massage establishment at a location that has not been licensed by the Licensing Office. (4957, 5031, 5285)

(10) For any applicant for a license or renewal to fail to disclose all controlling persons on an application or, in the event controlling person(s) changes, to update said information with the Licensing Office. (4957, 5031, 5285)

(11) For any person to knowingly use a massage establishment as living or sleeping quarters. (4957, 5031, 5285)

(12) For any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage therapist license as required by the Arizona Revised Statutes and this Chapter. (5285)

(13) For any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a current, unrevoked and unsuspended license as required by this Chapter. The provisions of Section 5-12-16(A)(13) shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person’s license. (5285)
(14) For any person to knowingly employ any other person to offer massage therapy who does not hold a current, unrevoked and unsuspended massage therapy license issued by the State of Arizona. (5285)

(15) For any person to offer massage or touching techniques or massage therapy in any room or space of the business that has not been specifically identified as a room or space available for those services on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)

(16) For any person to offer massage or touching techniques or massage therapy in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16). (5285)

(17) For any person to provide massage therapy services at a massage establishment or at any location on behalf of a massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M. (5285)

(18) For any person to photograph a massage establishment client while the client is on the premises of a massage establishment and located within any treatment room, restroom, locker room or dressing room, without the express, written permission of that client. For purposes of Section 5-12-16(A)(18) the word “photographed” shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image. (5285)

(19) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license. (5285)

(B) For purposes of Section 5-12-16, the word touch shall include physical contact that occurs through clothing or by means of any object. (4957, 5031, 5285)

(C). Whenever in this Chapter any act is declared to be unlawful, any person convicted of such a violation shall be guilty of a class one misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00), by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. (4957, 5031, 5285)

5-12-17: CIVIL VIOLATIONS (5285)

(A) A violation of any of the following sections of this Chapter shall be a civil violation subject to the provisions of this Section 5-12-17: (5285)

(1) Section 5-12-8(E)(1) [signage]; (5285)

(2) Section 5-12-8(E)(2) [lighting]; (5285)

(3) Section 5-12-8(E)(3) [ventilation]; (5285)

(4) Section 5-12-8(E)(4) [disinfecting and sterilizing equipment]; (5285)

(5) Section 5-12-8(E)(5) [hot and cold running water]; (5285)

(6) Section 5-12-8(E)(6) [linen storage]; (5285)

(7) Section 5-12-8(E)(7) [shower or tub requirement]; (5285)

(8) Section 5-12-8(E)(8) [pool or spa permit]; (5285)
Section 5-12-8(E)(9) [repair and maintenance of facility]; (5285)

Section 5-12-8(E)(10) [clean and sanitary sheets, towels, and head rest covering]; (5285)

Section 5-12-8(E)(11) [wash basins]; (5285)

Section 5-12-8(E)(13) [unobstructed line of sight]; (5285)

Section 5-12-8(F) [employee information provided to Licensing Office]; (5285)

Section 5-12-8(O) [employment of licensed massage therapists]; (5285)

Section 5-12-10 [display of license; identification; retention and inspection of records]; (5285)

Section 5-12-11 [massage therapy log]; (5285)

Section 5-12-18(A)(1) [falsified application information]; (5285)

Any responsible party, whether by admission, default, or after a hearing, is found responsible for a civil violation of this Chapter, shall pay a civil sanction of: (5285)

1. $250 for the first violation in an eighteen (18) month period; (5285)

2. $500 for the second violation in an eighteen (18) month period; and (5285)

3. $750 for the third violation and each subsequent violation in an eighteen (18) month period. (5285)

4. In applying the eighteen (18) month provision set forth in Section 5 -12-17(B), the date of the commission of the offense shall be the determining factor. (5285)

Each day in which a civil violation set forth in Section 5-12-17 continues shall constitute a separate civil offense. (5285)

A civil action for violations of Section 5-12-17 may be commenced by issuance of a citation by any police officer or City employee designated by the City Manager. The citation will be substantially in the form established by the City Manager or designee. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5285)

The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the Mesa City Code Section that was violated. The citation shall direct the responsible party to, within ten (10) calendar days of the issuance of the citation, pay the civil sanction or request a hearing before the Hearing Officer. (5285)

The Hearing Officer may permit amendments to the citation to correct a technical defect made in good faith. (5285)

If the responsible party pays the civil sanction, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If a responsible party served with a civil citation fails to pay the civil sanction, request a hearing, or the request for a hearing denied in accordance with Section 5-12-17(F), the violation in the civil citation shall be deemed admitted and the civil sanction may be collected as any other civil judgment, fine or fee due and payable to the City. (5285)
Upon receipt of a citation for a civil sanction, a person may request a hearing. The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the citation; and (ii) the request must set forth the grounds upon which the person is appealing the citation. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing. (5285)

All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5285)

If the City or responsible party is aggrieved by a decision of a Hearing Officer, the aggrieved party may file a complaint of special action in Superior Court to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the City and the responsible party, shall constitute a waiver of any right to judicial review. (5285)

In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons: (4957, 5031, 5285)

1. Applicant submits an application with falsified information. (5285)
2. Applicant fails to pay the required fee in accordance with the Schedule of Fees and Charges. (5285)
3. Applicant or a controlling person for the applicant was convicted of a felony offense having a reasonable relationship to the functions of a massage establishment or a massage therapist during the ten (10) year period immediately preceding the date of application. (5285)
4. Applicant or a controlling person for the applicant was convicted of untrue, fraudulent, misleading, or deceptive advertising during the ten (10) year period immediately preceding the date of application. (5285)
5. Applicant or a controlling person for the applicant was engaged in the business of a massage therapist under a false or assumed name, or was found to be impersonating another therapist of a like or different name during the ten (10) year period immediately preceding application. (5285)
6. Applicant or a controlling person for the applicant is currently in violation of this Chapter. Section 5-12-18(A)(6) shall apply regardless of the location at which the violation occurred. (5285)
7. Any grounds for denial set forth in Sections 5-12-8(A), (B), (C), (I), (J), or (K) of this Chapter. (5285)
8. Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City. (5285)

In addition to any penalties set forth in this Chapter, a license renewal application may be denied for any of the following reasons: (5285)

1. For any of the grounds for denial set forth in Section 5-12-18(A) above. (5285)
2. Applicant failed to submit the renewal application within the time frames prescribed by Section 5-12-14. (5285)
(C) In addition to any penalties set forth in this Chapter, a license shall be suspended if during the term of the license:

(1) Licensee or a controlling person for the licensee is convicted of a felony or misdemeanor criminal offense:
   (a) Involving fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining the license;
   (b) Involving prostitution, indecent exposure, or pornography;
   (c) Involving untrue, fraudulent, misleading, or deceptive advertising; or
   (d) Having a reasonable relationship to the functions of a massage establishment or a massage.

(2) The application upon which the license was awarded was found to contain false or misleading information, or the applicant failed to meet any of the requirements for the issuance of license set forth in this Chapter.

(3) Licensee or a controlling person for the licensee knows or should have known that prostitution, indecent exposure, or pornographic acts are occurring or have occurred in the operation of the licensed massage establishment.

(4) The licensee ceased to use the license for purposes of offering massage therapy. The failure to offer massage therapy at a massage establishment for thirty (30) consecutive calendar days shall create a rebuttable presumption that the licensee has ceased to use the license for purposes of offering massage therapy.

(5) If on two (2) or more occasions within an eighteen (18) month period, the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee commits an offense on the premises of any massage establishment owned, controlled, or operated by the licensee or a controlling person:
   (a) Prescribed by Chapters 14 (Sexual Offenses), 32 (Prostitution), and 35.1 (Sexual Exploitation of Children) of the Arizona Criminal Code (Title 13, Arizona Revised Statutes);
   (b) Prescribed by Mesa City Code, Title 6, Police Regulations; or
   (c) Outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code.

(d) For the purpose of Section 5-12-18(C)(5):
   (i) A person will be deemed to have committed an offense upon conviction;
   (ii) In applying the eighteen (18) month provision, the date of the commission of the offense shall be the determining factor; and
   (iii) The two (2) or more offenses subjecting the license to suspension do not have to be: (i) violations of the same statute or ordinance so long as they are offenses of the type listed in Section 5-12-18(C)(5), and (ii) committed by the same person so long as they are committed by the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee.
(6) Licensee or a controlling person for the licensee is found to be a responsible party for a civil violation set forth in Section 5-12-17 through a hearing, default, or admittance. (5285)

(7) The penalty for a suspension of any violation under Section 5-12-18(C) shall be: (5285)

(a) For the first suspension of a license during an eighteen (18) month period, the license will be suspended for up to fourteen (14) calendar days. (5285)

(b) For the second suspension of a license during an eighteen (18) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5285)

(c) For the third suspension of a license during an eighteen (18) month period, the license shall be revoked in accordance with Section 5-12-18(D). (5285)

(D) In addition to any penalty for a violation set forth in this Chapter, a license shall be revoked if the license was suspended in accordance with this Chapter on three (3) or more occasions during and eighteen (18) month period. (5285)

(E) Pursuant to Section 5-12-2, the Business Licensing and Revenue Collections Administrator or his/her designee has the authority to issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee may appeal the decision by requesting a hearing within ten (10) days of receipt of notice of the Business Licensing and Revenue Collections Administrator or his/her designee. (5285)

(1) The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision of the Business Licensing and Revenue Collections Administrator or his/her designee; and (ii) the request must set forth the grounds upon which the person is appealing the decision. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing. (5285)

(2) Any appeal hearing shall be subject to the rules set forth in Section 5-12-17(G). Any request for judicial review of a Hearing Officer’s decision shall be subject to the rules set forth in Section 5-12-17(H). (5285)

(3) The filing of an appeal will suspend the decision of the Business Licensing and Revenue Collections Administrator or his/her designee, or the Licensing Office until such time as the Hearing Officer has rendered their decision. (5285)

5-12-19: APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE: (4957, 5031, 5285)

No person may apply for a license under this Chapter within one (1) year from the denial of an application for a massage establishment to such applicant or from the revocation of a license issued pursuant to this Chapter. (4957, 5031, 5285)
5-12-20: EXEMPTIONS (4957, 5031, 5285)

The provisions of this Chapter shall not apply to:

1. Establishments whose employees are authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture, and who practice within the scope of that person’s license. (4957, 5031, 5285)

2. Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete. (4957, 5031, 5285)

3. Establishments whose employees are authorized by the laws of this state as barbers, cosmetologists, or aestheticians provided their activity is limited to the scope of their barber, cosmetology, or aesthetician license. (4957, 5031, 5285)

4. Establishments whose employees are providing colon irrigation only. (4957, 5031, 5285)

5. Businesses that are operating solely as a school approved by the Arizona State Board of Massage Therapy. (4957, 5031, 5285)

5-12-21: LICENSES; CUMULATIVE REGULATION: (4957, 5031, 5285)

A. The licenses required in this Chapter are in addition to any business or transaction privilege tax license required by the Mesa City Code or applicable law. (4957, 5031, 5285)

B. A state issued massage therapist license does not authorize one to operate a massage establishment in the City without first obtaining a license pursuant to this Chapter where applicable. (4957, 5031, 5285)

C. An applicant for a massage establishment license need not have a massage therapist license. However, massage establishments shall employ only Arizona state-licensed massage therapists to perform massage therapy. (4957, 5031, 5285)
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CHAPTER 13

RESIDENTIAL DEVELOPMENT FEE

SECTION:

5-13-1:  DEFINITIONS
5-13-2:  LEVY OF SOLID WASTE RESIDENTIAL DEVELOPMENT FEE
5-13-3:  COLLECTION OF RESIDENTIAL DEVELOPMENT FEE
5-13-4:  ESTABLISHMENT OF A CAPITAL IMPROVEMENT FUND AND USE OF FUNDS
5-13-5:  VIOLATION; PENALTY

5-13-1:  DEFINITIONS:

The following words and phrases, whenever used in this Chapter, shall have meanings respectively ascribed to them in this Section unless from the content a different meaning is clearly intended: (748, 756)

**DWELLING UNIT:** A room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes, exclusive of units designed to be used primarily for transient occupancy purposes. For purposes of this definition, transient occupancy shall mean occupancy by any one (1) person or group of persons for a period of less than thirty (30) calendar days. (748, 756, 1773, 3501)

**MANUFACTURED HOME:** Same as "mobile home." A structure transportable in one (1) or more sections which, (1) in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, (2) is built on a permanent chassis, (3) is designed to be used as a dwelling, with or without permanent foundation, when connected to utilities, and (4) is located on a manufactured home or recreational vehicle space, and not on a separate platted lot. This term shall not include a recreational vehicle as defined in this Chapter. (748, 756, 1773, 3501)

**MULTI-RESIDENCE DWELLING:** A dwelling unit in a building containing two (2) or more dwelling units, including units that are situated over one another, which are located within a Multiple Residence zoning district as outlined in Chapter 5, Title 11, Mesa City Code. (3501)

**RECREATIONAL VEHICLE:** A vehicle-type unit that is one (1) of the following: (1) a portable camping trailer mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold for camping; (2) a motor home designed to provide temporary living quarters for recreational, camping, or travel use, and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle; (3) a park trailer built on a single chassis, mounted on wheels, designed to be connected to utilities necessary for operation of installed fixtures and appliances, and having a gross trailer area of not less than three hundred twenty (320) square feet and not more than four hundred (400) square feet when it is set up, but excluding fifth wheel trailers; or (4) a travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, or a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle, and having a trailer area of less than three hundred twenty (320) square feet, and specifically including fifth wheel trailers. If a unit described in Subsection (5) requires a size or weight permit, it shall be manufactured to the standards of park trailers outlined in A119.5 of the American National Standards Institute Code. (3501)

**SINGLE-RESIDENCE ATTACHED DWELLING:** A one- (1-) family dwelling in a row of at least two (2) such units in which each unit is separated from any other unit by one (1) or more vertical common fire-resistant walls extending from ground to roof, each unit has its own front and rear access to the outside, and no unit is situated over another unit. (3501)

**SINGLE-RESIDENCE DETACHED DWELLING:** A building containing one (1) dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards on all four (4) sides. This term shall include a manufactured home situated on a separately platted lot. (3501)
PERSON: An individual, firm, corporation, partnership, joint venture, association, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number. (748,756)

5-13-2: LEVY OF SOLID WASTE RESIDENTIAL DEVELOPMENT FEE:

There is hereby levied and shall be collected by the Building Safety Director, for the purpose of defraying costs of solid waste collection equipment required by the City as a result of residential development, an occupations tax upon every person constructing any dwelling unit or units or establishing manufactured home spaces or lots or recreational vehicle spaces or lots both inside and outside the City limits where the City of Mesa is the solid waste service provider. The fees shall be in the following amounts: (748, 1773, 2081, 2442, 3501, 3902, 4851, 5223)

(A) The sum of two hundred twenty-seven dollars ($227.00) for each single-residence attached and detached dwelling unit hereafter constructed upon any lot or area. (748, 2081, 2209, 2442, 2908, 3501, 3902, 4713, 4851, 5223, 5286)

(B) The sum of sixty-two dollars ($62.00) for each manufactured home space or lot, each recreational vehicle space or lot, and each multi-residence dwelling unit established. (748, 1773, 2209, 2442, 2908, 3501, 3902, 4713, 4851)

5-13-3: COLLECTION OF RESIDENTIAL DEVELOPMENT FEE:

(A) The fee imposed by this Chapter shall be collected by the Building Safety Director, who shall be charged with the administration thereof. The fee for each unit listed in Section 5-13-2(A) and (B) shall be collected in conjunction with the issuance of a building permit for the construction of any of the listed units. The collection of fees for multi-residence dwelling units may be phased commensurate with the number of dwelling units approved for construction by means of a phased building permit. The fee for a manufactured home shall be collected in conjunction with the issuance of a building permit for the placement of that manufactured home in a manufactured home park or subdivision. The fee with respect to recreational vehicle spaces or lots shall be collected in conjunction with the issuance of a construction permit for the development of a recreational vehicle park or subdivision. The Building Safety Director shall not issue a building or construction permit until the fees required by this Chapter have been paid. (748, 756, 1266, 1773, 3041, 3501, 3902, 5223)

(B) If at the time of annexation to the City a current building permit has been issued by a jurisdiction other than Mesa, and is still valid for the construction of any dwelling unit or a current building permit has been issued and is still valid for the placing of a manufactured home in a manufactured home park or subdivision or a current construction permit has been issued and is still valid for the development of a recreational vehicle park or subdivision, the fee imposed by this Chapter shall not be collected. If a building permit for the construction of any dwelling unit has expired and has not been renewed at the time of annexation to the City, the developer of the dwelling unit shall be required to obtain a City of Mesa building permit and pay the fee imposed by this Chapter in conjunction with the issuance of said City building permit. (1266, 1773, 3041, 3501, 3902, 5223)

5-13-4: ESTABLISHMENT OF A CAPITAL IMPROVEMENT FUND AND USE OF FUNDS:

All funds collected by the Building Safety Director pursuant to this Chapter shall be deposited in a nonlapsing fund called "Solid Waste Development Fund." All funds deposited in the Solid Waste Development Fund shall be used exclusively for the purchase of solid waste collection equipment. (748, 3501, 3902, 5223)

5-13-5: VIOLATION; PENALTY:

Any person who shall construct a single-residence attached or detached dwelling unit or multi-residence dwelling unit(s) or place a manufactured home in a manufactured home subdivision or develop a manufactured home park or recreational vehicle park or subdivision without payment of the prescribed fee or who shall violate any of the provisions of the Mesa City Code as hereby amended shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000.00). Each violation continued shall be a separate offense, punishable as described above. (756, 1773, 2466, 3501)
CHAPTER 14

NATURAL GAS REGULATIONS

SECTION:

5-14-1: APPLICABLE TO
5-14-2: DEFINITIONS
5-14-3: SERVICE AND CURTAILMENT PRIORITIES
5-14-4: CONDITION GOVERNING EXTENSIONS OF NATURAL GAS MAINS AND SERVICES
5-14-5: NO VIOLATION OF PUBLIC SERVICE OBLIGATIONS
5-14-6: NOTICE TO CUSTOMERS AND SAFETY RULES
5-14-7: EMERGENCY SITUATION; PRIORITIES
5-14-8: PENALTY FOR UNAUTHORIZED USE

5-14-1: APPLICABLE TO:
The following rules or guidelines shall be applicable to natural gas distribution by the City of Mesa, except to the extent this Council or its designated representative may hereafter authorize exceptions to these rules in particular instances due to special circumstances. The Council or its designated representative shall require an application for such variation with justification for same to be presented in writing for consideration. (1455)

5-14-2: DEFINITIONS:

ALTERNATE FUEL CAPABILITIES: A situation where an alternate fuel could have been utilized, whether or not the facilities for such use have actually been installed; provided however, where the use of natural gas is for plant protection, feedstock, or process uses and the only alternate fuel is propane or other gaseous fuel, then the consumer will be treated as if he had no alternate fuel capability. (1455)

BOILER FUEL: Natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity. (1455)

COMMERCIAL CUSTOMERS: Customers engaged primarily in the sale of goods or services, including institutions and local, state, and federal government agencies, for uses other than those involving manufacturing or electrical power generation. (1455)

ESSENTIAL AGRICULTURAL USER: Uses of natural gas certified by the Secretary of Agriculture in accordance with Section 401(C) of the Natural Gas Policy Act of 1978. (1455)

ESSENTIAL INDUSTRIAL USER: To be designated as essential industrial process and feedstock uses when certified by the Secretary of Energy in accordance with Section 402 of the Natural Gas Policy Act of 1978. (1455)

FEEDSTOCK GAS: Natural gas used as a raw material for its chemical properties in creating an end product. (1455)

GENERAL SERVICE CUSTOMERS: Customers not qualifying as residential whose consumption has been less than the minimum for large general service customers. (3012)
IGNITION FUEL AND FLAME STABILIZATION: Natural gas used directly in an industrial use for ignition, start-up, testing, flame stabilization, and shutdown. (1455)

INDUSTRIAL CUSTOMERS: Customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power. (1455)

INTERRUPTIBLE CUSTOMER: Any large nonresidential customer (commercial or industrial) using the City’s natural gas service hereunder for any purpose where interruptibility is established by the applicable service agreement or rate schedule or by Council authorization. (1455)

LARGE GENERAL SERVICE CUSTOMERS: Customers not qualifying as residential whose consumption through one meter is estimated by the City to be both at least twenty-five thousand (25,000) therms in any one (1) month of a twelve- (12-) month period and at least two hundred and fifty thousand (250,000) therms in any consecutive twelve- (12-) month period. (1455,3012)

LARGE RESIDENTIAL CUSTOMERS: Customers who utilize gas service in apartment houses, mobile home parks, hotels, motels, clubs, and other establishments providing dwelling accommodations where more than one (1) dwelling unit is serviced through the same meter. (1455)

MCF: Thousand (1,000) cubic feet. (1455)

PLANT PROTECTION GAS: Minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed but shall not include deliveries required to maintain plant production. For the purpose of this definition, propane and other gaseous fuels shall not be considered alternate fuels. The quantification of such load shall be a responsibility of the customer and must be to the satisfaction of the City in order to qualify for such classification treatment. (1455)

PROCESS GAS: Gas use for which alternate fuels are not technically feasible, such as in applications requiring precise temperature controls and precise flame characteristics. For the purpose of this definition, propane and other gaseous fuels shall not be considered alternate fuels. (1455)

RESIDENTIAL CUSTOMERS: Customers who utilize gas service in individually metered dwelling units for space heating, air conditioning, cooking, water heating, home compressor appliance for alternate use in motorized vehicles, and other residential uses. (1455,3834)

THERM: That amount of gas having a heating value of 100,000 BTU (British Thermal Units). (2985)

UNAUTHORIZED USE OF GAS: Unauthorized use of gas shall mean: (1455)

(A) For any customer, the taking of unmetered gas by bypassing the meter or willfully modifying the gas meter so as to cause loss or reduction of registration. (1455)
(B) For an interruptible gas service customer, the taking of gas on any day in excess of the maximum daily contract quantity specified in the gas service contract between the City and customer. (1455)

(C) For any customer subjected to curtailment during a curtailment period, the taking of gas in excess of a daily variable entitlement specified by the City and based upon the customer’s priority class and the curtailment imposed upon the City by its general gas supplier, El Paso Natural Gas Company. (1455)

(D) For any customer with a maximum monthly quantity specified in the gas service contract between the City and the customer, the taking of gas in any billing period in excess of the maximum monthly quantity. (1455)

5-14-3: SERVICE AND CURTAILMENT PRIORITIES:

(A) In times of shortages of gas deliveries on the El Paso System which have the effect of impairing the City’s ability to render service in satisfaction of all its customer requirements, interruption or curtailment of service by the City shall, to the extent feasible, be effected in inverse order of the following priorities: (1455)

1. Priority 1A: Residential customers. (1455)
2. Priority 1B: Large residential customers. (1455)
3. Priority 1C: Small commercial customers. (1455)
4. Priority 2A: Essential agricultural uses. (1455)
5. Priority 2B: Essential industrial uses. (1455)
6. Priority 2C: Large commercial uses and industrial uses for ignition fuel and flame stabilization, plant protection, feedstock, and process uses not specified in priority 2B. (1455)
7. Priority 3: Industrial customers and all industrial requirements not specified in priority 2. (1455)
8. Priority 3A: Interruptible customers. (1455)

(B) The customer during a curtailment period may utilize its allotted gas in the manner it desires as long as the requested load curtailment is met. Any gas taken in excess of two percent (2%) of its allotment shall be considered unauthorized use of gas. (1455)

(C) In establishing a procedure to effect curtailments in accordance with the terms of this Chapter, the City may develop a plan whereby it may on occasion administer curtailments to customers within a given priority class on any other than a strict pro rata basis, provided that the burden of such curtailments on an aggregate basis shall be as equitable as possible among such customers. (1455)

(D) In the event of a partial or total failure in gas supply or a partial or total failure in the facilities of the City which threatens to impair the ability of the City to maintain the integrity of its system, the City may, during such emergency period, apportion its available supply of gas or its deliverability capacity therefore among the demands of its customers or a portion thereof in the most reasonable and practical manner possible. In such event the City shall have the right to shut off, discontinue, re-establish, or continue service to one (1) or more classes of customers, or a portion thereof, irrespective of the priority of preference provisions hereinabove specified in Section 5-14-3(A). (1455)
5-14-4: CONDITION GOVERNING EXTENSIONS OF NATURAL GAS MAINS AND SERVICES:
The following policy governs the extension of distribution facilities to customers whose requirements are deemed by the City to be usual and reasonable in nature. (1455)

(A) Residential Gas Service. (1455)

1. Free extensions on a footage basis will be made if all the following conditions exist: (1455)

   (a) The service can be installed in a normal manner from an existing natural gas main adjacent to the service address. (1455)

   (b) The proposed extension is for service lines only, and such service line does not cross any street or highway pavement wider than seventy feet (70') or any freeway or railroad right-of-way. (1455)

   (c) The gas will be used for a minimum of two (2) of the following types of permanently installed appliances: home heating, water heating, cooking (must include the oven), clothes drying, pool heating, and spa heating or one (1) home compressor appliance used to compress natural gas for alternate fuel use in motorized vehicles. (1455,2985,3834)

   (d) The proposed extension does not exceed seventy feet (70') for two (2) gas appliances, one hundred fifteen feet (115') for three (3) gas appliances, or one hundred fifty feet (150') for four (4) gas appliances as measured from the property line to the meter set along the route of construction required. Appliances must be as specified in (A)1(c). (1455,2985)

2. A nonrefundable contribution in aid of construction over the free extension allowance will be required: (1455)

   (a) If the proposed service exceeds the seventy-foot (70') limit for two (2) gas appliances, one hundred fifteen-foot (115') limit for three (3) gas appliances, or one hundred fifty-foot (150') limit for four (4) gas appliances. (1455,2985)

   (b) For all footage beyond the shortest practical route to the nearest practical point of delivery on each customer’s premises as determined by the City. (1455,2985)

3. The currently effective cost of the service extension will be required for a service which does not comply with all of the foregoing provisions of (A)1(c). (1455,2985)

(B) Gas Service for Residential Subdivisions, Large Residential Customers, Commercial Customers, Essential Agricultural, and Industrial Users (Priorities 1A and 1B and Priorities 2A, 2B, and 2C). (1455)

1. Free extension of the gas facilities will be made by the City provided the customer's annual revenue, less the cost of the natural gas (as estimated by the City), is equal to or exceeds one-fifth (1/5) of the cost of the extension facilities, including meters, regulators, and allocated system costs. (1455,1946)
In the case of an extension for a group of residential customers, the developer or responsible party must agree to have a minimum number of residences as determined in the revenue study and in compliance with Section 5-14-4(A) connected to the City’s gas system. Failure to comply with this requirement will result in a penalty equal to the cost of a residential water service connection for each residence below the required number. (1455)

2. Extensions over the free limits will be made to customers provided such customers will sign an extension agreement and make a nonrefundable contribution cost so that the remainder satisfies the requirements of (B)1. (1455)

(C) Other Customers (Not Qualified Under A or B). (1455)

Customers requiring more than fifty (50) M.C.F. in any one day. (1455)

When the forecasted supply of natural gas is adequate, a customer who requires in excess of fifty (50) M.C.F. in any one (1) day may, at the City’s option, have distribution facilities extended provided such customer will sign an extension agreement and make a nonrefundable contribution in aid of construction equal to the total cost of the extension, including allocated system costs, required system improvements, and local costs including gas meters and service regulators. (1455)

In addition, the following general conditions will apply to all new gas main extensions: (1455)

1. Extensions of the City gas facilities, in all circumstances, are subject to the availability of adequate capacity and suitable pressure at the beginning point of an extension. (1455)

2. The extension must be designed and constructed for operation at standard pressures used by the City in the area in which the extension is located. (1455)

3. All easements or rights-of-way required by the City for any portion of the extension which is either on a customer’s premise or other private property, or both, shall be furnished to the City without cost. (1455)

4. All construction, including that for which customers have made contributions, will be owned, operated, and maintained by the City. (1455)

5. (a) Measurement must be made along the proposed route of construction. (1455)

(b) The extension must be a branch from, the continuation of, or an addition to one of the City’s existing distribution lines. (1455)

6. The City will not undertake the initiation of natural gas service to new areas which are within its existing area of service but which are separated from its existing distribution facilities by any substantial distance without due consideration of its ability to meet its forecasted load requirements based upon its present and anticipated gas supply and consideration of such other factors as may be approved in the circumstances. (1455)

(D) Any increase in load not in accordance with the above rules may be considered unauthorized use of gas. (1455,2985)
5-14-5: **NO VIOLATION OF PUBLIC SERVICE OBLIGATIONS:**
The foregoing rules applicable to the City of Mesa are adopted by order of the Mesa City Council. The City of Mesa shall have no liability or obligation arising out of any refusal or curtailment or interruption or cessation of service effected or refused in accordance with the foregoing rules. (1455)

5-14-6: **NOTICE TO CUSTOMERS AND SAFETY RULES:**
To the extent practicable, the City shall attempt to give notice of pending effectuating curtailments or interruptions of gas service and re-establishment or recommencement of gas service following curtailments or interruptions; the City shall comply with all applicable safety rules, regulations, standards, and procedures, including those in effect under the National Pipeline Safety Act. (1455)

5-14-7: **EMERGENCY SITUATION; PRIORITIES:**
In emergencies arising from unforeseen causes beyond the City’s reasonable control, including decrease or interruption of gas supply to or in the City’s system or any part thereof due to the line breaks, line freezes, equipment malfunctions, or other similar casualty, the City shall take whatever steps it deems necessary or appropriate to protect the public health and safety. Subject thereto, the City shall, when and to the extent feasible, attempt to follow the respective priorities hereinabove set out. (1455)

5-14-8: **PENALTY FOR UNAUTHORIZED USE:**
If unauthorized use of gas occurs under the terms contained herein, the customer shall be subject to the section and title "Unauthorized Use of Gas" in the Terms and Conditions for the Sale of Utilities in the ordinance setting utility rates. (1455)

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CHAPTER 15

**CHARITABLE SOLICITATIONS**

(Repealed by 2383)

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CHAPTER 16

**USE TAX**

(Repealed by 2175)
CHAPTER 17

DEVELOPMENT IMPACT FEES

(1471, 1790, 1838, 2100, 2241, 2356, 2596, 2658, 2786, 2909, 3003, 3041, 3100, 4706, 5071, 5189)

SECTION:

5-17-1: FINDINGS AND PURPOSE:
The City Council of Mesa, Arizona, finds that:

(A) Both population and employment within the City continue to grow creating demands for new residential and nonresidential development.

(B) New development often overburdens existing public facilities, including water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems.

(C) The protection of the health, safety, and general welfare of the citizens of the City requires that the public facilities of the City be expanded and improved to meet the demands of new development.

(D) Under the City’s current laws, taxes, fees, utility charges, and other forms of revenue collected from new development do not generate sufficient funds to provide those public facilities required to serve the new development.

(E) An equitable development impact fee system, as established by this chapter, enables the City to impose a more proportionate share of the costs of required improvements to the water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems on those developments that create the need.

(F) All types of development that are not explicitly exempted from the provisions of this ordinance generate demand for the types of facilities for which impact fees are being imposed pursuant to this Chapter.
(G) The Impact Fee Study, as defined herein, sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City’s public facilities, and for determining the cost of acquiring land and the cost of acquiring or constructing facilities and equipment necessary to serve new development. (3502,3875,4706,5071)

(H) The assumptions and service levels referenced in the Impact Fee Study were those in existence at the time the Impact Fee Study was completed. (3502,3875,4039,4706)

(I) The Pledged Debt Analysis for Continuation of Impact Fees, as defined herein, sets forth the basis and analysis for the continuation of the City’s current impact fees (as determined in the Impact Fee Study) for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities until sufficient funds have been collected to repay all of the debt amounts for which the fees were pledged, as authorized by SB 1525, Fiftieth Legislature, First Regular Session (2011). (5189)

(J) The impact fees described in this Chapter are based on the Impact Fee Study and the Pledged Debt Analysis for Continuation of Impact Fees. (3502,3875,4039,5189)

(K) The types of improvements to each type of public facility considered in the Impact Fee Study and the Pledged Debt Analysis will benefit all new development in the City, and it is therefore appropriate to treat the entire City as a single service area for purposes of assessing, collecting, and expending the impact fees for each type of facilities. (3502,3875,4039,4706,5189)

(L) There is both a rational nexus and a rough proportionality between the development impacts created by each type of new development covered by this Chapter and the impact fees that each such development will be required to pay. (3502,3875,4039,4706,5189)

(M) This Chapter allows for the continuation of development impact fees that the City adopted prior to January 1, 2012, and that were, and hereby are again, pledged to repay debt service obligations related to the construction of impact fee eligible facilities for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities as allowed by Arizona Revised Statutes (“A.R.S.”) § 9-463.05. (3502,3875,4039,5189)

(N) This Chapter creates a system of impact fees in compliance with the requirements of A.R.S. § 9-463.05. (3502,3875,4039,5189)

5-17-2: AUTHORITY AND APPLICABILITY:

(A) This Chapter is enacted pursuant to the City’s general police power, the authority granted to the City by the Arizona State Constitution, and A.R.S. § 9-463.05. (3502,3875,5189)

(B) The provisions of this Chapter shall apply to all of the territory within the corporate limits of the City, and within the City’s water and wastewater service areas. (3502,3875)

(C) The City Manager or his designee is authorized to make determinations regarding the application, administration and enforcement of this Chapter. The application, administration, and enforcement of this Chapter shall comply with any applicable requirements of A.R.S. § 9-463.05. (4706,5189)
5-17-3: INTENT:

(A) The intent of this Chapter is to ensure that new development bears a proportionate share of the cost of improvements to the City’s water and wastewater systems, parks, libraries, fire facilities and equipment, public safety facilities and equipment, and stormwater drainage systems as allowed by the Arizona State Constitution and A.R.S. § 9-463.05. (3502,3875,4039,4234,4239,4240,5071,5189)

(B) This Chapter provides for the continuation of development impact fees (adopted by the City prior to January 1, 2012) for Water, Wastewater, Parks, Library, Fire, Public Safety and Storm Water facilities until sufficient funds have been collected to repay all of the debt amounts for which the fees were pledged as identified in the Pledged Debt Analysis for Continuation of Impact Fees, at such time, the collection of the impact fee for such impact fee category (each impact fee category being treated separately) shall automatically cease until a new or updated development impact fee is adopted in compliance with A.R.S. § 9-463.05. (3502,3875,4039,5189)

(C) It is not the intent of this Chapter that any monies collected from any impact fee and deposited in an impact fee fund shall ever be commingled with monies from a different impact fee fund or ever be used for a type of public facility different from that for which the impact fee was paid. (3502,3875,4039,4706)

5-17-4: DEFINITIONS:

The following words and phrases, whenever used in this Chapter, shall have the meanings respectively ascribed to them in this Section unless from the context a different meaning is clearly intended: (3502,4039)

APPLICANT: A person who applies to the City for a permit. (4039)

BUILDING AREA: For fees assessed on the basis of square feet, building area shall be calculated as follows:

Building area shall include all areas within the surrounding exterior walls, measured to the outside of such walls, exclusive of vent shafts and courts. Building area shall also include areas of buildings within the horizontal projection of the roof or floor above, which do not have surrounding exterior walls but exceed three feet (3') in horizontal dimension. Building area shall also include basements, if provided, and outdoor patios without roofs for restaurants, bars or similar occupancies (per Title 4 Chapter 2 of the Mesa City Code). (4706,5189)

CHANGE IN USE: A development that modifies the housing type, meter size, or land use type applicable to the lot. (3547,3875,4039,5189)

CONNECTION: The physical tie-in of a private water or wastewater service or system to the City’s public water or wastewater system. (3502,3875)

DEVELOPMENT: Any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land. (3502,4039)

DWELLING UNIT: A room or group of rooms within a building containing cooking accommodations and designed to be used for living purposes. The term dwelling unit shall include an apartment, but shall not include a hotel room, guest room in a boarding house, or other transient occupancy by any one (1) person or group of persons for a period of less than thirty (30) calendar days or accessory living quarters. (3502,4706)
HOTEL/MOTEL: A facility containing 6 or more commercial guest rooms utilized for short term transient occupancy which provides continuous on-site management. The term shall include those facilities subject to the Transient Lodging Tax provided in Sections 5-10-444 and 5-10-447 of the Mesa City Code, but shall not include nursing or convalescent homes, boarding houses, bed and breakfast establishments, or apartment buildings. (3875,5189)

HOUSING TYPE: The categories of housing types as set forth in Table 1 attached to this Chapter. (4039,4706)

IMPACT FEES: The water impact fee, wastewater impact fee, park impact fee, library impact fee, fire impact fee, public safety impact fee, and stormwater impact fee. (3502,4234,4239,4240,5071)

IMPACT FEE FUNDS: The water impact fee fund, wastewater impact fee fund, park impact fee fund, library impact fee fund, fire impact fee fund, public safety impact fee fund, and stormwater drainage impact fee fund. (3502,4234,4239,4240,5071)

IMPACT FEE STUDY: The Impact Fee Study for the City of Mesa, Arizona prepared by Duncan-Associates dated May, 2007. (3875,4039,4234,4239,4240,4706)

IMPACT FEE TABLES: Table 1 attached to this Chapter and included in this Chapter by reference. (3502,3875,5071)

IMPROVEMENT: Planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction, equipment purchases, and financing costs associated with new or expanded facilities, buildings, and equipment that expand the capacity of a key public facility. (3502)

KEY PUBLIC FACILITY: One (1) or more elements of the City’s water and wastewater systems, parks, libraries, fire facilities, public safety facilities, and stormwater drainage systems included in the calculations of the development impact fees in the Impact Fee Study. (3502,3875,4234,4239,4240,5071)

LAND USE TYPE: The categories of land use type as set forth in Table 1 attached to this Chapter. (4039,4359,4706)

LOT: A piece or parcel of land separated from other pieces or parcels by description, as in a subdivision or on a recorded survey map, or by metes and bounds, for purposes of sale, lease or separate use. (4039,5189)

MANUFACTURED HOME: Same as "mobile home." A structure transportable in one (1) or more sections which, (1) in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, (2) is built on a permanent chassis, and (3) is designed to be used as a dwelling, with or without permanent foundation, when connected to utilities. This term shall not include a recreational vehicle as defined in this Chapter. (3502,3875,4706)

METER SIZE: The category of meter size as set forth in Table 1 and Table 2 attached to this Chapter. (4039)

MULTI-RESIDENCE DWELLING: A dwelling unit in a building containing two (2) or more dwelling units, including units that are situated over one another. (3502,5189)

NON-RESIDENTIAL: All land uses (which includes commercial and industrial), except single residence detached dwellings, single residence attached dwellings, multi-residence dwellings, manufactured homes, recreational vehicles or similar uses. (4706,5189)
PERSON: Any person, partnership, firm, company, limited liability entity or corporation. (4039,5189)

PERMIT: Any permit authorized to be issued pursuant to the provisions of Chapter 1, of Title 4 and Chapters 6 and 8 of Title 9 of the Mesa City Code. (4039,4706)

PLEDGED DEBT ANALYSIS FOR CONTINUATION OF IMPACT FEES: The Pledged Debt Analysis for Continuation of Impact Fees for the City of Mesa, Arizona prepared by Duncan-Associates dated April 16, 2013. (5189)

RECREATIONAL VEHICLE: A vehicle-type unit that is one (1) of the following: (1) a portable camping trailer mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold for camping; (2) a motor home designed to provide temporary living quarters for recreational, camping, or travel use, and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle; (3) a park trailer built on a single chassis, mounted on wheels, designed to be connected to utilities necessary for operation of installed fixtures and appliances, and having a gross trailer area of not less than three hundred twenty (320) square feet and not more than four hundred (400) square feet when it is set up, but excluding fifth wheel trailers; or (4) a travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, or a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle, and having a trailer area of less than three hundred twenty (320) square feet, and specifically including fifth wheel trailers. (3502,4706)

SINGLE-RESIDENCE ATTACHED DWELLING: A one- (1-) family dwelling in a row of at least two (2) such units in which each unit is separated from any other unit by one (1) or more vertical common fire-resistant walls extending from ground to roof, each unit has its own front and rear access to the outside, and no unit is situated over another unit. (3502)

SINGLE-RESIDENCE DETACHED DWELLING: A building containing one (1) dwelling unit and that is not attached to any other dwelling by any means and is surrounded by open space or yards on all four (4) sides. This term shall include a manufactured home situated on a separately platted lot. (3502)

STORMWATER DRAINAGE IMPACT FEE MAP: The Stormwater Drainage Impact Fee Map attached to this Chapter and included herein. (4706)

SQUARE FEET: Each unit of building area equal to one hundred and forty-four (144) square inches. (3875,4234,4706)

5-17-5: IMPOSITION OF IMPACT FEES:

(A) Impact Fees Required. Any person who obtains a building permit, a right-of-way permit, or any other permit, is required to pay the applicable water impact fee, wastewater impact fee, park impact fee, library impact fee, fire impact fee, public safety impact fee, and stormwater drainage impact fee unless the type of development described in the permit is specifically exempted by this Chapter. In addition, any person who seeks a connection to the City water system shall pay a water impact fee, and any person who seeks a connection to the City wastewater system shall pay a wastewater impact fee, regardless of whether the development to be connected requires a building permit or other permit. (3502,3875,4039, 4234,4239,4240,4706,5071)
(B) Timing of Payment. Any person required by this Chapter to pay one (1) or more impact fees, shall pay each impact fee required by this Chapter to the City prior to, or in conjunction with, the issuance of any such permit, or prior to the completion of any connection to the City’s water and wastewater systems; and no such permits shall be issued and no such connections shall be made until each impact fee required by this Chapter has been paid. All impact fees paid pursuant to this Chapter shall be promptly deposited in the appropriate impact fee funds described in Section 5-17-7. (3502, 3875, 4039, 4706)

(C) Calculation of Impact Fees from Impact Fee Tables.

1. The City Manager, or his designee, shall determine the amount of each required impact fee through the use of the impact fee table set forth in this Chapter. (3502, 3875, 4706, 5189)

2. Land Use Type. The City Manager, or his designee, shall determine the land use type for each development based on the land use or land uses applicable to the lot to be developed in its entirety. If a lot consists of two (2) or more separate areas with different land uses applicable to each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each land use type in each separate area. Determinations of the land use type may be appealed to the City Manager or his designee. (3502, 4039, 4234, 4706, 5189)

3. Meter Size. The City Manager, or his designee, shall determine the meter size for each lot based on the actual meter size installed on each lot. If the exact meter size is not listed in a table, then the City shall use the next largest meter size in such table. If a lot consists of two (2) or more separate areas with separate meters in each separate area, then the impact fee shall be determined by adding up all the fees that would be applicable for each meter size in each separate area. (3502, 4039, 4706, 5189)

4. Calculation of Square Footage. In assessing the development impact fees for the nonresidential land use type, any determination of square footage shall be in whole units, with any fractions thereof being rounded up to the next square foot. (4234, 4706)

5. Existing development credits. Impact fees for development projects involving an addition to or remodeling of an existing facility, change of use, change of housing type, change of meter size or other modification or redevelopment of a previously developed lot or building with a valid certificate of occupancy shall be calculated as follows:

The applicable impact fees for each proposed housing type, land use type and meter size as set forth in the current impact fee tables minus the applicable impact fees for each existing or previous housing type, land use type and meter size as set forth in the current impact fee tables. Calculated amounts equal to or less than zero dollars ($0.00) shall result in no additional impact fee for that specific impact fee or fees. Unused credit amounts shall not be refunded to the owner or applicant, but shall run with the land until utilized in full. (4706)

6. If a manufactured home housing type is located on a separately platted lot, the impact fees shall be calculated as for single residence detached dwelling. If a manufactured home housing type is located on a recreational vehicle park space, the impact fees shall be calculated as for manufactured home/recreational vehicle. (4706)
5-17-6: EXEMPTIONS FROM IMPACT FEES:

(A) General Exemptions. The following types of development shall be exempt from payment of specified impact fees otherwise due pursuant to this Chapter. Except for claim(s) resulting from unforeseen conditions, the City Manager, or his designee, shall evaluate every permit application for applicability of the exemption criteria as follows: (3502,3547,3875,4039,4359,4706,5189)

1. Facilities located within the City and owned by the City will be exempt from payment of impact fees if the proposed facility will produce no additional demand for a specific necessary public service. The City Manager, or his designee, will evaluate such proposed facilities for applicability of the demonstration of no additional demand pursuant to this Chapter. (3502,4706,5189)

2. Public schools, school districts and Charter Schools located within Mesa shall be exempt from payment of all impact fees in accordance with Arizona Revised Statutes, Section 9-500.18, except applicable water and wastewater impact fees. (4706,5189)

3. Water and wastewater impact fees shall not be charged for the installation of fire protection systems or lines, provided that such system or line is not served by a water meter. (3502,4039,4706)

4. Separate water meters installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee. (3502,4706)

5. Separate water meters installed for irrigation purposes only that meet one (1) of the following conditions shall not be included in the calculation of the water impact fee: (3502,4039,4706)

   (a) Dwelling units for which applicable impact fees were assessed and paid on a dwelling-unit basis; or (3502,4039)

   (b) Dwelling units for which first connection preceded the assessment of development fees; or (3502,4039)

   (c) Residential subdivision developments where water meters are installed in common areas of said developments to provide landscape irrigation; or (4234)

   (d) Commercial or industrial developments for which water development fees were assessed and paid prior to July 1, 1993; or (3502,4039,4234)

   (e) Commercial or industrial developments for which first connection preceded the assessment of development fees. (3502,4039,4234)

6. Separate water meters installed in a residential subdivision development that is: (4234,4706)

   (a) Used for common amenities (i.e., swimming pools, clubhouses, recreation buildings, etc.) and (4234)

   (b) Solely dedicated for the noncommercial use of the subdivision residents shall not be included in the calculation of the water impact fees when applicable impact fees for dwelling units were assessed and paid on a dwelling/unit or space/lot basis. (4234)

7. A development shall be exempt from stormwater drainage impact fees if the development is located within the areas of the "Stormwater Drainage Impact Fee Map" designated either as "exempt" or "potentially exempt" from stormwater drainage impact fees. (4706,5189)
Demonstration of No Additional Demand for Facilities. A development may be exempted from payment of specific impact fees otherwise due pursuant to this Chapter if the proposed development will produce no additional demand for a specific key public facility than what was generated from such lot or location prior to the proposed development. The City Manager, or his designee, shall evaluate every permit application for applicability of the demonstration of no additional demand for facilities for the types of impact fees pursuant to this Chapter. (3502,3875,4039,4359,4706,5189)

Exemption Determination. The City Manager, or his designee, shall determine the validity of any claim for exemption pursuant to the criteria set forth in this Section. (3502,3766,3875,4039,4706)

Impact Fee Funds:

Creation of Impact Fee Funds. The following impact fee funds are hereby created as interest-bearing accounts separate and distinct from the general fund of the City: (3502,3875,5189)

1. Water Impact Fee Fund. (3502,5189)
2. Wastewater Impact Fee Fund. (3502,5189)
3. Park Impact Fee Fund. (3502,5189)
4. Reserved (5071)
5. Library Impact Fee Fund. (3502,5189)
6. Fire Impact Fee Fund. (3502,4039,5189)
7. Police Impact Fee Fund. (3502,4234,5189)
8. Reserved (5071)
9. Stormwater Drainage Impact Fee Fund. (4240,5189)

Each such impact fee fund shall contain only those impact fees collected pursuant to this Chapter for the types of key public facilities reflected in the title of the fund plus any interest which may accrue from time to time on such amounts. (3502,3875,4039,4706)

The monies in each impact fee fund shall be used only: (3502,3875)

1. To repay all of the debt amounts for which the fees have been pledged as described in the Pledged Debt Analysis for Continuation of Impact Fees; (5189)
2. As described in Section 5-17-8 (refunds); or (3502,5189)
3. As described in Section 5-17-9 (credits). (3502,5189)
5-17-8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:

(A) The City Manager, or his designee, is hereby authorized and directed to correct any error in the assessment and collection of impact fees detected within twenty-four months of the date of the payment of the impact fees, including assessing additional impact fee amounts or issuing a refund from the appropriate impact fee fund(s). (3502,4706,5189)

(B) If an applicant has paid an impact fee required by this Chapter and has obtained any of the types of permits listed in Section 5-17-5, and the permit for which the impact fee was paid later expires or is revoked, then the applicant who paid such impact fee shall be entitled to a refund of the impact fee paid. A refund will include interest to the extent required by A.R.S. § 9-463.05. In order to be eligible to receive such refund, the applicant who paid such impact fee shall be required to submit a request for such refund within thirty (30) days after the expiration or revocation of the permit for which the impact fee was paid. (3502,3875,4039,4706,5189)

(C) After an impact fee has been paid pursuant to this Chapter, no refund of any part of such impact fee shall be made if the development for which the impact fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development. (3502,3875,4039)

5-17-9: CREDITS AGAINST IMPACT FEES:

(A) Credits Against Impact Fees. (3502,5189)

1. Impact Fee Credits. The City will provide a credit toward the payment of a development impact fee for a required or agreed upon dedication of public sites, improvements and other necessary public services or facility expansions included in the City’s infrastructure improvement plan and for which the fee is assessed. The credit will be provided to the extent the public sites, improvements and other necessary public services or facility expansions are provided by the developer requesting the credits. The City will provide credits or reimbursements from development impact fees under A.R.S § 9-463.05(B)(7)(c)(i). The City will provide credits when required by A.R.S. § 9-463.05. Credits will only be provided if and to the extent such credits comply with A.R.S. § 9-463.05. (3502,3875,5189)

2. Oversized Water and Wastewater Improvements. Credits shall not be issued for water and wastewater oversize improvements. Oversized improvements may be handled using development agreements as outlined in Sections 9-6-4(F) and 9-8-3(I) of the Mesa City Code. (3502,3547,4706,5189)

(B) Procedure. In order to obtain a credit against an impact fee otherwise due, an applicant must submit a written offer to dedicate to the City specific parcels of qualifying land or to acquire or construct specific key public facilities in accordance with all applicable State or City design and construction standards, identify the project in the City’s Infrastructure Improvement Plan for which the credit is sought and must specifically request a credit against such impact fee. Such written request must be made on a form provided by the City, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts, and must be filed not later than the time when an applicant applies for the first permit of a type listed in Section 5-17-5(A) that creates an obligation to pay the type of impact fee against which the credit is requested, or the applicant’s claim for the credit shall be waived. (3502,5189)
(C) Calculation of Credit. The credit due to an applicant shall be calculated and documented as follows:

1. The value of land dedicated or donated shall, at the applicant's option, be valued at (a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) that fair market value based on the appraised land value of the parent parcel on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the City may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two (2) appraisals. If either party rejects the average of the two (2) appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the City. The third appraiser shall be selected by the first two (2) appraisers, and the third appraisal shall be binding on both parties. Credits may not exceed the cost identified in the Infrastructure Improvement Plan for which a development fee was assessed. (3502,5189)

2. In order to receive credit for qualifying acquisition or construction of eligible public facilities, the applicant shall comply with the public bidding process as required by Section 5-17-9(H) of the Mesa City Code. Credits may not exceed the cost identified in the Infrastructure Improvement Plan for which a development fee was assessed and may not exceed the actual costs the applicant incurred in acquisition or construction. (3502,3547,4706,5189)

(D) Effective Date. Approved credits shall become effective at the following times:

1. Approved credits for land dedications shall become effective when the land has been conveyed to the City in a form acceptable to the City and at no cost to the City and has been accepted by the City. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available. (3502)

2. Approved credits for the acquisition or construction of key public facilities shall generally become effective when (1) all required construction has been completed and has been accepted by the City, (2) a suitable maintenance and warranty bond has been received and approved by the City, (3) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable City and State procedures. When such conditions have been met, the City shall note that fact in its records. Upon request of the applicant, the City shall issue a letter stating the amount of credit available. (3502,3875)

(E) Credits Used for Same Impact Fee Category. Approved credits may be used only to reduce the amount of impact fees due from the applicant for the same impact fee category for which the applicant dedicated land or acquired or constructed a key public facility until the amount of the credit is exhausted. Approved credits shall not be paid to the applicant in cash or in credits against any impact fee for a different type impact fee category or against any other monies due from the applicant to the City, and shall not constitute a liability of the City, except as described in Section 5-17-9(G). Each time a request to use approved credits is presented to and approved by the City, the City shall reduce the amount of the applicable impact fee otherwise due from the applicant, and shall note in the City records the amount of credit remaining, if any. Upon request of the applicant, the City shall issue a letter stating the number of credits available. (3502,5189)
F) **Sale of the Development.** In the event that the development for which credits have been issued is sold to different owners, the credits usable by each new owner shall be calculated in terms of a percentage of the impact fees that would otherwise be due from the entire development. If the total amount of development is not known, the maximum potential development under existing development regulations shall be assumed. This percentage reduction will be applied to all impact fees assessed within the development until the total amount of the credits is exhausted or the development is completed, whichever occurs first. In the event that the impact fee tables are amended to increase the fees prior to completion of the development, the percentage reduction shall be applied only to the impact fees that were in place at the time the credits were issued, and the adjusted impact fee to be charged shall be the sum of the reduced original impact fee plus the amount by which the fees were increased. (3502,4039,5189)

G) **Rights to Credits.** Except as provided below in this Subsection, the right to claim credits shall run with the land and may be claimed only by owners of property within the development for which the land was dedicated or the key public facility of the same type was acquired or constructed. Credits issued for a particular development shall not be transferable or assignable to another development, except the City may agree to a transfer or assignment as allowed in A.R.S. § 9-463.05(B)(7)(c)(iii) in a signed development agreement between the City and the original developer. (3502,3547,3875,5189)

H) **Use of Public Bidding Process.** In order to receive a credit for the acquisition or construction of eligible public improvements (other than land dedication), the developer shall comply with A.R.S. § 34-101 et seq. and the City of Mesa’s public bidding process as administered by the City. (3502,4706,5189)

### 5-17-10: MISCELLANEOUS PROVISIONS:

A) **Interest.** Interest earned on monies in any impact fee fund shall be considered part of such fund, and shall be subject to the same restrictions on use applicable to the impact fees deposited in such fund. (3502)

B) **First-In/First-Out Accounting.** Monies in each impact fee fund shall be considered to be spent in the order collected, on a first-in/first-out basis. (3502)

C) **Maintenance.** Monies from any impact fee fund shall not be spent for periodic or routine maintenance of any facility of any type or to cure deficiencies in public facilities existing on November 1, 1998. (3502,3875,4039)

D) **No Restriction on Development Conditions.** Nothing in this Chapter shall restrict the City from requiring an applicant to construct reasonable project improvements required to serve the applicant’s development, whether or not such improvements are of a type for which credits are available under Section 5-17-9. (3502,3875,4039)

E) **Records.** The City shall maintain accurate records of the impact fees paid, including the name of the person paying such impact fees, the development for which the impact fees were paid, the date of payment of each impact fee, the amounts received in payment for each impact fee, and any other matters that the City deems appropriate or necessary to the accurate accounting of such impact fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice. (3502,4039)

F) **Temporary Rate Freeze for New and Increased Fees in the Future.** If the City adopts new or increased development impact fees, the new impact fee or the increased portion of the modified impact fee shall not be assessed against a development for the period of the time as provided for and defined in A.R.S. § 9-463.05(F) and (T)(4). (3502,3875,4706,5189)
(G) Mistake or Misrepresentation. If a development impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the City to the applicant within thirty (30) days after the City’s acceptance of the recalculated amount, with interest earned by the City since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the City within thirty (30) days after the City’s acceptance of the recalculated amount, with interest that would have been earned by the City from the date of such underpayment. In the case of an underpayment to the City, the City shall not issue any additional permits or approvals for the development for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty- (30-) day period, the City may also rescind any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then current owner of the land. (3502,4039,5189)

(H) Discretion to Reduce Impact Fees. In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the City Council may agree to pay some or all of the impact fees imposed on a proposed development from other funds of the City that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the City Council and shall be made pursuant to goals and objectives expressed by the City Council to promote such development. (3502,4039,5189)

(I) Appeals. Any determination made by any official of the City charged with the administration of any part of this Chapter may be appealed to the City Manager, or his designee. The determination of the City Manager, or his designee, may be appealed to the City Council committee that is designated by the City to hear such appeals. All appeals must include a written notice of appeal that contains an explanation of why the appellant feels that the determination was in error. The written notice of appeal must be filed with the City Clerk within thirty (30) days after the determination for which the appeal is being filed. The determination of the City Council committee shall be final. (3502,3547,3875,5189)

(J) Biennial Audit. The City shall conduct a biennial certified audit in accordance with A.R.S. § 9-463.05(G)(2) if and to the extent applicable to the continuation of the impact fees for the payment of pledged debt amounts and as required for any future adopted impact fees. (3502,3875,5189)

(K) Annual Report. Within 90 days of the end of each fiscal year, the City shall file with the City Clerk an annual report accounting for the collection and use of the fees for each service area and shall post the report on its website in accordance with A.R.S. § 9-463.05(N) and (O), as amended. (3502,3547,3875,4706,5071,5189)

5-17-11: VIOLATION; PENALTY:
Furnishing false information to any official or agent of the City charged with the administration of this Chapter on any matter relating to the administration of this Chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this Chapter. Any person, firm, or corporation that violates any of the provisions of this Chapter shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500), or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000). Each violation shall be considered a separate offense, punishable as described above. (3502,3875)
### TABLE 1
MESA DEVELOPMENT IMPACT FEES

<table>
<thead>
<tr>
<th>Impact Fee Categories</th>
<th>Description</th>
<th>Unit</th>
<th>Waste Water</th>
<th>Waste Water</th>
<th>Fire</th>
<th>Public Safety</th>
<th>Storm Water</th>
<th>Total</th>
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<tr>
<td><strong>Residential Land Uses:</strong></td>
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<td></td>
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<tr>
<td>Single Residence</td>
<td>Detached dwelling</td>
<td>$2,220</td>
<td>$2,659</td>
<td>$272</td>
<td>$402</td>
<td>$366</td>
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<td>$5,919</td>
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<td>Manufactured Home</td>
<td>(on platted lot)</td>
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CHAPTER 18

TRANSIENT OCCUPANCY TAX

(Repealed by 3175)

CHAPTER 19

FORTUNE TELLING

5-19-1: PURPOSE OF THIS CHAPTER:
The purposes of this Chapter shall be to protect the health, safety, and welfare of residents of the City by means of investigation and regulation of fortunetellers. (1846)

5-19-2: LICENSE REQUIRED:
It shall be unlawful for any clairvoyant, astrologer, seer, palmist, soothsayer, fortune teller, spiritualist, or spirit medium to engage in such business and charge or receive fees, rewards, or anything of value therefor without first obtaining a license therefor in compliance with the provisions of this Chapter. If more than one (1) person is associated in any of the above categories at the same place of business, each person so engaging shall be required to obtain a separate license. (1846)

5-19-3: APPLICATION:
Applicants for a license under this Chapter must file with the Finance Director a sworn application in writing on a form to be furnished by the Finance Director which shall contain, but not necessarily be limited to, the following information: (1846)

(A) Name and description of the applicant. (1846)

(B) Address (legal and local). (1846)

(C) If employed, the name and address of the employer, together with credentials establishing the exact relationship. (1846)
(D) The length of time for which the right to do business is desired. (1846)

(E) If a vehicle is to be used, a description of the same, together with license number or other means of identification. (1846)

(F) A photograph of the applicant taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2"), showing the head and shoulders of the applicant in a clear and distinguishing manner. (1846)

(G) The fingerprints of the applicant and the names of at least two (2) reliable property owners of the City who will certify as to the applicant's good character and business responsibility or in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility. (1846)

(H) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal laws, the nature of the offense, and the punishment or penalty assessed therefor. (1846)

(I) No license issued hereunder shall be transferable. (1846)

5-19-4: INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE:

Upon receipt of such application, the Finance Director shall cause an investigation to be made to determine whether the applicant or any officer, director, trustee, or partner or any agent, employee, or other person associated with the applicant:

(A) Has been convicted of a felony involving a transaction in securities or consumer fraud in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1846)

(B) Has been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, or theft by false pretenses, in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1846)

(C) Has been or is presently subject to an injunction, judgment, decrees, or permanent order of any federal court entered within the seven- (7-) year period immediately preceding the filing of the application of such injunction, judgment, decree, or permanent order: (1846)

1. Involving the violation of fraud or registration provisions of the securities laws of that jurisdiction; or (1846)

2. Involving the violation of the consumer fraud laws of that jurisdiction. (1846)

(D) Has been convicted of a felony involving moral turpitude or burglary, robbery, or theft as defined in Arizona Revised Statutes or a crime of violence in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application. (1846)

If as a result of such investigation it is determined that any of the items set forth above as (A), (B), (C), and (D) are determined to exist, the Finance Director shall deny the application. If not, the license shall be issued by the Finance Director upon payment of the required fee. (1846)
5-19-5: **FEES:**
The license fee for any clairvoyant, astrologer, seer, palmist, soothsayer, fortune teller, spiritualist, or spirit medium shall be three hundred dollars ($300.00) per calendar year or part of a calendar year, and all annual fees shall be paid in advance. (1846)

5-19-6: **LICENSE TO BE POSTED:**
The license issued to the licensee hereunder by the Finance Director shall be posted in a conspicuous place if the licensee is using a vehicle or building in his business, and otherwise must be kept by the person and exhibited at any time upon request. (1846)

5-19-7: **RENEWALS:**
Licenses which are continually renewed shall pay the annual fee prescribed in Section 5-19-5. Licenses which are not continuously renewed shall be treated as an original application upon application for renewal. (1846)

5-19-8: **SUSPENSION AND REVOCATION:**
Whenever the Finance Director has reason to believe that any licensee is guilty of any of the following acts: (1846)

(A) Fraud, misrepresentation, or false statement contained in the application for license; (1846)

(B) Fraud, misrepresentation, or false statement made in the course of carrying on the business; (1846)

(C) Violation of any of the provisions of this Chapter; (1846)

(D) Conviction of any crime described in Items (A), (B), (C), and (D) of Section 5-19-4; (1846)

(E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; (1846)

The Finance Director shall immediately suspend the license and give the licensee notice by registered mail of the suspension and of a hearing to be held within ten (10) days to determine whether or not the permit should be revoked. The notice shall contain a statement of the purported reason for the suspension. At the hearing the licensee shall have the right to be represented by counsel, to introduce witnesses on his behalf and at his own expense, and to have the testimony given at the hearing transcribed. Within the next three (3) days after the hearing, excluding weekends and legal holidays, if the Finance Director determines that there is a good and sufficient reason for revocation of the licensee's license, the Finance Director shall enter an order revoking the license effective immediately and notify the licensee by registered mail. (1846)

5-19-9: **APPEAL:**
Within five (5) days, excluding weekends and legal holidays, an applicant for a license or a licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (2383)
CHAPTER 20

PAYMENTS IN LIEU OF THE RESIDENTIAL DEVELOPMENT TAX

(2210,2240,2443,2466,2908)

(Repealed by 3502)
CHAPTER 21

STRUCTURED SOBER LIVING HOME LICENSE

(5458)

SECTION:

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5-21-1: INTENT
The intent of this Chapter is to protect the residents of structured sober living homes from operators who engage in abuse, neglect, mistreatment, fraud, or inadequate supervision of this vulnerable population as well as to protect the residents of structured sober living homes and the neighboring community from operators who fail to provide the supportive, residential family-like living environment necessary to achieve and maintain sobriety. (5458)

5-21-2: DEFINITIONS
The terms of this Chapter have the below meanings unless the context otherwise requires. 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. (5458)

(A) APPLICANT: A person who applies for a license pursuant to this Chapter. (5458)

(B) BEHAVIORAL HEALTH SERVICE: Services that pertain to mental health and substance use disorders that are either: (5458)

(1) Performed by or under the supervision of a professional who is licensed pursuant to Arizona Revised Statutes Title 32 and whose scope of practice allows for the provision of these services; or (5458)

(2) Performed on behalf of patients by behavioral staff as prescribed by law. (5458)

(C) BUSINESS LICENSING ADMINISTRATOR: The Business Licensing and Revenue Collections Administrator of the City or his/her designee. (5458)

(D) CITY: City of Mesa, Arizona. (5458)
(E) **HEARING OFFICER:** The Business Services Department Director or his/her designee. (5458)

(F) **HOUSE MANAGER:** A staff member, regardless of title, whether live-in or on a shift basis, who is responsible for the day-to-day operation of the structured sober living home, maintaining and managing a sober living environment, keeping the house running smoothly, and maintaining a clean and sanitary environment. (5458)

(G) **LICENSE:** A license issued to a structured sober living home operator in accordance with this Chapter. (5458)

(H) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Business Licensing and Revenue Collections Administrator. (5458)

(I) **OPERATOR:** A business entity or individual (natural person) who owns or provides structured sober living home services including the placement of individuals in a residence, setting house rules, and governing behavior of the occupants as residents of the home. Operator does not include property owner or property manager that exclusively handles real estate contracting, property management, and leasing of the property and who does not otherwise meet the definition of operator. (5458)

(J) **SCHEDULE OF FEES AND CHARGES:** The current City schedule of fees and charges as approved by the City Council. (5458)

(K) **STRUCTURED SOBER LIVING HOME:** Any group residential/group home for the handicapped that provides alcohol-free or drug-free housing, promotes independent living and life skill development, and provides structured activities that are directed primarily toward recovery from substance use disorders in a supervised setting to a group of unrelated individuals, who are recovering from drug or alcohol addiction and who are receiving outpatient behavioral health services for substance abuse or addiction treatment while living in the home. Structured sober living home does not include: (1) a private residence in which a related family member is required to receive outpatient behavioral health services for substance abuse or addiction treatment as a condition of continuing to reside in the family dwelling; or (2) group home/group home for the handicapped that is licensed or otherwise subject to oversight by the State of Arizona. (5458)

5-21-3: **ADMINISTRATION; LICENSE REQUIRED**

(A) It is the duty and responsibility of the Business Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, or revoke a structured sober living home license in accordance with this Chapter. (5458)

(B) Any party aggrieved by a decision of the Business Licensing Administrator under this Chapter may appeal within ten (10) calendar days of issuance of the decision. The appeal must meet the requirements set forth in Section 5-21-13. (5458)

(C) All operators in the City must first obtain a license from the Licensing Office as provided in this Chapter. (5458)

(D) A separate license is required for each structured sober living home location in the City. (5458)

(E) A license is issued for a period of one (1) year and cannot be transferred. (5458)

(F) An operator must display its license in a conspicuous location at the structured sober living home location where the residents of the home can easily view the license. (5458)

(G) An applicant for a license may seek a reasonable accommodation as prescribed in Section 5-21-11 of this Chapter. (5458)
5-21-4: LICENSE APPLICATION

(A) An applicant must submit a licensing application on a form provided by the City and provide, at a minimum, all of the following documents: (5458)

(1) If the property is leased to an operator, a copy of the lease or other properly executed document stating that the property will be used as a structured sober living home. (5458)

(2) Supervision requirements in the structured sober living home for the residents during all hours of operation. (5458)

(3) Documentation for each house manager indicating the manager meets the minimum qualifications in Section 5-21-9. (5458)

(4) Operation plan that facilitates the rehabilitative process and addresses the maintenance of the property and noise abatement consistent with local ordinances. (5458)

(5) The structured sober living home’s rules and regulations, written intake procedures, relapse policy, and discharge plan. (5458)

(6) A copy of the structured sober living home good neighbor policy. (5458)

(7) A copy of the operator’s insurance policy for the structured sober living home. (5458)

(8) An affirmation by the operator that, except for house manager(s), only residents who have the disability of addiction to drugs and/or alcohol as defined by state and federal law are eligible to reside at the structured sober living home and the home will not admit residents who pose a direct threat to the health or safety of others such as persons on the sex offender registry. (5458)

(9) A blank copy of every form residents and potential residents are required to complete. (5458)

(10) A signed waiver by the operator agreeing to allow fire inspectors or code compliance officers entry into the common areas (including, but not limited to, the living room, kitchen, dining room, and back or side yard of a structured sober living home) upon demonstration that probable cause exists to believe that a violation of this Chapter exists. (5458)

(11) A signed and dated safety self-assessment checklist confirming the following safety devices are installed and fully functional, as well as a schedule for self-inspecting each device: (5458)

(a) Functioning smoke detectors in the sleeping rooms. (5458)

(b) Functioning fire extinguishers in plain sight or clearly marked locations. (5458)

(c) Interior and exterior of the property is in a functional, safe and clean condition and free of fire hazards. (5458)

(12) A signed waiver by the operator agreeing to allow the City to conduct an annual fire inspection of the structured sober living home to ensure compliance with the City’s fire code and Section 5-21-4 (A)(11). (5458)
5-21-4

(13) A legible floor plan of the structured sober living home that includes the total square footage of the home; the layout, location, dimensions, and square footage of each bedroom or room occupied as a bedroom (excluding closet space); the number of beds in each bedroom or room occupied as a bedroom; and the maximum number of residents proposed to occupy the home now and in the future. (5458)

(B) As part of the license application process and prior to the issuance of a license, the operator must permit the City to perform a fire inspection of the structured sober living home. (5458)

(C) The Licensing Office will grant a license to an applicant unless it determines the application is subject to denial in accordance with Section 5-21-6. (5458)

(D) All required fees set forth in the schedule of fees and charges (including issuance, application, and renewal, as applicable) must be paid by the operator prior to the issuance of a license. (5458)

(E) An applicant who obtains a license is responsible for updating any information provided to the City in this Section, within ten (10) days of the change in information. (5458)

5-21-5: LICENSE RENEWAL

(A) A license, unless revoked, may be renewed and such renewal will be valid for a term of one (1) year. The completed renewal application must be submitted by the operator no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee set forth in the schedule of fees and charges, otherwise the renewal application will be denied. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed in accordance with the requirements of this Chapter. (5458)

(B) As part of the annual renewal process, a licensed structured sober living home must pass an annual fire inspection conducted by the City. (5458)

(C) If an operator fails to submit a complete renewal application and renewal fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license will expire at the end of the term of the license and will be deemed non-renewable; unless otherwise prohibited by this Chapter, an operator will still be eligible to apply for a new license. An operator may not operate a structured sober living home at a location with an expired license until a new license is issued. (5458)

(D) An application for renewal of a license must comply with Section 5-21-6. (5458)

5-21-6: LICENSE DENIAL OR REVOCATION

(A) In addition to any penalties set forth in the Chapter, the Licensing Office shall deny an application for a new license and may revoke a current license for any of the following reasons: (5458)

(1) Applicant failed to meet the requirements set forth in this Chapter for issuance of a license. (5458)

(2) Applicant or operator failed to pay the applicable fees set forth in this Chapter. (5458)

(3) Application contained materially false or misleading information or omitted any pertinent information. (5458)

(4) Applicant or operator is in violation of any provision of this Chapter, or any other law applicable to the operation of a structured sober living home. (5458)
(5) Applicant currently owes a debt to the City and therefore cannot be issued a license as set forth in Mesa City Code Title 1, Chapter 32. (5458)

(6) Applicant, operator or house manager refused entry into a structured sober living home upon request by a fire inspector or code compliance officer upon demonstration that probable cause exists to believe that a violation of this Chapter exists. (5458)

(7) Operator was convicted or pled nolo contendere to any of the following criminal offenses within five (5) years prior to the date of the application for the license or operator commits any of the following offenses while having the license: (5458)

(a) Any sex offense classified as a Level II or Level III community risk (intermediate to high risk). (5458)

(b) Any arson offense. (5458)

(c) Any violent felony which involved doing bodily harm to another person. (5458)

(d) An unlawful sale, transfer, production, delivery, or manufacturing drug offense under Arizona Revised Statutes Title 13, Chapter 34 (as amended) or similar law in another state. (5458)

(8) Operator is on parole or formal probation supervision on the date of the submittal of the application for the license or at any time thereafter. (5458)

(9) Excluding the house manager, operator allowed a person who is not in recovery from drug and/or alcohol addiction and not handicapped as defined by the Fair Housing Act and the Arizona Fair Housing Act to reside in the structured sober living home. (5458)

(B) In addition to any penalties set forth in this Chapter, the Licensing Office may deny an application for a license or may revoke a current license for any of the following reasons: (5458)

(1) Operator, who is in recovery from drug and/or alcohol addiction, has been clean and sober for fewer than two (2) full years as of the date of application for a license or the date of employment. (5458)

(2) Operator or house manager fails to take immediate measures to remove or isolate any resident, using alcohol or illegally using prescription or nonprescription drugs, from contact with all other sober residents in the structured sober living home. (5458)

(3) Operator or house manager fails to take immediate measures to remove or isolate any resident of the structured sober living home who fails to actively participate in a legitimate recovery program. (5458)

(4) More than three (3) violations of this Chapter have occurred within a twelve (12) month period. (5458)

(5) Repeated violations of the operating rules and regulations submitted as part of the application for the license, the supervision requirements in the structured sober living home for the residents during hours of operation, the structured sober living home’s rules and regulations, written intake procedures, relapse policy, or discharge procedure and policy. (5458)
5-21-7: MINIMUM STANDARDS FOR THE OPERATION OF A STRUCTURED SOBER LIVING HOME

(A) If the operator is not the property owner, the operator must obtain written approval from the property owner to operate a structured sober living home at the property as shown on the lease or other properly executed document. (5458)

(B) Like all properties in the City, the structured sober living home must be maintained in full compliance with all City building codes, the Mesa City Code, the Mesa Zoning Ordinance, and any other City regulations. (5458)

(C) An individual required to register under Arizona law as a sex offender and classified as a Level II or Level III community risk (intermediate to high risk) is not permitted to live in a structured sober living home. (5458)

(D) A structured sober living home shall provide a clean, safe, substance-free living environment in which:

1. Case management is provided to help residents receive substance abuse treatment, community-based recovery services, or both, for sustained recovery; (5458)

2. At least one (1) house manager is present at all times when residents are present at the structured sober living home; and (5458)

3. The operator or house manager is available on call at all times. (5458)

(E) A structured sober living home must have Naloxone (Narcan) available on the premises for use by the residents in the home, all of whom must have received training to administer Naloxone within one (1) week of admission to the home. (5458)

(F) A structured sober living home shall provide house managers with an understanding of substance use disorders, co-occurring substance use and mental health disorders, and recovery principles. (5458)

(G) The operator shall acquire and maintain commercial general liability insurance of at least one million dollars ($1,000,000.00) in coverage per occurrence and at least three million dollars ($3,000,000.00) aggregate or at least one million dollars ($1,000,000.00) general liability per occurrence and at least two million dollars ($2,000,000.00) general aggregate coverage with at least one million dollars ($1,000,000.00) umbrella coverage. (5458)

5-21-8: OPERATING RULES AND REGULATIONS FOR STRUCTURED SOBER LIVING HOMES

Each operator must establish and enforce operating rules and regulations that meet or exceed the following minimum standards: (5458)

(A) House rules and regulations that include all of the following: (5458)

1. Prohibits the use of alcohol at the home or by any recovering addict either on or off the premises. (5458)

2. Prohibits the use of non-prescription drugs at the home or by any recovering addict either on or off the premises. (5458)
(3) Prohibits theft by residents, staff or house manager(s). (5458)

(4) Addresses residents, staff, or house managers borrowing money from other residents, staff or house managers. (5458)

(5) Requires residents attend weekly household meetings and participate in self-help meetings and recovery programs, including a statement that refusal to actively participate in recovery programs may be cause for discharge. (5458)

(6) Requires residents to seek employment and the number of hours that must be devoted per day to that job search. (5458)

(7) Addresses residents completing household chores and adhering to the house curfew. (5458)

(8) Statement that violating the house rules and regulations will result in consequences and a description or listing of the consequences, up to and including immediate discharge from the home. (5458)

(B) The structured sober living home shall have one (1) or more house managers at the home, at least one (1) of whom is present at all times when residents are present at the structured sober living home. (5458)

(C) All residents, other than the house manager, must actively participate in recovery programs, such as Alcoholics Anonymous or Narcotics Anonymous, and must adhere to the program’s applicable prescribed schedule and requirements. (5458)

(D) The structured sober living home shall establish a protocol to assure that all residents have access to meals at the home whether the residents dine individually or as a group. Public, social, or charitable service-provided meals shall not be a substitute for these protocols. (5458)

(E) That structured sober living home shall establish a designated smoking area outside of the home that does not expose neighbors to secondhand smoke. If an adjacent resident is sensitive to secondhand smoke, the operator or house manager should take reasonable measures to accommodate that neighbor. A structured sober living home may ban smoking from the home and grounds. (5458)

(F) A structured sober living home shall develop protocols to prevent locking residents out of the home or otherwise preventing resident access to the home at any time unless the residents are at work or engaged in some other approved activity outside the home. The purpose of the protocol is to prevent a structured sober living home from simply locking its doors and leaving residents loitering outside the home. Part of maintaining a family-like living environment is enabling access to the home as in a biological family. (5458)

(G) A structured sober living home must establish a medication policy which shall be posted at a conspicuous site in a common area inside the home. The policy shall address, at a minimum, all of the following: (5458)

(1) Possession, use and storage of prescription medications. (5458)

(2) Individuals on medication-assisted treatment being permitted to continue to receive this treatment while living in the structured sober living home. (5458)

(3) Operator, house manager, and staff of the structured sober living home shall not dispense medications but must make them available to the resident to whom the medication is prescribed. (5458)
(4) Possession or use of prescription medications is prohibited except for the person to whom the medication(s) are prescribed and in the prescribed dose. (5458)

(5) Preventing a resident who violates the medication policy from having contact with other residents until the violation is resolved. (5458)

(H) The structured sober living home must establish and maintain an operation plan that facilitates the rehabilitative process, including discharge planning, and that addresses the maintenance of the property and noise abatement consistent with local ordinances. The structured sober living home’s relapse and discharge policy must include options for eviction of a resident to avoid forcibly evicting a resident onto the street including, but not limited to, a provision that an operator or house manager cannot discharge a resident who does not have alternative living arrangements. The options for eviction of residents may include, but are not limited to: (5458)

(1) Notice to resident and resident’s family of proposed eviction; (5458)

(2) Time limits on when eviction can occur where no immediate threat to other residents exist; (5458)

(3) Travel arrangements to the resident’s home of record; or (5458)

(4) Alternate living accommodation arrangements or referrals. (5458)

(I) The structured sober living home shall have a written visitation policy requiring house manager consent of all visitors and prohibiting any visitor who is under the influence of illegal drugs, excessive medication, or alcohol. (5458)

(J) The structured sober living home shall have a good neighbor policy directing residents to be considerate of neighbors, including refraining from engaging in behavior that would unduly interfere with a neighbor’s use and enjoyment of their home and property. The good neighbor policy shall establish a written protocol for the house manager or operator to follow when a neighbor complains to the staff, house manager, operator or to the City. The good neighbor policy shall address the following issues: (5458)

(1) Policies and procedures that, upon request, provide neighbors with full contact information for the structured sober living home’s operator and house manager(s). (5458)

(2) Policies and procedures that require the operator or house manager to respond to a neighbor’s concerns even if it is not possible to resolve the issue. (5458)

(3) New resident orientation to include how residents are to greet and interact with neighbors and concerned parties. (5458)

(4) Policies that are responsive or preemptive to neighbor’s reasonable complaints regarding: smoking, loitering, parking, noise, lewd or offensive language, and cleanliness of public space around the property. (5458)

(K) All rules and regulations for residents of a structured sober living home shall be posted in a visible location in the home. (5458)
5-21-9: HOUSE MANAGER

The purpose of this section is to ensure the house manager of a structured sober living home can perform the job in a safe and knowledgeable manner. (5458)

(A) Certification. A house manager, within thirty (30) days of being hired for the position, shall provide the Licensing Office a certification or similar proof of meeting the minimum qualifications set forth in Section 5-21-9(C). (5458)

(B) Duties. House manager is responsible for the day-to-day operation of the structured sober living home including, but not limited to: general oversight of the house; create a safe, supportive and caring home environment in which the residents continue their recovery; provide regularly scheduled opportunities for the residents to grow in their understanding of recovery; prevent disruptive residents and neighborhood activities; and provide basic first aid and CPR when necessary. The house manager may also coordinate aspects of the resident’s transportation, meals, activities and meetings. (5458)

(C) Minimum Qualifications. A house manager shall meet the following minimum qualifications: (5458)

(1) Possess at least a high school or general equivalency diploma; (5458)

(2) Be at least twenty-one (21) years old; (5458)

(3) Is not on formal probation supervision or parole; (5458)

(4) Be clean and sober for at least one (1) year as of the date of employment; (5458)

(5) Successfully complete training in first aid; and (5458)

(6) Successfully complete training and certification in cardiopulmonary resuscitation (CPR). (5458)

5-21-10: REPORTING A VIOLATION

A structured sober living home operator shall not terminate any staff or house manager, evict any resident (collectively “Reporting Party”), or take any other adverse action against a Reporting Party for disclosing a violation of any provision of the Mesa City Code, based upon the Reporting Party’s reasonable belief that the operator, staff or house manager has violated or is violating a provision of the Mesa City Code. This provision applies to: (1) disclosure to any person the Reporting Party reasonably believes is in a managerial or supervisory position at the structured sober living home or who has the authority to investigate the violation and take action to prevent further violations of the Mesa City Code; or (2) disclosure to an employee of any public body or political subdivision of this state or the federal government. (5458)

5-21-11: REASONABLE ACCOMMODATION

(A) Policy. It is the City’s policy to provide a reasonable accommodation in accordance with federal and state fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) for persons with disabilities seeking fair access to housing in the application of this Chapter. The term “disability” as used in this Chapter shall have the same meaning as the terms “disability” and “handicapped” as defined in the federal and state fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.). The purpose of this Section is to establish the procedure by which a person may request a reasonable accommodation and how the request is to be processed. (5458)

(B) Reasonable Accommodation. Any person seeking a permit to operate a structured sober living home that will substantially serve persons with disabilities may apply for a reasonable accommodation to obtain relief from a City regulation, policy, or condition that poses a barrier to equal access to housing. (5458)
(C) Procedure. (5458)

(1) Application Required. An application for a reasonable accommodation shall be filed and processed with the City Manager or designee. The application shall include the following information and be subject to the determinant factors required by this Section. (5458)

(2) Submittal Requirements. The application shall be made in writing, and shall include the following information: (5458)

   (a) The specific City provision, regulation, policy, or condition from which the reasonable accommodation is being requested; (5458)

   (b) The specific exception or modification sought from the application of the subject provision, policy, or condition of this Chapter that the applicant seeks; (5458)

   (c) Documentation that the specific exception or modification requested by the applicant is necessary to provide one (1) or more individuals with a disability an equal opportunity to use and enjoy the residence; (5458)

   (d) Any other information that the City Manager or designee reasonably determines is necessary to evaluate the request for a reasonable accommodation; (5458)

   (e) Any other information that the City Manager or designee reasonably concludes is necessary to determine whether the findings required by Section 5-21-11(G) of this Section can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected. (5458)

(D) Fee. No application fee is required to request a reasonable accommodation. (5458)

(E) City Manager Action. Within sixty (60) days of receipt of a completed application, the City Manager or designee shall issue a written determination to approve, conditionally approve, or deny a request for the requested reasonable accommodation: (5458)

(F) Standards for Granting a Reasonable Accommodation. The following factors may be considered in determining whether to grant a reasonable accommodation: (5458)

   (1) Whether a less drastic exception or modification to the applicable provision, regulation, policy, or condition that achieves the same end as the requested reasonable accommodation is available; (5458)

   (2) Special needs created by the disability at issue; (5458)

   (3) Potential benefit that can be accomplished by the requested modification; (5458)

   (4) Physical attributes of the subject property and structures; (5458)

   (5) Alternative accommodations that may provide an equivalent level of benefit; (5458)

   (6) Whether the requested accommodation would impose an undue financial or administrative burden on the City; (5458)

   (7) Whether the requested accommodation would require a fundamental alteration in the nature of a program of the City; (5458)
(8) Whether granting the request would be consistent with the City’s General Plan; and (5458)

(9) The property will be used by an individual with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.). (5458)

(G) Findings. The written decision to approve, conditionally approve, or deny a request for a reasonable accommodation shall be based on the following findings, all of which are required for approval. In making these findings, the City Manager or designee may approve alternative reasonable accommodations which provide the applicant with an equivalent level of benefit. (5458)

(1) The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.); (5458)

(2) The requested accommodation is necessary to provide one (1) or more individuals with a disability an equal opportunity to use and enjoy a dwelling; (5458)

(3) The requested accommodation will not impose an undue financial or administrative burden on the City, as “undue financial or administrative burden” is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law; (5458)

(4) The requested accommodation will not, under the specific facts of the application, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others; (5458)

(5) Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting; (5458)

(6) The requested accommodation will not result in a fundamental alteration in the nature of the requirements of City regulation, policy or condition. (5458)

(H) Any party aggrieved by a decision of the City Manager or designee may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the City Manager or designee; the failure of an appeal to meet the requirements of this Section will entitle the City Manager or designee to deny the appeal without further review. The appeal shall be processed in accordance with Section 5-21-13. (5458)

5-21-12: VIOLATION AND PENALTIES

(A) Nothing in this Chapter shall be construed as affecting the ability of the City to initiate or continue concurrent or subsequent criminal prosecution or civil code enforcement actions for any violation of the Mesa City Code or state law arising out of the circumstances necessitating the application of this Chapter. (5458)

(B) The remedies herein are cumulative, and the City may proceed under one (1) or more such remedies. Each violation of any provision of this Chapter shall constitute a separate offense and each day a violation remains unabated may constitute a separate offense. (5458)

(C) Any operator or other person who causes, permits, facilitates, aids, or abets any violation of any provision of this Chapter, or who fails to perform any act or duty this Chapter requires, is subject to a minimum civil sanction of not less than one hundred dollars ($100.00) and a maximum civil sanction of two thousand five hundred dollars ($2,500.00). Each day any violation of any provision of this Chapter exists shall constitute a separate violation. (5458)

(D) Any operator, house manager, or other person who knowingly causes, permits, facilitates, aids or abets any violation of any provision of this Chapter or who knowingly fails to perform any act or duty required by this Chapter is guilty of a class 1 misdemeanor. (5458)
5-21-13: APPEAL HEARING; JUDICIAL REVIEW

(A) Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director; the failure of an appeal to meet the requirements of this Section will entitle the Business Services Director to deny the appeal without further review. (5458)

(B) If an appeal meets the requirements of Section 5-21-13(A), the Business Services Director will schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Section 5-21-13(A) will suspend the decision of the Business Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Hearing Officer, will be reinstated and dated as of the original date the decision was issued by the Business Licensing Administrator. (5458)

(C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony will be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery will be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5458)

(D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, will constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5458)

(E) The decision of the Business Licensing Administrator, if not appealed, will be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Business Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer will be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5458)
CHAPTER 22

AUTOMATED KIOSKS

(5466)

SECTION:

5-22-1: DEFINITIONS
5-22-2: LICENSING AND OPERATION
5-22-3: REPORTS TO LAW ENFORCEMENT
5-22-4: STORAGE, RETENTION AND RETRIEVAL
5-22-5: FEES
5-22-6: PENALTIES
5-22-7: APPEALS

5-22-1: DEFINITIONS

The below words and phrases, wherever used in this Chapter, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. 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. (5466)

(A) “Applicant” means the person who applies for a license pursuant to this Chapter. (5466)

(B) “Automated Kiosk” means an interactive device that is installed within a retail space at which used consumer electronic devices are sold, traded, recycled, or otherwise received by a person. (5466)

(C) “Automated Kiosk License” means a license issued pursuant to this Chapter authorizing a person to operate one or more automated kiosk(s) within the boundaries of the City. (5466)

(D) “Consumer Electronic Device” means any portable electronic or digital device designed to be purchased and used by end users or consumers for daily, non-commercial purposes; examples of consumer electronic devices include, but are not limited to, cellular telephones, touch screen tablets, laptop computers, smart watches, and digital media players. (5466)

(E) “Controlling Person” means a person who either (A) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (B) is any of the following: (5466)

1) An officer, director, or any stockholder who owns ten percent (10) or more, of a corporation licensee/applicant; (5466)

2) A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant; (5466)

3) An officer, president, or secretary of a limited liability company/corporation licensee/applicant; or (5466)

4) The sole proprietor of a sole proprietorship licensee/applicant. (5466)
5-22-1

(F) “Designated Agent” means the person designated by the applicant or licensee to receive notices from the City pursuant to this Chapter. (5466)

(G) “ESN” means a unique number assigned by the manufacturer to identify a mobile phone or device, commonly referred to as an electronic serial number. (5466)

(H) “IMEI” means a unique number used by wireless carriers and cell phone manufacturers to identify mobile phones and devices, commonly referred to as an international mobile equipment identity. (5466)

(I) “Licensee” means the person who applied for a license pursuant to this Chapter and in whose name such license was issued by the City pursuant to this Chapter. (5466)

(J) “MEID” means a unique identifier used by wireless carriers and cell phone manufacturers to identify a mobile phone, commonly referred to as a mobile equipment identifier. (5466)

(K) “Person” means an individual, partnership, corporation, association or any other entity of whatever kind or nature. (5466)

5-22-2: LICENSING AND OPERATION

(A) It shall be unlawful for a person to operate an automated kiosk at any location within the City without obtaining a license pursuant to this Chapter. (5466)

(B) A license issued pursuant to this Chapter is valid for a period of one (1) year from the date of issuance. (5466)

(C) The automated kiosk(s) shall operate only at the location(s) designated on the license. Each automated kiosk location to be operated by the licensee under the license must be approved by the City. Approval of an automated kiosk location will be determined at the best interest of the community based on the history for the past five (5) years of criminal activity at the proposed location. The license shall designate all locations where property belonging to the licensee is processed and stored. Property of the licensee may be processed and stored at locations not designated on the license only with the written and signed consent of the City. (5466)

(D) Any person desiring to obtain a new or renewal license must apply to the City by presenting a complete application, the applicable fee, and fingerprint records to the City Licensing Office. (5466)

(1) The application shall include, but not be limited to, the following information: (5466)

   (a) The names, addresses, and contact information for all controlling persons and designated agents of the applicant. (5466)

   (b) All locations within the City at which the applicant intends to operate an automated kiosk and the number of automated kiosks that will be at each such location. (5466)

   (c) The location(s) where property obtained at the automated kiosk may be processed and stored. (5466)

(2) Fingerprint records are required: (5466)

   (a) On all new applications, for all applicants and controlling persons; and (5466)

   (b) For renewal applicants, for any new controlling person(s) for the license. (5466)
(3) Fingerprints shall be submitted in a form approved by the City. The fingerprints shall be submitted the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the United States Federal Bureau of Investigation. (5466)

(E) Following receipt of the required documents and fees, all new applications shall be submitted to the City Police Department for investigation and criminal record review in accordance with this Chapter. The City Police Department, on behalf of the City Licensing Office, shall receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license. (5466)

(F) Complete renewal applications must be submitted to the City Licensing Office no later than forty-five (45) calendar days prior to the expiration of a license, otherwise the license shall be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee shall submit an application for a new license and provide all information and fees required for a new license application. (5466)

(G) A new or renewal license shall be issued to an applicant pursuant to this Chapter unless:

1. The applicant failed to provide a completed application, the required fee, or the fingerprint records; (5466)

2. The applicant or a controlling person has been convicted during the ten (10) year period prior to submission of the application of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moral turpitude; (5466)

3. The applicant fails to pay the applicable license and reporting fee for a new license when the license is submitted for approval; (5466)

4. The applicant or a controlling person is currently in violation of this Chapter or City Code; (5466)

5. The application contains false or misleading information; or (5466)

6. The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City. (5466)

(H) A licensee may operate an automated kiosk in the City only if the automated kiosk performs all of the functions set forth in this subsection: (5466)

1. Uses a live representative to remotely monitor the automated kiosk during all hours of operation; (5466)

2. Verifies a seller’s identity via a valid motor vehicle operator’s license, valid motor vehicle non-operating identification license, valid armed forces identification card or other valid government issued photo identification, including the serial or identification number of such valid document sufficient to verify the information required to be reported in Section 5-22-3(A); (5466)

3. Secures storage of consumer electronic devices accepted by the automated kiosk and adheres to the storage and retention requirements pursuant to Section 5-22-4; (5466)
(4) Captures and stores images during each transaction of (i) the seller, (ii) the identification required in Section 5-22-2(H)(2), and (iii) the consumer electronic device; (5466)

(5) Electronically reports all transactions to law enforcement pursuant to Section 5-22-3; (5466)

(6) Reads and records ESN, IMEI, or MEID, subject to Section 5-22-3(B)(7); and (5466)

(7) Only buys consumer electronic devices. (5466)

(I) The City shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license. The notice shall be personally served on the licensee or mailed to the licensee’s last known address. Service of the notice shall be deemed complete upon mailing or personal service on the licensee. (5466)

(J) The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements of this Chapter by the date provided in the notice, the City may suspend or revoke the license as provided in this section. (5466)

(K) The City may suspend a license for a period of time not to exceed thirty (30) calendar days if the City determines that the licensee or the designated agent or a controlling person of the licensee has violated or is not in compliance with any provision of this Chapter. During the suspension period, the licensee shall not transact any business through the automated kiosk(s) associated with the suspended license(s). If a fine is associated with the violation that is the basis for the suspension, the suspension may continue beyond the period set forth in this Subsection (K) until such time as the licensee pays the fine. (5466)

(L) The City may revoke a license issued pursuant to this Chapter if the City determines: (5466)

(1) A licensee or designated agent operated the business during a period of time when the license was suspended; (5466)

(2) A licensee, designated agent or controlling person is convicted of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moreal turpitude; (5466)

(3) The licensee or designated agent has operated, or has attempted to operate, an automated kiosk at a location that is unlicensed; (5466)

(4) The City previously issued three (3) or more notices of suspension within an eighteen (18) month period; (5466)

(5) The licensee or designated agent has not complied with a provision of this Chapter or has failed to provide information as required by this Chapter; (5466)

(6) The application fee, annual license fee(s), reporting fee, or any transaction privilege tax has not been paid; or (5466)

(7) The licensee fails to pay outstanding fines or resolve any violations. (5466)
(M) It is a violation of this Chapter for any person to provide false information on any license application. (5466)

(N) It is a violation of this Chapter for a person to operate an automated kiosk that either fails to meet all of the requirements in this Chapter or when the person does not have a license issued pursuant to this Chapter. (5466)

(O) If a license is revoked pursuant to this section, the licensee and its controlling person(s) may not apply for a license under this Chapter for a period of one (1) year from the date of revocation. (5466)

5-22-3: REPORTS TO LAW ENFORCEMENT

(A) At the time of each transaction whereby a consumer electronic device is received at an automated kiosk, a licensee shall prepare a true, complete, legible and accurate report of the transaction, including a description of the consumer electronic device received. The report shall be submitted to the City within twenty-four (24) hours after receipt of the consumer electronic device. The report shall be in a form designated by the City Police Department. Submission of the report to the City is deemed accepted when the report is delivered in person to the address designated by the City Police Department, or when the report is sent electronically to the City Police Department utilizing software approved by the City Police Department. The reporting party shall retain a copy of the report for a minimum of two (2) years from the date of the transaction. (5466)

(B) Each report shall, at a minimum, contain for each consumer electronic device received all the following information: (5466)

1. The name, current address and date of birth of the seller as shown on the identification requirements pursuant to Section 5-22-2(H)(2). (5466)

2. A legible color copy of the photo identification used to verify the seller’s identity in Section 5-22-2(H)(2). (5466)

3. A digital color photograph of the consumer electronic device purchased by the licensee. (5466)

4. A digital color photograph of the seller. (5466)

5. An electronic signature and fingerprint of the seller. (5466)

6. An accurate and legible description of each consumer electronic device item purchased or received, including, as applicable, the manufacturer’s name, model number and serial number. (5466)

7. The ESN, IMEI or the MEID of the consumer electronic device purchased. If the ESN, IMEI or MEID is not available at the time of purchase or receipt, the report filed pursuant to this subsection must be updated with the ESN, IMEI or MEID as soon as known by the licensee, but no later than fifteen (15) calendar days after the transaction. The hold requirement outlined in Section 5-22-4(A) shall not begin until all required contents of the report are complete and submitted to the City Police Department. (5466)

8. The amount paid for the consumer electronic device. (5466)

9. The date and time when the consumer electronic device was received. (5466)

10. The location of the automated kiosk where the consumer electronic device was sold or collected; and (5466)

11. Require the seller to agree to a statement, using verbiage provided to the licensee by the City, in which the seller attests to the accuracy of the information provided as a part of the sale and the authority of the seller to sell the consumer electronic device. (5466)

(C) It is a violation of this Chapter for any person to provide false information on reports required by this section. (5466)
5-22-4: STORAGE, RETENTION AND RETRIEVAL

(A) A licensee shall retain consumer electronic devices received at an automated kiosk at a secure location designated on the license for at least thirty (30) calendar days after submitting the complete report to the City required under Section 5-22-3. Any consumer electronic device held in custody pursuant to this section shall not be altered or transformed in any way, but shall be held in the same condition in which it was received by the automated kiosk. (5466)

(B) Consumer electronic devices retained at a designated location(s) under this section are subject to return and inspection by the City during regular business hours of the location or, at a minimum, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. (5466)

(C) Within twenty-four (24) hours of a request by the City Police Department or other law enforcement agency, the licensee shall comply with a request to open the automated kiosk during the automated kiosk’s regular operating hours to allow the law enforcement agency the opportunity to inspect the accessory bin and review any data that records transactions. (5466)

(D) Upon being advised by a representative of the City Police Department or other law enforcement agency that there is probable cause to believe a consumer electronic device in the possession of the licensee is stolen or was used in the perpetration of a crime, the licensee operating the automated kiosk shall, upon request by the City Police Department or other law enforcement agency:

1. Within three (3) calendar days, surrender such consumer electronic device to the law enforcement agency and the law enforcement agency shall provide a seized property receipt for the consumer electronic device; or

2. At the sole discretion of the requesting law enforcement agency, the consumer electronic device may be retained within the place of business on an investigative hold for a period not to exceed ninety (90) calendar days. During that time period, law enforcement may seize the consumer electronic device upon providing the licensee appropriate notification of the seizure and making arrangements to take physical custody of the consumer electronic device. The licensee shall produce the consumer electronic device at reasonable times and places, or may deliver the consumer electronic device to a representative of the law enforcement agency. (5466)

(E) The investigative hold shall be effective immediately upon oral or written notice to the licensee. If the hold is placed orally, it shall be followed by a written notice mailed to the licensee operating the automated kiosk within five (5) calendar days. (5466)

(F) A licensee shall not sell, transfer, exchange or otherwise dispose of any consumer electronic devices in violation of this section. (5466)

5-22-5: FEES

The following licensing and reporting fees shall be paid in amounts approved by the City Council as set forth in the City’s then current schedule of fees and charges: (5466)

1. Initial application fee. (5466)

2. Annual license and reporting fee for each automated kiosk location. (5466)
5-22-6: FINES; PENALTIES

(A) Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense, except when the violation is from a bona fide error that occurred provided that the licensee maintains adopted procedures reasonably anticipated to avoid the occurrence of bona fide errors. (5466)

(B) A violation of this Chapter that is not a bona fide error, whether or not specifically designated as being unlawful, shall be a class one misdemeanor and upon conviction shall be punished as provided in Title One, Chapter 26 of the City Code. (5466)

(C) For the purposes of this section, “bona fide error” includes clerical, calculation, computer malfunction, programming, and printing errors and other, similar errors. (5466)

(D) A licensee or designated agent who does not comply with a request by a law enforcement agency to inspect an automated kiosk pursuant to Section 5-22-4(C), or refuses to return a consumer electronic device to law enforcement that is identified as stolen or involved in the perpetration of a crime pursuant to Section 5-22-4(D) shall be issued a notice stating that the licensee or designated agent shall comply with the request by the law enforcement agency within five (5) calendar days of receipt of the notice. (5466)

(E) The notice issued pursuant to Subsection (D) above shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of how a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in revocation of the license. (5466)

(F) A licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements under Subsection (A) of this section by the date provided in the notice, the City Police Department may: (1) disable the automated kiosks by removing the automated kiosks from the power source and placing a notice on the machines that the automated kiosk is not operational; and (2) revoke the license pursuant to Section 5-22-2(L). The licensee is responsible for the cost incurred by law enforcement to disable the automated kiosks in accordance with this subsection and any fines or fees assessed by the court. (5466)

(G) Once an automated kiosk is disabled, the City shall issue a notice to the licensee or its designated agent by certified mail that describes the action taken pursuant to this section. The notice shall include a description of the violation, the statutory or code reference, a description of how a hearing may be requested, and the time limit for requesting a hearing. A person receiving the notice under this subsection may request a hearing pursuant to Section 5-22-7. If a licensee or designated agent fails to request a hearing, the automated kiosks shall remain disabled. (5466)

(H) The City Police Department shall take every reasonable precaution in the event the City finds it necessary to disable the automated kiosks and the City shall incur no liability by such action. (5466)
5-22-7: APPEALS

(A) It is the duty and responsibility of the Business Licensing Administrator or his/her designee ("Licensing Administrator") to administer the provisions of this Chapter. Pursuant to this duty, the Licensing Administrator will issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (5466)

(B) Any party aggrieved by a decision of the Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal shall be in writing, state the grounds for the appeal, and be sent to the Business Services Director or his/her designee ("Director"); the failure of an appeal to meet the requirements of this subsection will entitle the Director to deny the appeal without further review. (5466)

(C) If an appeal meets the requirements of Subsection (B), the Director shall schedule a hearing with a hearing officer who will be the Director or a person designated by the Director ("Hearing Officer"). The hearing will be held within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (B) will suspend the decision of the Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Licensing Administrator, if upheld by the Hearing Officer, shall be reinstated and dated as of the original date the decision was issued by the Business Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter. (5466)

(D) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5466)

(E) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with the proper jurisdiction to review the Hearing Officer’s decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, shall constitute a waiver of any right to judicial review of the Hearing Officer’s decision. (5466)

(F) The decision of the Licensing Administrator, if not appealed, shall be the City’s final determination on a matter pursuant to this Chapter. If the decision of the Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer shall be the City’s final decision on the matter unless appealed in accordance with this Chapter. (5466)
CHAPTER 1

GENERAL OFFENSES

SECTION:

6-1-1: AID TO AN OFFENSE AND ATTEMPT

(A) It shall be unlawful to aid, counsel, agree to aid, or attempt to aid another person or persons in planning or engaging in the commission of any offense set forth in Title 6 of the Mesa City Code. (1635)

(B) It shall be unlawful for a person to: (1635)

1. Intentionally engage in conduct which would constitute an offense pursuant to said Title 6 if the attendant circumstances were as such person believes them to be; or (1635)

2. Intentionally do or omit to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense pursuant to said Title 6. (1635)

(C) It is no defense that it was impossible for the person to aid the other party’s commission of the offense, provided such person could have done so had the circumstances been as the person believed them to be. (1635)

6-1-2: BARBED WIRE, CONCERTINA WIRE, RAZOR WIRE, AND ELECTRIC FENCES:

(1480,1635)

(Repealed by 2568)
6-1-3: **CONDUCT OF PERSONS WITHIN CITY OF MESA CEMETERY:**

(A) **Automobiles.** Automobiles shall not be driven through the cemetery at a greater speed than fifteen (15) miles per hour and shall be kept on the right side of the roadway. (971,1635)

(B) **Bicycles and Motorcycles.** Bicycles and motorcycles are not permitted in the cemetery except when in attendance at funerals or on cemetery business. (971,1635)

(C) **Children.** Children under twelve (12) years of age shall not be permitted within the cemetery or its buildings unless accompanied by persons responsible for them. (971,1635)

(D) **Dogs.** Dogs shall not be permitted on the cemetery grounds. (971,1635)

(E) **Flowers and Plants.** No person shall gather flowers or damage or remove shrubbery or plants. (971,1635)

(F) **Rubbish.** Depositing of rubbish on the walkways, roads, grounds, graves, or gravesites or in the buildings is prohibited. (971,1635)

(G) **Desecration of Marker or Burial Place.** No person shall willfully or maliciously deface, break, destroy, disturb, or remove a tomb, monument, or grave stone erected for a dead person or mark, deface, injure, destroy, disturb, or remove any fence post, rail, or wall of the cemetery. (971,1635)

(H) **Loitering and Boisterousness.** No person shall congregate within the cemetery; no automobiles shall be driven in the cemetery except for purposes directly associated with the cemetery; and no persons shall congregate within the cemetery except for such purposes. (971,1635)

6-1-4: **EXPECTORATING ON SIDEWALK OR IN PUBLIC BUILDINGS:**

It shall be unlawful for any person to expectorate upon any of the sidewalks or upon the floor of any theatre, public building, church, or room used for public assemblies. (1957 Code,1635)

6-1-5: **KEEPING OF JUNK RESTRICTED:** (1635,1952)

(Repealed by 2568)

6-1-6: **LUG WHEELS PROHIBITED:**

It shall be unlawful for any vehicle with wheels injurious to pavement to be permitted upon the public thoroughfares. (1957 Code,1635)

6-1-7: **WILLFUL FAILURE TO RETURN LIBRARY PROPERTY:**

It shall be unlawful for any person to willfully fail to return any book, pamphlet, record, magazine, or other property of the City of Mesa Public Library within five (5) days after the receipt of notice from the library demanding return of such property. (1635)

6-1-8: **NUISANCE DEFINED:** (1635,1952)

(Repealed by 2568)
6-1-9: **DESTRUCTION OF BUILDINGS:** (1957 CODE, 1635)

(Repealed by 2568)

6-1-10: **PROPERTY OWNER OR OCCUPANT TO ABATE:** (1957 CODE, 1635, 1952)

(Repealed by 2568)

6-1-11: **CITY TO ABATE:** (1957 CODE, 1635, 1952)

(Repealed by 2568)

6-1-12: **UNLAWFUL ACT:**

It shall be unlawful for any person to create or maintain any nuisance or cause the same to exist or to knowingly permit a nuisance to be created or maintained on the premises or property owned, leased, occupied, maintained, used, or controlled by such person. (1957 Code, 1635, 1952)

6-1-13: **OBSCENE CONDUCT:**

It shall be unlawful for any person to urinate or stool in any place open to public view. (1635)

6-1-14: **WATER FLOWING UPON STREETS:** (1065, 1635)

(Repealed by 4145)

6-1-15: **WEAPONS:**

It shall be a misdemeanor for any person to negligently or purposely discharge any firearm, BB gun, or slingshot within the corporate limits, except: (394, 1635)

(A) In necessary self-defense. (394, 1635)

(B) A law enforcement officer in necessary performance of his duty. (394, 1635)

(C) For the purpose of target shooting or practice on a range operated by qualified personnel. Qualified personnel shall consist of either a certified firearms safety instructor, rifle or pistol marksmanship instructor certified by the National Rifle Association, or person designated by a rifle or pistol club, public or private school, or military agency. (394, 1635)

(D) Target shooting on private premises with air or CO2-operated BB or pellet guns or slingshots, providing:

(394, 1635)

1. The target area is enclosed in such manner and with materials that will stop the projectiles. (394, 1635)

2. Such target shooting is supervised by an adult at all times. (394, 1635)
3. Any safety precautions recommended by the Police Chief are complied with. (394,1635)

(E) In an area recommended as a hunting area by the Arizona Game and Fish Commission and approved by the Police Chief. Such area must be posted as required by the Police Chief and may be closed at any time by the Police Chief or the Director of the Game Department. (394,1635)

(F) Where a permit is issued by the Police Chief. (394,1635)

(G) In defense of property from damage by animals or birds, providing the property owner obtains a permit from the Arizona Game Department or U.S. Fish and Wildlife Service and the taking of such animals or birds is properly supervised by the Game Department or the Fish and Wildlife Service or a person designated by either of those agencies to assure the safety of surrounding property owners. (394,1635)

(H) Definition. For the purpose of this Section, a firearm is defined as any device that expels a projectile or projectiles by means of expanding gases. (394,1635)

6-1-16: OBSCENITY; LIVE SHOWS:

(A) Legislative Finding and Purpose. The City Council finds that the crass commercial exploitation of explicit sexual conduct through the public exhibition of obscene films, live obscene shows, and the sale of obscene publications and devices constitutes a debasement and distortion of sensitive key relationships of human existence central to family life, community welfare, and the development of human personality; is indecent and offensive to the senses and to the public morals; and interferes with the comfortable enjoyment of life and property in that such interferes with the interest of the public in the quality of life and total community environment, the tone of commerce in the City, property values, and public safety; that the State Legislature has heretofore adopted Title 13, Chapter 35, Arizona Revised Statutes; that the provisions contained therein prohibit obscenity and should be diligently enforced by the administration of the City; that such enactments by the State Legislature do not prohibit live obscene productions, and the live obscene productions should be prohibited; and that the carrying on of any of the activities prohibited by those portions of the laws of the State of Arizona hereinabove referred to and in this Section hereafter referred to is detrimental to the best health, safety, convenience, good morals, and general welfare of the City of Mesa and the residents, citizens, inhabitants, and businesses thereof. Accordingly, the City Council hereby declares that the activities prohibited in those portions of Title 13 above set forth and hereinafter set forth are, and are hereby declared to be and constitute, a public nuisance. (1129,1635,3740)

(B) Definitions. In this Section the following definitions shall apply: (1129,1635)

OBSCENE: That which is determined as obscene, applying the following guidelines: (1129,1635)

1. The average person, applying contemporary State standards, would find that the subject matter, taken as a whole, appeals to the prurient interest; and

2. The subject matter depicts or describes patently offensive sexual activity; and (3740)
3. The subject matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

**KNOWINGLY:** Having knowledge of the character and content of the material involved or failure on notice to exercise reasonable inspection which would disclose the content and character of same. (1129,1635)

**PATENTLY OFFENSIVE SEXUAL ACTIVITY:** So offensive on its face as to affront current standards of decency and shall be deemed to include any of the following described forms of sexual activities, if they are depicted, represented, or described so as to affront current standards of decency: (1129,1635,3740)

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, directly and not through clothing. (3740)

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy. (3740)

3. Masturbation, actual or simulated. (3740)

4. Flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed. (1129,1635,3740)

5. Excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above. (3740)

(C) Participation in Obscene Performance Prohibited. No person shall knowingly produce, present, or direct any obscene performance or participate in the portion thereof which is obscene. (1129,1635,3740)

(D) Obscene Performance on Premises Prohibited. No person being the owner of any premises or having control thereof shall knowingly permit within or upon said premises any obscene performance. (1129,1635,3740)

**6-1-17:** PROHIBITED USE OF PUBLIC RIGHT-OF-WAY:
It shall be unlawful for any person to use a public street, highway, alley, lane, parkway, sidewalk, or other right-of-way, whether such right-of-way has been dedicated to the public in fee or by easement, for lying, sleeping, or remaining in a sitting position thereon, except in the case of a physical emergency or the administration of medical assistance. (1659)

**6-1-18:** PENALTY:
Any person convicted of a violation of any provision of Title 6, Chapter 1, Mesa City Code, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,1659,2466)
6-1-19: PROBATION:
If a person convicted of a violation of any section of Title 6, Mesa City Code, is found eligible for probation by the City Police Court, the Court may suspend the imposition of execution of sentence for a period of time not to exceed three (3) years and if so, shall without delay place such person on supervised or unsupervised probation. If the court imposes probation, it may also impose a fine not to exceed two thousand five hundred dollars ($2,500.00) and may require the convicted person to make restitution to the victim of the crime in such amount and manner as the court may order. (1635, 1659, 2466)

6-1-20: UNLAWFUL POSSESSION OF FIREARMS BY MINOR:

(A) Definitions. (2750)

1. FIREARM: Any loaded or unloaded pistol, revolver, rifle, shotgun, or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or expanding gases; except that it does not include an air rifle, air pistol, BB gun, or firearm in permanently inoperable condition. (2750)

2. MINOR: A person who is under the age of eighteen (18) years. (2750)

3. WRITTEN CONSENT: Written approval or permission to possess a firearm which is on a form prescribed by the Police Department, signed by the child's parent or legal guardian and notarized, which specifically describes the firearm by (a) type, (b) manufacturer, (c) caliber, and (d) serial number. (2750)

(B) Unlawful Possession of Firearm.

It shall be unlawful for a minor to possess any firearm within the City limits without written consent of the minor's parent or legal guardian. (2750)

(C) Possession of Consent Form; Keeping of Records. (2750)

1. The original written consent form shall be carried by the minor any time the minor is in possession of a firearm outside the minor's residence. (2750)

2. The Police Department shall not maintain a file or register of executed written consent forms. (2750)

(D) Forfeiture of a Firearm.

Any firearm possessed by a minor in violation of this Section may be subject to forfeiture in the same manner as authorized by Chapter 39 of Title 13, Arizona Revised Statutes. (2750)

6-1-21: SALE AND DISPLAY OF PSEUDOEPHEDRINE PRODUCTS:

Definitions. (4558)

In this article, unless the context otherwise requires:
1. "Pseudoephedrine product" means any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product. (4558)

2. "Retail establishment" means any place of business that offers any pseudoephedrine product for sale at retail. (4558)

3. "Pharmacist" means a person registered pursuant to Title 32, Chapter 18, of the Arizona Revised Statutes to dispense medicinal substances. (4558)

(A) No retail establishment shall sell any pseudoephedrine product unless staffed with a pharmacist on the premises at the time of the sale except as exempted by order of the Attorney General of the United States or his designee, pursuant to federal law. (4558)

(B) A person making a retail sale of a product containing pseudoephedrine shall only complete such a transaction upon display by the purchaser of a government-issued photo identification, and shall record the purchaser's name, quantity of pseudoephedrine product purchased, transaction date and the identity of the seller. At the discretion of the retail establishment, the information may be recorded in written tabulation or by electronic means. (4558)

(C) The information required to be obtained by paragraph B will be retained by the retail establishment for a period of two (2) years, and will be considered a confidential document that will only be available to the operator of the retail establishment and certified Arizona peace officers. (4558)

(D) Display of pseudoephedrine products. (4558)

1. The operator of a retail establishment shall keep all pseudoephedrine products in a manner that is inaccessible to customers without the assistance of a pharmacist or employee acting under the direct supervision of a pharmacist; (4558)

2. Any pseudoephedrine product displayed in violation of this ordinance shall constitute a nuisance which, if not abated, shall subject the pseudoephedrine products to forfeiture; (4558)

3. Upon an initial discovery of any pseudoephedrine product displayed in violation of this ordinance, the operator of the retail establishment, upon written notification by any law enforcement officer of the nuisance, shall immediately remove the pseudoephedrine products and thereby avoid their forfeiture; (4558)

4. Any pseudoephedrine products displayed in violation of this ordinance within one year of written notice of the nuisance shall be immediately seized by any law enforcement officer discovering them; (4558)

5. Upon the seizure of any pseudoephedrine products for violation of this ordinance, the law enforcement officer shall give written notice of the intent to forfeit the seized products. The notice shall include the date and time of the seizure, an inventory of the items seized, and directions on how a post-seizure hearing may be demanded to challenge the forfeiture of the items. (4558)

6. Within fifteen (15) days of the seizure, the operator of a retail establishment may request the appointment of a hearing officer to preside over the post-seizure hearing in accordance with Mesa City Code Title 1, Chapter 27, Section 8. If no written demand for a post-seizure hearing is filed, the items seized shall be forfeited and destroyed. If a demand for a post-seizure hearing is timely filed, a hearing shall be held pursuant to the procedures set forth in Mesa City Code 8-6-8 (E) to determine if the seized pseudoephedrine products were displayed in violation of this ordinance. If it is determined that the pseudoephedrine products were displayed in violation of this ordinance, the items shall be ordered forfeited and destroyed. (4558)
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CHAPTER 2

GRAFFITI

SECTION:

6-2-1: GRAFFITI

(A) For purposes of this Section, the term "graffiti" shall mean the etching, scratching, painting, covering, drawing upon, or otherwise placing of a mark, symbol, figure, inscription, word, design, drawing, or name upon public or private property. (2920)

(B) For purposes of this Section, the term "graffiti implements" shall mean an aerosol paint container, a felt tip marker, a paint stick, an etching tool, or any article, substance, solution, or other compound designed or commonly used to make graffiti. (2920)

(C) For purposes of this Section, the term "invitee" shall mean a person on land of another if (1) he enters by invitation, express or implied, (2) his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and (3) there is mutuality of benefit or benefit to the owner. (2920)

(D) It is unlawful to make graffiti of any type on any building, public or private, or any other property, real or personal, owned by any person, firm, or corporation or any public agency or instrumentality without the express permission of the owner, manager, or other person responsible for said property. (2920)

(E) It is unlawful to possess graffiti implements with the intent to place graffiti upon any building, public or private, or any other property, real or personal, owned by any person, firm, or corporation or any public agency or instrumentality without the express permission of the owner, manager, or other person responsible for said property. (2920)

(F) Possession of any graffiti implement in any public place, including any building, park facility, or alley or on any private property, unless an invitee, gives rise to an inference of intent to use the graffiti implement in violation of this Chapter. (2920)
CHAPTER 3

AIRCRAFT REGULATIONS

SECTION:

6-3-1: DEFINITIONS
6-3-2: MINIMUM HEIGHT LIMITS FOR AIRCRAFT; EXEMPTIONS
6-3-3: LANDING OTHER THAN AT AN ESTABLISHED AIRPORT PROHIBITED
6-3-4: LIGHTS FOR NIGHT OPERATION OF AIRCRAFT
6-3-5: DROPPING OBJECTS FROM AIRCRAFT PROHIBITED; EXCEPTION
6-3-6: SPECIAL REGULATIONS PERTAINING TO HELICOPTERS
6-3-7: PENALTY

6-3-1: DEFINITIONS:

AIRCRAFT: As used in this Chapter means any aeroplane, airplane, gas bag, flying machine, balloon, or any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance used primarily as safety equipment. (1520)

6-3-2: MINIMUM HEIGHT LIMITS FOR AIRCRAFT; EXEMPTIONS:

(A) Subject to the exemptions set forth in paragraph (B) below, no person shall fly or permit any aircraft to be flown within the corporate limits of the City of Mesa except at a height sufficient to permit a reasonably safe emergency landing, which in no case shall be less than one thousand feet (1,000'). (2370)

(B) Situations exempted from the minimum height limits established in paragraph (A) above include: (2370)

1. Takeoffs or landings at an established landing field or airport; (2370)
2. Operation of helicopters pursuant to Section 6-3-6 of this Chapter; (2370)
3. When special circumstances render a deviation necessary to avoid immediate danger or when such deviation is required because of stress of weather conditions or other unavoidable causes; (2370)
4. Operation of aircraft being used on agricultural lands for agricultural dusting or spraying; (2370)
5. Contemporaneous flight of five (5) or more hot air balloons operating from an established airport or landing field pursuant to a Federal Aviation Administration (F.A.A.) permit. (2370)
6-3-3: **LANDING OTHER THAN AT AN ESTABLISHED AIRPORT PROHIBITED:**
Except in case of emergency and except for special provisions pertaining to helicopters contained in Section 6-3-6 hereof, no person shall land any aircraft within the corporate limits of the City except upon a regularly established airport field or landing place. (1520)

6-3-4: **LIGHTS FOR NIGHT OPERATION OF AIRCRAFT:**
All aircraft when flying within or over the corporate limits of the City at night shall have lights and other equipment required by the rules, regulations, or orders of the Federal Aviation Administration for such flying. (1520)

6-3-5: **DROPPING OBJECTS FROM AIRCRAFT PROHIBITED; EXCEPTION:**
No person in any aircraft shall cause or permit to be thrown out, discharged, or dropped within the corporate limits of the City any dust, spray, object, or thing, except loose water or loose sand ballast when absolutely essential to the safety of the occupants and except as herein provided; excepting that aircraft used for dusting or spraying on agricultural lands for agricultural purposes may dust or spray agricultural crops. (1520)

6-3-6: **SPECIAL REGULATIONS PERTAINING TO HELICOPTERS:**

(A) Except as provided in Subsections (B), (C), and (D) of this Section, no person shall take off or land on any area within the limits of the City in a helicopter except on a regularly established heliport or landing place without first obtaining a permit to do so from the Chief of Police or his designee. The Chief of Police or his designee may issue such a permit if the following conditions are met: (1520,2653)

1. The pilot is duly licensed by the F.A.A. (1520)

2. The helicopter to be used is licensed by the F.A.A. (1520)

3. The safety of lives of the inhabitants of the City will not be endangered by the proposed flight or landing. (1520)

4. The noise attendant upon the flight or landing will not be detrimental to the neighborhood. (1520)

5. Public liability and property damage insurance in limits of not less than one hundred thousand dollars ($100,000.00) for each person injured or three hundred thousand dollars ($300,000.00) for each occurrence and fifty thousand dollars ($50,000.00) for property damage has been obtained and is in effect. (1520)

(B) Helicopter takeoffs and landings for the purposes hereafter enumerated may be made without a permit issued by the Chief of Police provided all other conditions of Subsection (A) of this Section have been met. (1520)

1. A takeoff or landing by an authorized representative of a news media. (1520)

2. A takeoff or landing to assist in investigating an accident or to remove persons or property from the scene of an accident. (1520)
3. A takeoff or landing to assist the Police Department in any investigation being conducted by the Police Department. (1520)

(C) The provisions of Subsection (A) of this Section shall not apply to helicopter takeoffs or landings made necessary by an emergency. (1520)

(D) Helicopters may take off from and land on private property for pesticide application purposes without a permit issued by the Chief of Police provided that: (2653)

1. The pesticide applicator is properly licensed by the F.A.A. and the Arizona Department of Agriculture; and (2653)

2. The property owner of the landing site has given permission for the landing and takeoff; and (2653)

3. The landing and takeoff do not endanger people's safety and do not occur within five hundred feet (500') of a residence, unless the occupants of all residences within five hundred feet (500') consent to the landing and takeoff. (2653)

6-3-7: PENALTY:
Any person who shall violate any of the provisions of this Ordinance or of the Mesa City Code as amended herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed three (3) months, or by both such fine and imprisonment. (1520,2466)
CHAPTER 4

ANIMAL CONTROL ORDINANCE WITH LEASH LAW (4845)

SECTION:

6-4-1: DEFINITIONS
6-4-2: POWERS AND DUTIES OF ENFORCEMENT AGENT
6-4-3: LICENSE FEES FOR DOGS; ISSUANCE OF DOG TAGS; RECORDS; PENALTIES
6-4-4: KENNEL PERMIT; FEE; VIOLATION; CLASSIFICATION
6-4-5: ANTI-RABIES VACCINATION; VACCINATION AND LICENSE STATIONS
6-4-6: RABIES CONTROL FUND
6-4-7: DOGS NOT PERMITTED AT LARGE; WEARING LICENSES
6-4-8: IMPOUNDING AND DISPOSING OF DOGS AND CATS; RECLAIMING IMPOUNDED DOGS AND CATS; POUND FEES
6-4-9: HANDLING OF BITING ANIMALS; RESPONSIBILITY FOR REPORTING ANIMAL BITES; AUTHORITY TO DESTROY ANIMALS
6-4-10: UNLAWFUL INTERFERENCE WITH ENFORCEMENT AGENT
6-4-11: REMOVING IMPOUNDED ANIMALS
6-4-12: UNLAWFUL KEEPING OF DOGS
6-4-13: DOGS; LIABILITY
6-4-14: PROPER CARE, MAINTENANCE, AND DESTRUCTION OF IMPOUNDED ANIMALS
6-4-15: RESPONSIBILITY
6-4-16: DETERMINATION OF A VICIOUS DOG
6-4-17: CONTROL OF A VICIOUS DOG
6-4-18: PENALTIES
6-4-19: POLICE DOGS

6-4-1: DEFINITIONS:
As used in this Chapter, unless the context otherwise indicates, the following terms shall have the meanings herein ascribed to them. (1980)

ANIMAL: Any animal of a species that is susceptible to rabies, except man. (1980)

AT LARGE: On or off premises of owner and not under control of owner or other persons acting for the owner. Any dog in a suitable enclosure which actually confines the dog shall not be considered to be running at large. (1980)

ATTACK: A violent or aggressive physical contact or violent or aggressive behavior that confines the movement of a person or domestic animal. An attack on a domestic animal must include biting or an attempt to bite. (2287)


ENFORCEMENT AGENT: That person or persons designated by the City who is responsible for the enforcement of this Chapter and any regulations promulgated thereunder. (1980)

IMPOUND: The act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound in accordance with the provisions of this Chapter. (1980)
KENNEL: An enclosed controlled area, inaccessible to other animals, in which a person keeps, harbors, or maintains five (5) or more dogs under controlled conditions. (1980)

OWNER: Any person or legal entity having a possessory property right in an animal or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them. (2287)

POUND: Any establishment authorized for the confinement, maintenance, safekeeping, and control of dogs and other animals that come into custody of the enforcement agent in the performance of official duties. (1980)

RABIES QUARANTINE AREA: Any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area. (1980)

RABIES VACCINATION CERTIFICATE: A method of recording and duplicating rabies information that is in compliance with the County enforcement agent’s licensing system and/or County enforcement agent’s prescribed forms. (2259)

STRAY DOG: Any dog four (4) months of age or older running at large that is not wearing a valid license tag. (1980)

VACCINATION: The administration of an anti-rabies vaccine to animals by a veterinarian or in authorized pounds by employees properly trained by a veterinarian. (1980)

VETERINARIAN: Unless otherwise indicated, veterinarian means licensed to practice in this State or any veterinarian employed in this State by a governmental agency. (1980)

VETERINARY HOSPITAL: Any establishment operated by a veterinarian licensed to practice in this State that provides clinical facilities and houses animals or birds for dental, medical, or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it or as an integral part of it pens, stalls, cages, or kennels for quarantine, observation, or boarding. (1980)

VICIOUS ANIMAL: Any animal, excluding a dog, of the order Carnivore that has a propensity to bite human beings without provocation and has been so declared after a hearing before a Justice of the Peace or City Magistrate. (2287)

VICIOUS DOG: Any dog, except one assisting a peace officer engaged in law enforcement duties, which:

(A) When unprovoked, in a vicious or terrorizing manner approaches any person or domestic animal in an apparent attitude of attack upon the streets, sidewalks, or any public or private grounds or places; or

(B) The owner thereof knows, or should reasonably know, possesses a propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise endanger the safety of human beings or domestic animals; or

(C) Bites, inflicts injury, assaults, or otherwise attacks a human being or domestic animal without provocation on public or private property; or

(D) Is owned or harbored primarily or in part for the purpose of dog fighting; or any dog trained for dog fighting.
Notwithstanding the definition of a vicious dog above, no dog may be declared vicious if an injury or damage is sustained by a person who, at the time such injury or damage was sustained, had entered upon the premises of another without license, invitation, or other right. (2287)

6-4-2: POWERS AND DUTIES OF ENFORCEMENT AGENT:

(A) The enforcement agent shall:

1. Enforce the provisions of this Chapter and the regulations promulgated thereunder. (1980)

2. Issue citations for the violation of the provisions of this Chapter and the regulations promulgated thereunder. The procedure for the issuance of notices to appear shall be as provided for peace officers in A.R.S. 13-3903, except that the enforcement agent shall not make an arrest before issuing the notice. (1980)

3. Be responsible for declaring a rabies quarantine area within an area of jurisdiction. When a quarantine area has been declared, the enforcement agent shall meet with the State veterinarian and representatives from the Department of Health Services and the Game and Fish Department to implement an emergency program for the control of rabies within an area. Any regulations restricting or involving movements of livestock within an area shall be subject to approval by the State veterinarian. (1980)

(B) The issuance of citations pursuant to this Section shall be subject to the provisions of A.R.S. 13-3899. (1980)

(C) The enforcement agent may designate deputies. (1980)

6-4-3: LICENSE FEES FOR DOGS; ISSUANCE OF DOG TAGS; RECORDS; PENALTIES:

(A) A license fee shall be paid for each dog four (4) months of age or over that is kept, harbored, or maintained within the boundaries of the City for at least thirty (30) consecutive days of the calendar year. The license fee shall be established and collected by the Maricopa County Animal Control Services with approval by the Maricopa County Board of Supervisors. An applicant for a license for a dog claimed to be incapable of procreation shall furnish a proof-of-surgical-sterilization certificate signed by a licensed veterinarian as proof that the dog has been surgically altered to be permanently incapable of procreation. License fees shall be paid within ninety (90) days. A penalty not to exceed four dollars ($4.00) shall be added to the license fee in the event that application is made subsequent to the date on which the dog is required to be licensed under the provisions of this Chapter. This penalty shall not be assessed against applicants who furnish adequate proof that the dog to be licensed has been in their possession less than thirty (30) consecutive days. (1980,2113,2552,2986,3831)

(B) Each dog licensed under the terms of this Chapter shall receive at the time of the licensing such a tag on which shall be inscribed the name of the county, the number of the license, and the date on which it expires. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this Chapter. Whenever a dog is lost, a duplicate tag shall be issued upon application by the owner and a payment of one dollar ($1.00) to the enforcement agent. (1980)

(C) Any person who fails within fifteen (15) days after written notification from the enforcement agent to obtain a license for a dog required to be licensed; counterfeits or attempts to counterfeit an official dog tag; removes such tag from any dog for the purpose of willful and malicious mischief; or places a dog tag upon a dog, unless the tag was issued for that particular dog, is guilty of a misdemeanor. (1980)
6-4-4:  KENNEL PERMIT; FEE; VIOLATION; CLASSIFICATION:

(A)  A person operating a kennel shall obtain a permit issued by the Board of Supervisors of the county where the kennel is located, except if each individual dog is licensed. (1980)

(B)  The annual fee for the kennel permit is seventy-five dollars ($75.00). (1980)

(C)  A dog remaining within the kennel is not required to be licensed individually. A dog leaving the controlled kennel conditions shall be licensed, except if the dog is only being transported to another kennel which has a permit issued under this Section. (1980)

(D)  A person who fails to obtain a kennel permit under this Section is subject to a penalty of twenty-five dollars ($25.00) in addition to the annual fee. (1980)

(E)  A person who knowingly fails within thirty (30) days after written notification from the enforcement agent to obtain a kennel permit is guilty of a misdemeanor. (1980)

6-4-5:  ANTI-RABIES VACCINATION; VACCINATION AND LICENSE STATIONS:

(A)  Before a license is issued to any dog, the owner must present a vaccination certificate signed by a veterinarian stating the owner’s name and address and giving the dog’s description; date of vaccination; type, manufacturer, and serial number of the vaccine used; and the date re-vaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the enforcement agent on or before the tenth day of the month following the month during which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(B)  A dog vaccinated in any other state prior to entry into Arizona may be licensed in Arizona provided that at the time of licensing, the owner of such dog presents a vaccination certificate, signed by a veterinarian licensed to practice in that state or a veterinarian employed by the governmental agency in that state, stating the owner’s name and address and giving the dog’s description; date of vaccination; and type, manufacturer, and the serial number of the vaccine used. The vaccination must be in conformity with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(C)  The enforcement agent shall make provisions for vaccination clinics as deemed necessary. The vaccination shall be performed by a veterinarian. (1980)

6-4-6:  RABIES CONTROL FUND:

(A)  The enforcement agent or his authorized representative shall place the monies collected by him under the provisions of this Chapter in a special fund to be known as the rabies control fund to be used for the enforcement of the provisions of this Chapter and the regulations promulgated thereunder. (1980)

(B)  Any unencumbered balance remaining in the rabies control fund at the end of a fiscal year shall be carried over into the following fiscal year. (1980)

6-4-7:  DOGS NOT PERMITTED AT LARGE; WEARING LICENSES:

(A)  In a rabies quarantine area, no dog shall be permitted at large. Each dog shall be confined within an enclosure on the owner’s property or secured so that the dog is confined entirely to the owner’s property or on a leash not to exceed six feet (6’) in length and directly under the owner’s control when not on the owner’s property. (1980)
(B) Any dog over the age of four (4) months running at large shall wear a collar or harness to which is attached a valid license tag. Dogs used for the control of livestock or while being used or trained for hunting, dogs while being exhibited or trained at kennel club events, or dogs while engaged in races approved by the Arizona Racing Commission, and such dogs while being transported to and from such events, need not wear a collar or harness with a valid license attached provided that they are properly vaccinated, licensed, and controlled. (1980)

(C) If any dog is at large on the public streets, public parks, or public property, then said dog’s owner or custodian is in violation of this Chapter. (1980)

(D) Any person whose dog is at large is in violation of this Chapter. A dog is not at large:

1. If said dog is restrained by a leash, chain, rope, or cord of not more than six feet (6’) in length of sufficient strength to control the actions of said dog or is confined entirely to the owner’s property by adequate fence or other method. (1980)

2. If said dog is used to control livestock or while being used or trained for hunting or being exhibited or trained at a kennel club event or while engaged in races approved by the Arizona Racing Commission. (1980)

3. While said dog is actively engaged in dog obedience training, accompanied by and under the control of his owner or trainer, provided that the person training said dog has in his possession a dog leash of not more than six feet (6’) in length and of sufficient strength to control said dog; and further, that said dog is actually enrolled in or has graduated from a dog obedience training school. (1980)

4. If said dog, whether on or off the premises of the owner or person acting for the owner, is controlled as provided in Subsection (D)1 of this Section or within a suitable enclosure which actually confines the dog. (1980)

(E) Any dog(s) at large shall be apprehended and impounded by an enforcement agent. (1980)

1. Said agent shall have the right to enter upon private property when it becomes necessary to do so in order to apprehend any dog that has been running at large. Such entrance upon private property shall be in reasonable pursuit of such dog(s) and not include entry into a domicile or enclosure which confines a dog unless it is at the invitation of the occupant. (1980)

2. Said agent may issue citation(s) to the dog owner or the person acting for the owner when the dog is at large. The procedure of the issuance of notice to appear shall be provided for peace officers in A.R.S. 13-3903, except the enforcement agent shall not make an arrest before issuing the notice. The issuance of citation(s) pursuant to this Chapter shall be subject to the provisions of A.R.S. 13-3899. (1980)

3. In the judgement of the enforcement agent, if any dog at large or any other animal that is dangerous or fierce and a threat to human safety cannot be safely impounded, it may be slain. (1980)

6-4-8: IMPOUNDING AND DISPOSING OF DOGS AND CATS; RECLAIMING IMPOUNDED DOGS AND CATS; POUND FEES:
(A) Any stray dog or cat shall be impounded. All dogs and cats impounded shall be given proper care and maintenance. (1980)

(B) Each stray dog or cat impounded shall be kept and maintained at the pound for a minimum of seventy-two (72) hours unless claimed by the owner. Any person may purchase such dog or cat upon expiration of the impoundment period, provided such person pays all pound fees and complies with the licensing and vaccinating provisions of the Chapter. If the dog or cat is not claimed within the impoundment period, the enforcement agent shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. If such dog or cat is used for medical research, no license or vaccination is required. The enforcement agent may destroy impounded sick or injured dogs or cats whenever such destruction is necessary to prevent such dog or cat from suffering or to prevent the spread of disease. (1980)

(C) Any impounded licensed dog or any cat may be reclaimed by its owner or such owner’s agent, provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all pound fees. If the dog or cat is not reclaimed within the impound period, the enforcement agent shall take possession and may place the dog or cat for sale or dispose of the dog or cat in a humane manner. Any person purchasing such a dog or cat shall pay all pound fees. (1980)

6-4-9: HANDLING OF BITING ANIMALS; RESPONSIBILITY FOR REPORTING ANIMAL BITES; AUTHORITY TO DESTROY ANIMALS:

(A) An unlicensed or unvaccinated dog or cat that bites any person shall be confined and quarantined in an authorized pound or, upon request of and at the expense of the owner, at a veterinary hospital for a period of not less than ten (10) days. A dog properly licensed and vaccinated pursuant to this Chapter that bites any person may be confined and quarantined at the home of the owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the enforcement agent. (1980,3830)

(B) Any animal, other than a dog or cat, that bites any person shall be confined and quarantined in an authorized pound or, upon the request of and at the expense of the owner, at a veterinary hospital for a period of not less than fourteen (14) days, provided that livestock shall be confined and quarantined for the fourteen- (14-) day period in a manner regulated by the Arizona Livestock Board. If the animal is a caged rodent, it may be confined and quarantined at the home of the owner or where it is harbored or maintained for the required period of time with the consent of and in a manner prescribed by the enforcement agent. (1980)

(C) Any wild animal which bites any person may be killed and submitted to the enforcement agent or his deputies for transmission to an appropriate diagnostic laboratory. (1980)

(D) Whenever an animal bites any person, the incident shall be reported to the enforcement agent immediately by any person having direct knowledge. (1980)

(E) The enforcement agent may destroy any animal confined and quarantined pursuant to this prior to the termination of the minimum confinement period for laboratory examination for rabies if: (1980)

1. The animal shows clear clinical signs of rabies. (1980)

2. The owner of such animal consents to its destruction. (1980)

(F) Any animal subject to licensing under this Chapter found without a tag identifying its owner shall be deemed unowned. (1980)
(G) The enforcement agent shall destroy a vicious animal, except a dog found to be vicious under Section 6-4-16, upon an order of a Justice of the Peace or a City Magistrate. A Justice of the Peace or City Magistrate may issue such an order after notice to the owner, if any, and a hearing. (2287)

6-4-10: UNLAWFUL INTERFERENCE WITH ENFORCEMENT AGENT:
It is unlawful for any person to interfere with the enforcement agent in the performance of his duties. (1980)

6-4-11: REMOVING IMPOUNDED ANIMALS:
No person may remove or attempt to remove an animal which has been impounded or which is in the possession of the enforcement agent except in accordance with the provisions of this Chapter and the regulations promulgated thereunder. (1980)

6-4-12: UNLAWFUL KEEPING OF DOGS:
It is unlawful for a person to keep, harbor, or maintain a dog within the City except as provided by the terms of this Chapter. (1980)

6-4-13: DOGS; LIABILITY:
Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted. (1980)

6-4-14: PROPER CARE, MAINTENANCE, AND DESTRUCTION OF IMPOUNDED ANIMALS:

(A) Any animal impounded in a county, city, or town pound shall be given proper and humane care and maintenance. (1980)

(B) Any dog or cat destroyed while impounded in a county, city, or town pound shall be destroyed only by the use of one of the following: (1980)

   1. Sodium pentobarbital or a derivative of sodium pentobarbital. (1980)


   3. T-61 euthanasia solution or its generic equivalent. (1980)

(C) If an animal is destroyed by means specified in Subsection (B)1 or 3 of this Section, it shall be done by a licensed veterinarian or in accordance with procedures established by the State veterinarian pursuant to A.R.S. 24-153. (1980)

6-4-15: RESPONSIBILITY:
An owner whose dog fits the definition of a vicious dog in Section 6-4-1 must comply with this ordinance, register the dog with the Police Chief or his designee, confine and control the dog in accordance with Section 6-4-17, and post warning signs. (2287)

6-4-16: DETERMINATION OF A VICIOUS DOG:

(A) In the event that the Police Chief or his designee has reasonable grounds to believe that a dog may be vicious, a hearing may be convened. Dog owners are guaranteed due process hearings in the initial determination and in the completion of any appeal process with regard to said determination that their animal is a vicious dog as defined by this ordinance. (2287, 4027)
(B) Written notice informing the owner of the charged viciousness and of the hearing shall be served by the Police Chief or his designee pursuant to the Rules of Civil Procedure. A hearing date shall be held not later than ten (10) calendar days from the date notice was served to the owner. (2287)

(C) Hearing Officer. The due process hearing will be conducted by a City Magistrate or Hearing Officer. The City Magistrate or Hearing Officer will make findings of fact and conclusions of law. The City Magistrate or Hearing Officer shall provide the owner with a written copy of the findings. (2287,4027)

(D) The hearing shall be informal and shall be open to the public. At the hearing, both oral and documentary evidence may be taken from any interested person and considered in determining whether the dog is vicious. Any owner who fails to appear after notice is given without obtaining a continuance from the appointed Hearing Officer or City Magistrate may be deemed to have waived any right to introduce evidence or object to any order made by the City Magistrate or Hearing Officer. The City Magistrate or Hearing Officer’s decision shall be based on the preponderance of evidence. (2287)

(E) Notice. If the animal is deemed to be a vicious dog, the City Magistrate or Hearing Officer will advise the owner of the decision at the hearing or send a registered letter advising the owner of such within ten (10) days. (2287)

(F) In the event that the enforcement agent or law enforcement officer has probable cause to believe that the dog in question is vicious and may pose a threat of serious harm to human beings or other domestic animals, the enforcement agent or law enforcement officer may require the seizing and impoundment of the dog pending the hearing. (2287)

6-4-17: CONTROL OF A VICIOUS DOG:
Once a dog is declared vicious, the following steps will be required to continue ownership of such an animal: (2314)

(A) Immediate steps that must be completed within one (1) calendar day upon completion of notification of a determination of viciousness: (2314)

1. Leash and muzzle. No person shall permit a vicious dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet (6') in length. No person shall permit a vicious dog to be kept on a chain, rope, or other type of leash outside confinement unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all vicious dogs on a leash outside the animal’s kennel must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals. Any kennel or pen must meet the requirements of Section 6-4-17(B)1. (2314)

2. Confinement Indoors. No vicious dog may be kept on a porch, patio, or in any part of a house or structure that would allow the dog to exit such building on its own volition. (2314)

(B) Reporting Requirements. The following types of information must be reported by the owner of the dog to the Police Chief or his designee within ten (10) calendar days of occurrence: (2314)

1. Death of dog. A written notice from a veterinarian confirming the death of the dog must be provided to the Police Chief or his designee. (2314)

2. Yearly renewal of liability insurance. (2314)
3. The new address of a registered vicious dog owner should the owner move within the City limits. (2314)

4. The new address of a registered vicious dog that has been moved permanently outside the City limits. (2314)

(C) A time schedule for completion of the following steps is to be set by the Hearing Officer, but in no case will it be longer than thirty (30) calendar days from the date of the City Magistrate or Hearing Officer’s decision. (2314)

1. Confinement. All vicious dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled. Such pen, kennel, or structure must have secure sides and a secure top attached to the sides. (2314)

   (a) All structures used to confine vicious dogs must be locked when such animals are within the structure. Such structure must have a secure bottom or floor attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet (2'). (2314)

   (b) The pen or kennel may not share common fencing with the area of perimeter fence. (2314)

   (c) All structures erected to house vicious dogs must comply with all zoning and building regulations of the City. All such structures must be adequately lighted, ventilated, and kept in a clean and sanitary condition and any other condition that provides for humane care. (2314)

2. Registration. A declared vicious dog shall not only be routinely licensed yearly but shall also be permanently registered as a vicious dog with the Mesa Police Department. (2314)

3. Signs. All owners of vicious dogs within the City shall display in a prominent place on their premises a sign in three-inch (3") letters, easily readable by the public, using the words "Vicious Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal. (2314)

4. Insurance. All owners of vicious dogs must obtain public liability insurance in a single incident amount of one hundred thousand dollars ($100,000) for bodily injury to or death of any person or persons or for damage to property or animals owned by any persons resulting from the ownership of a dog. All owners must provide proof of insurance and effective dates to the Police Chief or his designee. Cancellation of liability insurance by the dog’s owner is allowed only in the event that the dog dies. The owner of a dog must notify the Police Chief or his designee within ten (10) days if insurance coverage is cancelled by the insurance carrier and provide proof that substitute insurance coverage has been obtained. (2314)

5. Failure to Comply. The purpose of complying with these guidelines for a dog declared vicious is to prevent attacks, injuries, or deaths by mandating the use of control methods. Owners have the opportunity to keep their dogs if this article is complied with. (2314)

   (a) It shall be unlawful for the owner of a vicious dog registered in the City of Mesa to fail to comply with the requirements and conditions set forth in this ordinance. Any dog determined to be a vicious dog pursuant to Section 6-4-15 or Section 6-4-16 that is found to be in violation of this ordinance shall be subject to immediate seizure and impoundment and may be destroyed upon order of a City Magistrate. (2314)

   (b) Any dog that has been determined to be a vicious dog pursuant to Section 6-4-15 or Section 6-4-16 that injures or kills a human being or a domestic animal and is in violation of this ordinance shall be destroyed. (2314)
6-4-18: PENALTIES:

(A) Any owner of a dog that has been declared vicious pursuant to Section 6-4-15 or Section 6-4-16 who violates or permits the violation of any provision of this article shall, upon conviction in the City of Mesa Court, be fined a sum of not less than two hundred fifty dollars ($250.00) and not more than two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (2314,2466)

(B) In addition, the Court may order the vicious dog impounded and destroyed. (2314)

(C) The Court may order any person who violates this article to pay all expenses related to the impounding of the vicious dog, including shelter, food, handling, and veterinary care, to the City. (2314)

(D) The Court may also order any person who violates this article to pay restitution to any victim or victims whose person or animal was injured or killed or property damaged. (2314)

(E) In the event that the owner of the vicious dog is a minor, the parent or guardian in physical control of such minor at the time of the acts giving rise to the determination of viciousness shall be liable: (1) for all injuries and property damage sustained by a person or domestic animal caused by an unprovoked attack by said vicious dog; and (2) all violations of this Chapter. (2314)

6-4-19: POLICE DOGS:

Dogs utilized by the Mesa Police Department are exempt from the requirements of this ordinance. (2287)
CHAPTER 5

GENERAL REGULATIONS RELATING TO ANIMALS

SECTION:

6-5-1: UNLAWFUL FOR ANIMALS TO RUN AT LARGE
Any person owning, keeping, possessing, harboring, or maintaining any cattle, horses, mules, swine, sheep, goats, or other livestock commits an unlawful act if such animal is at large within the corporate limits. (1505,1635)

6-5-2: PLACE WHERE BIRDS AND ANIMALS ARE KEPT FOR SALE AND EXHIBITED TO BE KEPT SANITARY:
No person shall keep, operate, or conduct any place of business at which birds, pigeons, dogs, cats, or other animals are kept for exhibition or sale or are offered for sale, unless such place shall be kept in a clean and sanitary condition and subject at all times to the inspection of the Board of Health, and the Board of Health is hereby authorized and empowered to close such place of business if the same shall not be kept clean and sanitary and keep the same closed until the same shall be placed in a clean and sanitary condition. (1957 Code,1635)

6-5-3: UNLAWFUL TO TAKE ANY ANIMAL FROM PERSON IN CHARGE:
It shall be unlawful for any person to take his own animal or that of any other person out of the custody of the person holding the same for any damage done by it or out of the pound by stealth or by force or to interrupt or hinder the pound master in the discharge of his duties. (1957 Code,1635)

6-5-4: CONVEYANCE OF LIVESTOCK:
All livestock shall be conveyed in motor vehicles within the City, and it shall be unlawful for any person to drive any domestic animal or animals through or upon any public thoroughfare of the City. (1957 Code,1635)

6-5-5: SELLING CHICKENS, DUCKS, OR RABBITS THAT HAVE BEEN ARTIFICIALLY COLORED (3877)

(A) It is unlawful for any person: (3877)

1. To sell, offer for sale or barter, or to give away chickens, ducks, or rabbits that have been dyed, colored, stained, or whose natural color has been artificially changed; or (3877)
2. To bring or transport these artificially colored animals into the City. (3877)

(B) This Section does not apply to a person who finds abandoned animals that have been artificially colored, or who is given such animals that the owner no longer wants and such person tries to find a new home for the abandoned or unwanted animal. (3877)

6-5-6: **PENALTY: (3877)**

Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466,3877)
CHAPTER 6

CURFEW

SECTION:

6-6-1: CURFEW FOR MINORS
6-6-2: RESPONSIBILITY OF PARENTS (REPEALED BY 2585)
6-6-3: PENALTY

6-6-1: CURFEW FOR MINORS:

(A) It is unlawful for a minor under the age of sixteen (16) years to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in the City between the hours of ten (10:00) P.M. and five (5:00) A.M. It is unlawful for a minor between the ages of sixteen (16) years and eighteen (18) years to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in the City between the hours of twelve (12:00) midnight and five (5:00) A.M. (2585,2825)

(B) It is unlawful for a parent, guardian, or other person having legal care and custody of a minor to knowingly allow or permit the minor to be in, on, or upon a public street, sidewalk, alley, right-of-way, or other public place in violation of the provisions of this Section, except as expressly provided herein. (2585)

(C) The provisions of this Section do not apply: (2585)

1. To legally emancipated minors, whether the emancipation be through marriage, military service, or other legally sufficient grounds. (2585)

2. To minors who are accompanied by a parent, guardian, or other person having legal care and custody of the minor. (2585)

3. To minors who would otherwise be in violation of the terms of this Section when: (2585)

   (a) Their presence is reasonably required in the pursuit of a lawful trade, occupation, work, business, or profession in which the minor is then engaged, with the permission of a parent, guardian, or other person having legal care or custody of the minor; or (2585)

   (b) Their presence is necessitated by an emergency, medical or otherwise, involving themselves or another; or (2585)
(c) Their presence is occasioned by their attendance at or return from functions sponsored by or related to religious, school, civic, or nonprofit organizations, including but not limited to, services, classes, meetings, dances, social events, dramatic or musical performances, and sporting events, with the permission of a parent, guardian, or other person having legal care or custody of the minor. (2585)

4. To a minor, if it is established that a parent, guardian, or other person having legal care or custody of a minor gave permission to the minor, prior to the date and time of the offense, authorizing the minor to be at a specific location or authorizing the minor to perform a legitimate errand or activity, and the minor was at that location, was traveling to or from that location, or was performing that errand or activity. (383,1635,2585)

6-6-2: RESPONSIBILITY OF PARENTS:

(Repealed by 2585)

6-6-3: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466,2585)
CHAPTER 7

REGISTRATION OF CONVICTED PERSONS

SECTION:

6-7-1: REGISTRATION REQUIRED
6-7-2: FULL PAROLEES EXCEPTED
6-7-3: PHOTOGRAPHS AND FINGERPRINTS
6-7-4: FALSE INFORMATION
6-7-5: RECORDS CONFIDENTIAL
6-7-6: RECORDS AVAILABLE TO POLICE OFFICIALS
6-7-7: DISCLOSURE OF INFORMATION ILLEGAL
6-7-8: CHANGE OF ADDRESS
6-7-9: PENALTY

6-7-1: REGISTRATION REQUIRED:

Every person who, subsequent to January 1, 1950, has been or who is hereafter convicted of a felony under the laws of the United States, of the State of Arizona, or of any other state or any other government or country; who has violated any national or state law relating to the possession, sale, or transportation of any narcotic; who is a habitual user of narcotics and who is residing in the City on the effective date of this Chapter; or who comes into the City from any point outside the City, whether in transit through the City or otherwise, shall report to the Chief of Police of the City within five (5) days of the effective date of this Chapter if residing in the City on said effective date or within forty-eight (48) hours after his arrival within the City if coming into the City after said effective date and shall furnish to the Chief of Police a written statement signed by such person, giving the following information: (365,1635)

(A) His true name and all aliases which he has used or under which he may have been known. (365,1635)

(B) A full and complete description of his person. (365,1635)

(C) The kind, character, and nature of each crime of which he has been convicted. (365,1635)

(D) The place where such crime was or crimes were committed and the place of conviction of the same. (365,1635)

(E) The name under which he was convicted in each instance and the date thereof. (365,1635)

(F) The name, if any, and the location of each prison, reformatory, jail, or other penal institution in which he was confined or to which he was sentenced. (365,1635)

(G) The location and address of his residence, stopping place, living quarters, or place of abode in the City. If he has more than one (1) residence, stopping place, or place of abode, that fact must be stated and the location and address of each given. (365,1635)
A statement of the kind of residence, stopping place, or place of abode in which he resides, whether the same is temporary or permanent, and whether the same is a private residence, hotel, apartment house, or other building or structure. (365,1635)

The length of time he has occupied each such place of residence, stopping place, or place of abode and the length of time he expects or intends to remain in the City. (365,1635)

Such other information as the Chief of Police shall find reasonably necessary to carry out the intent of this Subsection. (365,1635)

FULL PAROLEES EXCEPTED:
This Chapter shall not be construed to apply to any person who has received a full pardon for each crime whereof he shall have been convicted. (365,1635)

PHOTOGRAPHS AND FINGERPRINTS:
At the time of furnishing such information as required above, the person registering shall be photographed and fingerprinted by the Chief of Police, and photographs and fingerprints shall be made a part of the permanent record herein provided for. (365,1635)

FALSE INFORMATION:
It shall be unlawful for any person required by any provision of this Chapter to furnish any such report to furnish in such report any false or fictitious address or any address other than a true address or intended address or to furnish in making any such report any false, untrue, or misleading information or statement relating to any information required by any provision of this Chapter to be made or furnished. (365,1635)

RECORDS CONFIDENTIAL:
The statements herein required shall at all times be kept by the Chief of Police in a file separate and apart from other files and records maintained and kept by the Police Department of the City and shall not be open to inspection by the public or by any person other than a regular member of the Police Department of the City. (365,1635)

RECORDS AVAILABLE TO POLICE OFFICIALS:
The Chief of Police shall have the authority to transmit copies of records required herein to the Sheriff of any county of the State, to the head of any organized police department of any municipality in the State, to the head of any department of the State engaged in the enforcement of any criminal law of the State, to the head of any federal law enforcement agency, to any sheriff or chief of police of a municipality, or to the head of any other law enforcement agency of any state in any state or territory outside of the State when request is made in writing by such sheriff or other head of a law enforcement agency asking for the record of a certain person named therein and stating that such record is deemed necessary for the use of such law enforcement officer or agency for the investigation of any crime, any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose. (365,1635)

DISCLOSURE OF INFORMATION ILLEGAL:
It shall be unlawful for any police officer or employee of the Police Department to disclose to any person any information contained in a statement required hereunder. (365,1635)

CHANGE OF ADDRESS:
Whenever any person who is required by this Chapter to register shall move and change his address within the City of Mesa, such person shall report such change of address and location of his residence to the Chief of Police within forty-eight (48) hours. (365,1635)

PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466)
CHAPTER 8

PREVENTION AND SUPPRESSION OF RIOTS

SECTION:

6-8-1: GOVERNMENT BY PROCLAMATION
In the event of the threat of or occurrence of acts of riot, rout, or affray sufficient to constitute great danger to the City and its residents, the Mayor shall take command of the Police Force of the City and govern by proclamation. (580,1635)

6-8-2: ESTABLISHMENT OF A CURFEW:
In such areas of the City as shall be designated by the Mayor by proclamation under the conditions set forth in Section 6-8-1 of this Chapter and within the area within all or any part of the City so designated by the Mayor, a curfew shall be in effect the hours of each day designated in the proclamation. All persons living or residing within any such designated area shall go immediately to their homes and remain there until the curfew is lifted by order of the Mayor, and all other persons not residing within the designated area shall immediately leave. (580,1635)

6-8-3: SALE OF ALCOHOLIC BEVERAGES:
During the imposition of any curfew as set forth in Section 6-8-2, all business establishments in the designated curfew area having on their premises intoxicating beverages shall be closed during the state of emergency and until the curfew is lifted. (580,1635)

6-8-4: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (1635,2466)

CHAPTER 9

BANNERS AND SIGNS ON POLES

(Repealed by 1654)
CHAPTER 10

PUBLIC PARK REGULATIONS (5054)

SECTION:

6-10-1: DEFINITIONS (5054)
6-10-2: HOURS AND OPERATIONS (4271, 5054)
6-10-3: PROHIBITED AND/OR RESTRICTED USES AND ACTIVITIES (4271, 5054)
6-10-4: VENDING/SOLICITATION WITHIN A PARK AND RECREATION FACILITY, SPECIAL EVENT AREA, OR RETENTION BASIN (4271, 5054)
6-10-5: URBAN CAMPING (4271, 5054)
6-10-6: SPIRITOUS LIQUOR; PROHIBITIONS; PERMITS (4271, 5054)
6-10-7: MULTI-USE PATH (4271, 5054)
6-10-8: UNLAWFUL REMAINDER IN OR RETURN TO PARK (4271, 5054)
6-10-9: ENFORCEMENT AND PENALTY (4271, 5054)

6-10-1: DEFINITIONS:
For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein: (786, 1635, 5054)

CITY: The City of Mesa. (786, 1635)

PARKS, RECREATION & COMMERCIAL FACILITIES DEPARTMENT DIRECTOR: The Parks, Recreation & Commercial Facilities Department Director or designee responsible for any park and recreation facility or special event or retention basin area and for the activities conducted therein and to whom all park rangers of such area are responsible. (786, 1635, 2763, 3212, 4271, 5054)

PARK AND RECREATION FACILITY: A playground, park, retention basin within the boundary of a park, cemetery, golf course, multi-use path, recreation or community center, public open space, land designated for future park development, swimming pool, athletic stadium or venue, or any other area that is City owned, leased, licensed to, or used by the City and that accommodates active or passive recreation, and entertainment, including all internal and adjacent public roadways, parking lots, sidewalks, and pathways which are established or maintained by the City. (786, 1635, 2455, 3212, 4271, 5054)

RETENTION BASIN: An open space set aside for retention or runoff of water from adjacent lands; whether detaining or retaining; not located inside the boundary of parks that are owned or maintained by the City of Mesa. (3212, 4271)

SPECIAL EVENT AREA: A City-approved or sponsored fair, circus, parade, carnival, march, procession, festival, street dance, concert performance, rodeo, race, organized sports event of one or more teams, vendor sales lot or activity, or any other temporary activity using outdoor or indoor spaces and inviting public participation and patronage (with or without charge) whether held on public or private property. (4271, 5054)

SPIRITOUS LIQUOR: Includes alcohol, brandy, whisky, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, or absinthe, or compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, and any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half (1/2) of one percent (1%) of alcohol by volume. (2455, 5054)
6-10-2: HOURS AND OPERATIONS: (4271, 5054)

(A) Hours. Except for unusual and unforeseen emergencies, park and recreation facilities shall be open to the public every day of the year during designated hours. The opening and closing hours for each park and recreation facility shall be posted therein as authorized by the Parks, Recreation & Commercial Facilities Department Director or designee. It shall be unlawful for a person to remain in a park and recreation facility or to enter a park and recreation facility except during the designated hours, unless a permit is obtained pursuant to Subsection (C) of this Section. (4271, 5054)

(B) Closed Areas. Any section or part of any park and recreation facility may be declared closed to the public by the Parks, Recreation & Commercial Facilities Department Director or designee at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses, as the Parks, Recreation & Commercial Facilities Department Director or designee shall find reasonably necessary. No person shall enter any closed area of a park and recreation facility if such entry is prohibited, nor shall any person utilize any portion of a park and recreation facility if such utilization is prohibited. (4271, 5054)

(C) Permit. Any person desiring to remain in a park and recreation facility or enter a park and recreation facility other than during designated hours shall obtain a permit from the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

6-10-3: PROHIBITED AND/OR RESTRICTED USES AND ACTIVITIES: (4271, 5054)

It shall be unlawful to utilize or engage in any activities within any park and recreation facility, special event area, or retention basin in violation of the following, except when a permit is requested and approved in advance by the Parks, Recreation & Commercial Facilities Department Director or designee for conducting such activities as outlined in this Section: (4271, 5054)

(A) Pollution of Waters. No person shall throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, swimming pool, or other body of water in or adjacent to any park and recreation facility, special event area, or retention basin, or any stream, storm, sewer, or drain flowing into such waters any substance, matter, or liquid or solid, which will or may result in the pollution of said waters. (4271)

(B) Refuse and Trash. No person shall dump, deposit, or leave any glass or plastic bottles or containers, broken glass, ashes, paper, boxes, cans, rubbish, waste, garbage, household appliances or furniture, construction or landscaping materials, or other discarded items. No such refuse or trash shall be placed in any waters in or contiguous to any park and recreation facility, special event area, or retention basin or left anywhere on the grounds thereof but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided, all such refuse or trash shall be carried away from the park and recreation facility, special event area, or retention basin by the person responsible for its presence and properly disposed of elsewhere. (4271)

(C) Sanitary Facilities. No person shall urinate or defecate except in a designated sanitary facility provided for such purposes within a park and recreation facility, special event area, or retention basin. (4271)
(D) Bathing, Swimming, or Wading. No person shall swim, bathe, or wade in any waters or waterways or any public restroom unless in a designated bathing area in or adjacent to any park and recreation facility, special event area, or retention basin except in such waters and at such places designated for such purposes and in compliance with such regulations as are herein set forth or may be hereafter adopted. Moreover, no person shall frequent any waters or places customarily designated for the purpose of swimming, bathing, or wading, or congregate thereat when such activity is prohibited by the Parks, Recreation & Commercial Facilities Department Director or designee upon a finding that such use of the water would be dangerous, a threat to public health, or otherwise inadvisable. (4271, 5054)

(E) Boating. No person shall bring into or operate any boat, raft, or other watercraft, whether motor powered or not, upon any waters, within any park and recreation facility, special event area, or retention basin, except at places designated for boating by the Parks, Recreation & Commercial Facilities Department Director or designee. The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to designate places for boats, rafts, or watercraft, which are not motor powered separately from such craft that are motor powered. Such activity shall be in accordance with applicable regulations as are now or may hereafter be adopted. (4271, 5054)

(F) Golfing. No person shall use any portion of a park and recreation facility, special event area, or retention basin for golfing purposes or make use of any golf club or golf ball in any park and recreation facility, special event area, or retention basin, except at places designated for golfing by the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

(G) Motorized Vehicles. No person shall drive, ride, or operate at any time, any motorized vehicle or motor-assisted device of any type, including but not limited to; any automobile, truck, motorcycle, motorbike, motor scooter, or all-terrain vehicle, within a park and recreation facility, special event area, or retention basin, except upon public roadways or designated parking areas running through or adjoining such premises, or within areas designated for such purposes by the Parks, Recreation & Commercial Facilities Department Director or designee. This prohibition shall not apply to City-owned vehicles, motorized wheelchairs, power-driven personal mobility devices, or similar motorized mobility devices utilized by persons with disabilities, vehicles authorized by the City to operate on such premises such as utility or maintenance vehicles, or any emergency or public safety vehicle. The Parks, Recreation & Commercial Facilities Department Director or designee shall have the authority to identify, designate, or limit motorized vehicle or motor-assisted device traffic within a park and recreation facility, special event area, or retention basin as necessary. A person operating a motorized vehicle or motor-assisted device within authorized areas of a park and recreation facility, special event area, or retention basin shall obey all traffic control signs or notices posted or placed therein. (4271, 5054)

(H) Non-Motorized Vehicles. No person shall operate or ride any skateboards, rollerblades, roller skates, bicycles, or any type of rolling vehicle where such activity is specifically prohibited by written posted notice; or on any brickwork, ornamental surface, picnic table, bench, tennis or basketball or volleyball court, playground, equipment, surface used for ADA access, fountain area, planter, or sculpture; or in an unsafe manner so as to infringe upon or endanger the safety of themselves or the general public within any park and recreation facility, special event area, or retention basin. All persons operating a non-motorized vehicle within any park and recreation facility, or special event area, or retention basin shall obey all traffic control signs or notices posted or placed therein. (4271, 5054)
(I) Horseback Riding. No person shall bring a horse into a park and recreation facility, special event area, or retention basin except on designated bridle trails or paths, equestrian areas, or other areas designated by the Parks, Recreation & Commercial Facilities Department Director or designee. If horses are permitted in any area, they shall be thoroughly broken, properly restrained, ridden with due care, and shall not be allowed to graze or go unattended; nor shall they be hitched to any rock, tree, shrub, or fence. (4271, 5054)

(J) Leashed Dogs. Dogs in all City of Mesa parks, multiuse paths and basins shall be controlled and restrained on leashes no greater than six feet (6’) in length. Owners of dogs shall immediately remove any dogs exhibiting aggressive behavior that evidences a threat of imminent injury; clean up after pets; be liable for injury caused by aggressive dogs; be responsible for the immediate repair of damage caused by a dog; not be under the age of twelve (12); and comply with all animal control ordinances stated in Mesa City Code, Title 6, Chapter 4. Pertaining to dog parks; owners shall have a leash visible at all times, dogs shall be at least four (4) months of age; licensed with visible tags; leashed immediately if exhibiting aggressive behavior; and not be allowed into a dog park if in season. (4271, 5054)

(K) Animals. Except with respect to horses and dogs as provided in Subsections (I) and (J), no person shall bring into or be allowed to enter a park and recreation facility or special event area with any animal owned or under control of such person, except in designated areas clearly marked by signs permitting such use or in other areas designated or approved by the Parks, Recreation & Commercial Facilities Department Director or designee for such activities as animal shows, petting zoos, educational events, or obedience classes. In all cases, if animals are permitted in an area, they shall be restrained and under the control of such person at all times. (4271, 5054)

(L) Models. No person shall bring into, use, or operate any radio controlled or non-radio-controlled model, including but not limited to, model aircraft, model boats, model motor cars, and other models, in any park and recreation facility, special event area, or retention basin except in areas set apart for such purposes and designated by the Parks, Recreation & Commercial Facilities Department Director or designee. The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to designate places for models that are not motor powered separately from those models that are motor powered. (4271, 5054)

(M) Glass Containers. No person within a park and recreation facility, special event area, or retention basin shall have in his/her possession or custody a glass container of any kind or description. (4271)

(N) Disfiguration or Removal of Improvements. No person shall deface, disfigure, injure, tamper with, displace, or remove any turf grass, landscape materials, electrical equipment, wiring, playground equipment, picnic table, bench, fire pit, grill, paving, water fountain, public utility line; or part or appurtenance thereof; sign, monument, marker, fencing, restroom fixture, or any other park equipment, facility, property, structure, or improvement of any kind whatsoever, within a park and recreation facility, special event area, or retention basin. (4271, 5054)

(O) Disfiguration or Removal of Natural Resources. No person shall disfigure, displace, remove, or excavate, as applicable, any soil, rock, stone, sand, tree, shrub, cactus, plant material, or other natural resource of any description, within a park and recreation facility, special event area, or retention basin. (4271, 5054)

(P) Harming, Removing, or Releasing Animals. No person shall harm, remove from, or release into any park and recreation facility, special event area, or retention basin any animals without approval of the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)
(Q) Fires. No person shall start or sustain a fire, except for the combustion of charcoal in fire pits, grills, or other areas as designated and approved for such use by the Parks, Recreation & Commercial Facilities Department Director or designee within any park and recreation facility, special event area, or retention basin. This provision shall not serve to prohibit the burning of wood in the fireplaces located at Falcon Field Park nor the ceremonial burning of the flag of the United States of America or the Arizona State flag. (4271, 5054)

(R) Iceblocking or Water Sliding. No person shall engage in any iceblocking or erect and/or engage in any water sliding activities within any park and recreation facility, special event area, or retention basin except as designated and approved for such use by the Parks, Recreation & Commercial Facilities Department Director or designee, within any park and recreation facility, special event area, or retention basin. (4271, 5054)

(S) Interference With Persons or Activities. No person shall unreasonably disturb or interfere with any person or party occupying any area or participating in any activity organized by the City of Mesa within a park and recreation facility, or special event area, or retention basin. (4271)

(T) Parked Vehicles. No person within a park and recreation facility, special event area, or retention basin shall wash and/or wax a vehicle or undertake mechanical repair or maintenance of any vehicle, including but not limited to; automobile oil changes or engine tune-ups, except in the case of an emergency where the vehicle is not operable. Unattended vehicles left in a parking lot or parking structure in any park and recreation facility, special event area, or retention basin within the hours of 10:00 p.m. and Sunrise shall be impounded. (4271, 5054)

(U) Miscellaneous Prohibited Uses. No person within a park and recreation facility, special event area, or retention basin shall use, unless a permit is obtained in advance from the Parks, Recreation & Commercial Facilities Department Director or designee, or the Parks, Recreation & Commercial Facilities Department Director or designee has approved a specific area for such uses within a particular park and recreation facility, special event area, or retention basin, a sling shot; BB, pellet, or paint ball gun; javelin; shot-put; discus; fireworks; rockets; hot air balloons; or hard-material types of jousting, fencing, or archery equipment. (4271, 5054)

(V) No person shall interfere with the Parks, Recreation & Commercial Facilities Department Director or designee, police officer, or park ranger in the performance of his/her duties or the enforcement of any provisions of this Chapter within a park and recreation facility, special event area, or retention basin. (4271, 5054)

6-10-4: VENDING/SOLICITATION WITHIN A PARK AND RECREATION FACILITY, SPECIAL EVENT AREA, OR RETENTION BASIN: (4271, 5054)

(A) Selling, Advertising, and Signage. No person shall expose or offer for sale or hire any service or article, including food, beverages, and confectionary articles; announce, advertise, or call the public attention to any service or article for sale or hire; or paste, glue, tack, or otherwise post any sign, placard, or advertisement within a park and recreation facility, special event area, or retention basin unless all applicable tax and licensing permits are obtained and approvals for such activities is granted by the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)

(B) No person shall engage in any vending or solicitation operations without having first obtained a peddlers, solicitors, and transient merchants license pursuant to Title 5, Chapter 8 of the City Code. The license shall note the specific park and recreation facility, special event area, or retention basin in which the licensee is authorized to conduct vending and/or solicitation operations and the duration of such use. (4271)
(C) The Parks, Recreation & Commercial Facilities Department Director or designee may waive any of the requirements of this Section for vending and/or solicitation operations conducted in connection with special events sponsored or approved by the City. (4271, 5054)

(D) For purposes of this Section, "vending" means a person engaging in the sale, distribution, or display of any items of tangible personal property. (4271)

(E) For purposes of this Section, "solicitation" means a person requesting an immediate donation or exchange of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or thing of value. The solicitation may be spoken, written, or by printed work, or by another means of communication. Solicitation does not include requesting or accepting payment of the fare on a public transportation vehicle by the operator of the vehicle. (4271)

6-10-5: URBAN CAMPING: (4271)

(A) Except upon the approval of the Parks, Recreation & Commercial Facilities Department Director or designee, no person shall camp within a park and recreation facility, special event area, or retention basin, or in any building, facility, parking lot, structure, or on any property adjacent thereto, that is owned, leased, licensed, possessed, controlled or in use, by the City. (4271, 5054)

(B) For the purpose of this Section, the term "camp" means to use real property of the City for living accommodation purposes such as sleeping activities, or making preparations to sleep, including the laying down of bedding for the purpose of sleeping, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping, or doing any digging or earth breaking, or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area for living accommodation purposes regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Any camping equipment left unattended within or adjacent to a park and recreation facility, special event area, or retention basin shall be discarded. (4271, 5054)

6-10-6: SPIRITUOUS LIQUOR; PROHIBITIONS; PERMITS: (4271, 5054):

(A) No person within a park and recreation facility, special event area, or retention basin shall consume or have in his possession or custody any spirituous liquor except under the conditions set forth in Subsections (B) and (C) of this Section. (4271)

(B) Subsection (A) of this Section shall not apply to those premises within a park and recreation facility, special event area, or retention basin where the sale of spirituous liquor is being governed by a special event license or permit issued by the State Liquor Department. During those events or activities within a park and recreation facility, special event area, or retention basin that is governed by a State liquor license or permit, the sale and consumption of spirituous liquor on those premises at those times shall be subject to all terms and conditions of State law, the State liquor license or permit, and all applicable contracts involving the sale of spirituous liquor on those premises; at all other times, consumption of spirituous liquor within a park and recreation facility, special event area, or retention basin is prohibited unless authorized under a City permit obtained from the Parks, Recreation & Commercial Facilities Department Director or designee. (4271, 5054)
(C) The Parks, Recreation & Commercial Facilities Department Director or designee is authorized to issue permits allowing the consumption and possession of beer and wine in any City of Mesa park and recreation facilities, special event areas, or retention basins under the management and direction of the Parks, Recreation & Commercial Facilities Department Director and pursuant to the Guideline for the Permitting of Beer and Wine Possession and Consumption. Such beer and wine permits are available only for persons of legal drinking age (“responsible party”) representing two (2) or more persons. Permits shall identify the name and signature of the responsible party; and the date and specific park or facility for which the permit is issued. The City permit shall state that the authority it confers to possess or consume beer and wine is contingent upon compliance with all terms and conditions of the permit, park rules, City ordinances, and State laws. The person's name that is identified on the City permit as the responsible party shall remain on site at all times during which beer and wine is consumed. If the City permit is not complied with in any respect; the permit is null and void, and the prohibition described in Subsection (A) of this Section is reinstated. Unless authorized under a State liquor license or a City permit, it is unlawful to possess or consume any spirituous liquor in any park and recreation facility, special event area, or retention basin. (4271, 4317, 5054)

6-10-7: MULTI-USE PATH: (4271)

(A) Definitions. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly requires a different meaning: (4271)

**MULTI-USE PATH**: An off-road surfaced path which may be separated from motorized vehicular traffic by an open space or barrier and has been designated, or designed and designated, by the City for public use for human-powered travel or movement or by use of a motorized wheelchair. (4271)

**PEDESTRIAN**: Means a person who is traveling on or is otherwise lawfully using a multi-use path and includes a person who is either walking, jogging, running, skating, or bicycling on the multi-use path. Pedestrian also means a person with a disability, who is using a motorized or human-powered wheelchair or similar mobility device on the multi-use path. (4271)

(B) Multi-use paths are for the exclusive use of pedestrians. Unless otherwise prohibited, pedestrians may enter and use a multi-use path in the company of a leashed dog and shall be bound by the rules contained in Section 6-10-3(J). (4271)

(C) A pedestrian who is operating a human-powered device or vehicle, i.e., bicyclists and skaters, upon a multi-use path shall yield the right-of-way to any pedestrian walking, jogging, running, or in a wheelchair or similar mobility device on the multi-use path. A pedestrian operating a bicycle on a multi-use path shall yield the right-of-way to skaters. (4271)

(D) All pedestrians using multi-use paths shall travel at a rate of speed which is reasonable and prudent under the prevailing conditions and in a consistent and predictable manner, obey all instructions of any traffic control device, warning sign, or pavement marking applicable to use of the multi-use path, and refrain from entering any portion of the multi-use path when it is flooded or contains standing water. (4271)

(E) No person shall willfully throw, deposit, or cause to be thrown or deposited, upon any multi-use path any glass bottles, glass, nails, tacks, wires, cans, or any other object, substance, or debris, including animal waste. Any person who drops, or causes to be dropped, thrown, or deposited upon a multi-use path any such material will immediately remove it or cause it to be removed. (4271)

(F) The City Manager or designee may adopt and post additional rules and regulations which the City Manager or designee deems reasonably necessary for the full and safe enjoyment of multi-use paths by pedestrians. (4271, 5054)
6-10-8: UNLAWFUL REMAINDER IN OR RETURN TO PARK: (4271)

After the Parks, Recreation & Commercial Facilities Department Director or designee, park ranger, or police officer directs a person to leave, or ejects a person from a park and recreation facility, special event area, or retention basin, it shall be unlawful for the person to remain within the park and recreation facility, special event area, or retention basin or return to the same park and recreation facility, special event area, or retention basin for at least twenty-four (24) hours after being directed to leave, or ejected. (2763, 3212, 4271, 5054)

6-10-9: ENFORCEMENT AND PENALTY: (4271)

(A) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall, in connection with their duties imposed by law, diligently enforce the provisions of this Chapter. (4271, 5054)

(B) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall have the authority to eject from the park and recreation facility, special event area, or retention basin any person who violates any provision of this Chapter or any rule or any City Code; or who engages in any other disorderly or disruptive behavior occurring in a park and recreation facility, special event area, or retention basin. A person ejected shall be informed at the time of ejection that re-entry is prohibited for at least twenty-four (24) hours. (4271, 5054)

(C) The Parks, Recreation & Commercial Facilities Department Director or designee, park rangers, and police officers shall have the authority to seize and confiscate any property, thing, or device in the park and recreation facility, special event area, or retention basin used in violation of this Chapter. (4271, 5054)

(D) The park rangers shall have the authority to issue citations and warnings for violations of the City Code or any City ordinance or any provision of this Chapter within a park and recreation facility, special event area, or retention basin. Citations shall be issued in accordance with A.R.S. §13-3903. (4271)

(E) Penalty. Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (4271)
CHAPTER 11

SMOKING REGULATIONS AND HEALTHIER SMOKEFREE ENVIRONMENTS

(Initiative 195-1 - Approved 3-26-96,2112,3204,3205,3218,3287)

SECTION:

6-11-1: PURPOSE

Since the active smoking of tobacco and the inhalation of environmental tobacco smoke (ETS) are dangers to human health and the most prevalent cause of preventable death, disease, and disability, as well as are annoyances, inconveniences, discomforts, and general health hazards to those who are involuntarily exposed to such, and in order to serve the public health, safety, and welfare, the declared purpose of this Chapter is to protect people from dangerous, unnecessary, and/or involuntary health risks by prohibiting the smoking of tobacco or any other plant in City or public places and places of employment, as defined in this Chapter. (2112,195-1)

6-11-2: DEFINITIONS:

ACCESSORY BAR: A place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for on-site consumption. For purposes of this paragraph, "incidental" means that the gross annual receipts, for every consecutive twelve-month period, from the sale of alcoholic beverages, associated snacks, appetizers, and other products for consumption at the accessory bar are no greater than twenty-five percent (25%) of the gross annual receipts of the entire restaurant, for the same period of time. (3287)

BAR: Those business premises where the Arizona Department of Liquor Licenses and Control has licensed the retail sale and on-site consumption of alcoholic beverages, and fifty percent (50%) or more of the business' gross annual revenues, for every consecutive twelve-month period, are derived from the sale of alcoholic beverages. (2112,195-1,3287)
BUILDING SAFETY DIRECTOR: The public officer appointed to that position by the City Manager, or such other person as the City Manager shall designate. (3287,4252)

DESIGNATED SMOKING AREA: Means: (3287)

(A) An indoor area where smoking is allowed under this Chapter that is physically separated and independently ventilated from smokefree areas, so that air within designated smoking areas allowed under this Chapter does not drift or get vented into any smokefree areas. The Building Safety Director is authorized to make reasonable requirements, consistent with the Mesa Building Code and this Chapter, including the use of self-closing and tight-fitting doors, applying the terms "physically separated" and "independently ventilated" to accomplish this goal. (3649,3715,4252)

However, under no circumstances shall the designated smoking area exceed in size the smokefree area in that facility. Moreover, the smoking area shall not include the entry lobby, waiting areas, rest rooms, or areas where minors may customarily congregate in that facility. The designated smoking area shall be constructed so that nonsmoking customers can receive all services provided by that business without walking through the smoking area and without exposure to tobacco smoke. Repeated and confirmed violations pertaining to the infiltration of smoke particulates into nonsmoking areas may result in rescission of any alternatives to a smokefree environment offered in this Section, or annullment of the privilege to allow any smoking within the establishment. (3287,3649)

(B) A designated smoking area may also include the grounds of a building or other facility required to be smokefree under this Chapter when the designated outdoor smoking area is at least fifteen feet (15') away from nonsmoking patrons and the public entrances and exits of the facility. (3287)

EMPLOYEE: Any person who is employed by any "employer" for direct or indirect monetary wages or profits. (2112,195-1,3287)

EMPLOYER: Any person or entity employing the service of an "employee." (2112,195-1,3287)

PLACE OF EMPLOYMENT: Any area under control of a private or public employer that is used as a workplace for employees. (2112,195-1,3287)

PUBLIC PLACE: Any area available to, and customarily used by, the public, including areas closed in by a roof and walls with openings for ingress and egress, and any areas used for public gatherings where persons are seated, standing, or otherwise there for a common purpose such as attendance at or waiting lines for events in a park, amphitheater, stadium, or other assembly area so designated or allowed by the City of Mesa for a legal event. Public places regulated by this Chapter shall include, but not be limited to: grocery and other retail stores, waiting rooms, public and private schools, doctors' office buildings, pharmacies, hospitals and nursing homes, community centers, child care centers, any group meeting places for children's clubs, scout troops, or other child-/youth-centered organizations, public rest rooms, lobby and public service areas of hotels, motels, sports/recreational facilities, restaurants, and all public places regulated by A.R.S. §36-601.01. A public place shall also include all places identified under Arizona or federal law as a place of public accommodation. (195-1,3287)

RESTAURANT: A facility regularly open for the primary purpose of serving food prepared for consumption, either on or off the premises, to customers for compensation, including those that also serve alcoholic beverages from an accessory bar. For purposes of this Chapter only, a "restaurant" shall have annual gross revenue from the sale of food exceeding fifty percent (50%) for every consecutive twelve-month period, excluding, however, food such as appetizers, snacks, and other food products consumed in an accessory bar which the owner chooses to designate as a smoking area under this Chapter. (2112,195-1,3287)
SMOKE OR SMOKING: Means and includes: (2112,I95-1,3287)

(A) Carrying or placing of a lighted cigarette, 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; (2112,I95-1,3287)

(B) Placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; (2112,I95-1,3287)

(C) Carrying or placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in one’s hands or any appendage or devices and allowing smoke to diffuse in the air. (2112,I95-1,3287)

SMOKEFREE: No tobacco or other plant smoke and freedom from inhaling environmental tobacco smoke (ETS) or passive smoke, including secondhand smoke generated by an active smoker or sidestream smoke or fumes from any such burning material, device, or ashtray that continues to emit such tobacco smoke or fumes from lighted or extinguished smoking materials. (I95-1,3287)

TOBACCO SHOP: Means: (3287)

(A) An exclusively retail business, (3287)

(B) That is not part of a larger store, and (3287)

(C) That derives at least ninety percent (90%) of its gross annual revenue, for every consecutive twelve-month period, from the retail sale of tobacco products and smoking equipment. (3287)

6-11-3: REGULATION OF SMOKING, CITY PROPERTY:
All buildings and vehicles owned, leased, or occupied by the City of Mesa shall be subject to the provisions of this Chapter, as well as outdoor areas or facilities, the primary intended use of which requires persons to assemble, such as group seating or standing or waiting in lines, thus exposing them to inhalation of ETS, excepting designated smoking areas as per Section 6-11-5(A)3. (2112,I95-1)

6-11-4: REGULATION OF SMOKING IN PUBLIC PLACES:
No person shall smoke in any public place when the public gathers together for any purpose or event, except in a bar whose owner chooses to allow smoking, in a designated smoking area meeting all the requirements of this Chapter, or pursuant to a hardship exception or phase-in as prescribed in this Chapter. (2112,I95-1,3204,3287)

6-11-5: REGULATION OF SMOKING IN PLACES OF EMPLOYMENT:

(A) On or before March 1, 1997, each employer in each place of employment within the City shall adopt, implement, maintain, and announce to its employees a smoking policy containing at a minimum the following requirements: (2112,I95-1,3287)

1. Except as set forth below, all workplace areas shall be "smokefree" as previously defined in Section 6-11-2. (I95-1,3287)
2. Smoking is prohibited in conference rooms, meeting rooms, classrooms, auditoriums, cafeterias, kitchens, lunchrooms, employees' lounges, rest rooms provided by employers for employee use, and in waiting areas, including outdoor waiting lines, hallways, stairways, elevators, and areas common to all employees. (2112,195-1,3287)

3. A separate smoking area outdoors which does not require others to walk through it upon entering or a smoking area indoors which is separately constructed and negatively pressure ventilated using a separate cooling and/or heating ventilation system may be provided at the option of the employer. However, if an employee complains to the employer or the City that smoke is drifting or being vented out of the designated smoking area and interfering with nonsmokers, and the employer or the City confirm that as a fact, the employer shall repair, relocate, or eliminate the designated smoking area. (I95-1,3287)

4. Nothing in Chapter 11 shall require an employer to construct, purchase, or otherwise provide or facilitate any smoking area, and nothing in Chapter 11 shall preclude the designation of the total premises as smokefree at the option of the employer. (I95-1,3287)

(B) No employee shall be retaliated against in any fashion, nor subject to termination or to disciplinary action as a result of his complaint about smoking violations in the workplace. (2112,195-1,3287)

6-11-6: WHERE SMOKING IS ALLOWED:

(A) A private residence or public housing dwelling unit, but the common areas and common open space, as defined in Title 11, Mesa City Code, of public housing projects and private multiple- and single-residence developments that are accessible to the public or the residents of the project or development (such as lobbies, playgrounds or "tot lots," elevators, and recreation areas, whether located indoors or outdoors) are required to be smokefree when the public or residents gather in those areas, as are private residences required to be smokefree when used as commercial child care or health care facilities. (I95-1,3205,3287)

(B) Hotel and motel rooms rented to guests which may include rooms specified as permitting smoking within rooms so designated. (I95-1,3287)

(C) Private clubs, including fraternal lodges, meeting the definition of private clubs rather than places of public accommodation under the 1964 Civil Rights Act, as amended, conducting private functions where the public is not invited, welcomed, or served, hence not charged for services, will be expected to set their own policies relative to smoking control within their private facilities. Private clubs do not include establishments holding public liquor licenses from the Arizona Department of Liquor Licenses and Control, or clubs formed to circumvent this Chapter where persons pay nominal dues or the "members" do not control the operation of the "club." (I95-1,3287)

(D) Where smoking or smoking materials are being used to exercise protected First Amendment activity, such as smoking materials used for bona fide religious purposes. (3287)

(E) Tobacco shops. However, if a tobacco shop shares a common ventilation system with an area required to be smokefree under this Chapter, the tobacco shop must meet the requirements of a designated smoking area before smoking can occur there. (3287)
(F) Hotel, motel, wedding chapel, reception center, restaurant, and any other bona fide conference or meeting rooms while these are being used exclusively for, or leased exclusively for, private meeting functions to which the public is not invited or allowed to attend. However, if a conference or meeting room shares a common ventilation system with an area required to be smokefree under this Chapter, the conference or meeting room where smoking is allowed must meet the requirements of a designated smoking area before smoking can occur there. (3287)

(G) In a designated smoking area meeting the requirements of this Chapter. (3287)

(H) In a building or facility operating under a hardship exception or phase-in, as allowed pursuant to an order of the Building Safety Director under this Chapter. (3287,4252)

(I) In any building, facility, or area not required to be smokefree under this Chapter. (3287)

6-11-7: SIGN POSTING:

(A) "No Smoking" signs, "Smokefree" signs, "This is a Nonsmoking Establishment" sign, or the international "No Smoking" symbol shall be clearly and conspicuously posted by the owner/operator/manager/employer or other person in control in enclosed areas where smoking is prohibited by this Chapter, including each entry point. The owner, manager, operator, or other person having control of a business or facility shall remove all ashtrays and other smoking paraphernalia from all areas required to be smokefree under this Chapter. (2112,195-1,3287)

(B) Where smoking is permitted indoors under this Chapter, the owner shall conspicuously post a sign stating "Designated Smoking Area" at all entrances to that area. All bars that choose to allow smoking throughout their facility shall post a sign on all outside entry doors stating "This is a Smoking Establishment, and Does Not Provide a Nonsmoking Area." All signs designating smoking areas or smoking establishments under this Chapter shall also state that "Minors May Not Enter Unless Accompanied and Supervised by a Parent or Legal Guardian." It is unlawful for an owner, manager, operator, or other person in control of a business or facility to allow minors to enter any area where smoking is permitted under this Chapter unless each minor is accompanied and supervised by a parent or legal guardian. (3287)

(C) If a building or facility has both smokefree areas and a designated smoking area, the owner, manager, operator, or other person in control of that building shall conspicuously post a sign at all initial entry points clearly indicating that "This Establishment Provides Both Smoking and Nonsmoking Areas." The owner, manager, operator, or other person in control of such a building or facility shall also clearly indicate inside the building or facility, through the signs required in paragraphs (A) and (B) above, in which areas smoking is permitted and in which areas smoking is prohibited. (3287)

(D) All signs and symbols required under this Chapter shall have letters or symbols no smaller that three inches (3") in height. (195-1,3287)

6-11-8: BARS AND RESTAURANTS: (3204,3218,3287)

(A) Smoking is allowed throughout all bars and their grounds (other than accessory bars in restaurants) providing it does not affect nonsmoking areas. (3287)
(B) All restaurants shall be smokefree, except the restaurant owner may choose to allow smoking: (3287)

1. In an accessory bar if it is a designated smoking area meeting all the requirements of this Chapter; or (3287)

2. If the restaurant owner applies for, is granted, and complies with a hardship exception or phase-in under this Chapter. (3287)

6-11-9: (RESERVED) (3287)

6-11-10: HARDSHIP SITUATIONS:

(A) Hardship Phase-In. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter may apply to the Building Safety Director for a phase-in of part or all of the structural, HVAC, signage, and other requirements of this Chapter applicable to designated smoking areas. The Building Safety Director may grant a phase-in period of up to one (1) year. Hardship applicants shall bear the burden of showing that immediate implementation of the requirements of this Chapter would create an undue financial hardship. (3287,4252)

1. For purposes of this Section, an "undue financial hardship" means that the owner does not have current funds, or the current ability to borrow and repay funds, necessary and sufficient to remodel the owner’s facility to comply with this Chapter. (3287)

2. A hardship phase-in application shall contain the following: (3287)

   (a) An estimate from an appropriately licensed contractor of the costs of complying with this Chapter; (3287)

   (b) Mesa sales tax and other financial statements for the most recent annual period purporting to show an undue financial hardship on the applicant; (3287)

   (c) A time and task schedule for complying with all requirements of this Chapter should a hardship phase-in be granted; (3287)

   (d) A sworn statement explaining how the applicant will protect the health of employees and the public from secondhand and sidestream smoke during a phase-in period; (3287)

   (e) A sworn statement that the applicant shall completely fulfill the structural, HVAC, signage, and all other requirements of this Chapter applicable to designated smoking areas in that facility in accordance with its submitted time and task statement and within the hardship phase-in period, if granted; (3287)

   (f) A description of all efforts the applicant has made, and which reasonably could be made, to operate the business or facility successfully within a smokefree environment. (3287)

(B) Hardship Smoking Exception. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter but wishing to allow smoking throughout the owner’s business or facility may apply to the Building Safety Director for a hardship smoking exception allowing smoking in an area or areas otherwise required to be smokefree under this Chapter. Applicants shall bear the burden of showing that operating smokefree in part or all of their premises has created an undue financial hardship. (3287)
1. For purposes of this Section, evidence of a fifteen percent (15%), or more, reduction in gross revenue over the applicable period of time shall constitute prima facie evidence and a rebuttable presumption of an "undue financial hardship." (3287)

2. An application for a hardship smoking exception shall contain the following: (3287)

(a) A description of all efforts the applicant has made, or which reasonably could be made, to operate the business or facility successfully within a smokefree environment. (3287)

(b) Mesa sales tax statements comparing sales receipts for a four-month period of compliance under this Chapter and the same four-month period in the year prior to compliance, or other comparable period acceptable to the Building Safety Director. (3287,4252)

(c) A sworn statement that the applicant shall comply with the terms of the Building Safety Director's hardship exception order, including structural, HVAC, periodic reevaluation of the grounds for a smoking hardship exception, and such other requirements the Building Safety Director may deem reasonably necessary to protect the health of employees and the public. (3287,4252)

(C) Application. (3287)

1. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking phase-in, that person shall apply to the Building Safety Director within sixty (60) days of December 20, 1996. (3287,4252)

2. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking exception, that person shall apply to the Building Safety Director within one year of December 20, 1996. (3287,4252)

3. All operations within new businesses or new facilities constructed or remodeled after December 20, 1996 shall comply with the provisions of this Chapter, and are not eligible for a hardship exception or phase-in. (3287)

4. If a person submits a complete application for a hardship phase-in or exception within the time frames set forth above, and works in good faith to fulfill the requirements of this Chapter and the orders of the Building Safety Director, the Building Safety Director may temporarily permit smoking in areas otherwise required to be smokefree under this Chapter until the Building Safety Director finally grants or denies the application. (3287,4252)

5. If a person fails to submit a complete application for a hardship phase-in or exception within the time frames set forth above, or fails to fulfill the requirements of this Chapter or the orders of the Building Safety Director in processing such application, the business or facility must be smokefree as required under this Chapter, or the owner, manager, tenant, and other person(s) in control of the premises are subject to enforcement action under this Chapter. (3287,4252)

(D) Investigation and Decision. The Building Safety Director, or designee, may hold an administrative hearing to review a hardship application under this Section, and the Building Safety Director may conduct such other investigation and review as the Building Safety Director deems necessary. The applicant shall cooperate with the Building Safety Director's investigation. (3287,4252)
1. The Building Safety Director may grant a hardship phase-in or hardship smoking exception subject to such terms and conditions as the Building Safety Director deems reasonably necessary to protect the health and safety of employees and the nonsmoking public, in light of the "Purpose" section of this Chapter (6-11-1), and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1) (see footnote two [2] pages forward). (3287,4252)

2. The decision of the Building Safety Director granting or denying a hardship application under this Section is subject to appeal as a special action in the Maricopa County Superior Court, to the extent and in the manner provided in Volume 17B, A.R.S. (3287)

(E) No Application or Permit Fees. The City shall not assess or collect any application fee or charge for hardship exceptions or phase-ins. Furthermore, if remodeling of existing structures, as of December 20, 1996, is undertaken solely for the purpose of complying with the smokefree requirements of this Chapter, no Mesa building permit fees or other City-imposed charges shall be assessed or collected due to such remodeling. (3287)

6-11-11: CHAPTER NOT TO EXCUSE NONCOMPLIANCE WITH OTHER MEASURES:
Nothing in this Chapter excuses noncompliance with any Mesa Code (including the Mesa Zoning Code), county, state, or federal law (such as Occupational Safety and Health Administration standards), or any rule or regulation adopted pursuant thereto. (3287)

6-11-12: ENFORCEMENT:

(A) Against the Smoker. Any person who smokes in an area required to be smokefree under this Chapter shall be subject to citation for a petty offense. For the first petty offense, the fine is one hundred dollars ($100.00). For the second petty offense, the fine is two hundred dollars ($200.00). For the third petty offense, the fine is three hundred dollars ($300.00). For each petty offense thereafter, the violator shall be subject to Class One criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five hundred dollars ($500.00), a maximum fine of two thousand five hundred dollars ($2,500.00), six (6) months in jail, or both such fine and imprisonment. (95-1,3287)

(B) Against the Owner, Manager, and Tenant of a Facility. All owners, managers, operators, tenants, or other persons in control of an establishment or area regulated under this Chapter ("responsible party") are jointly and individually liable for compliance with this Chapter. (95-1,3287)

1. Upon a determination of reasonable cause that a responsible party has failed to fulfill a requirement of this Chapter or to maintain a smokefree environment where required under this Chapter, the Building Safety Director, or designee, may issue and serve upon the responsible party a notice of civil violation stating the nature of the violation. The notice shall be in the form established by the Building Safety Director. Service shall be made by mailing a copy thereof to the place of business by certified or registered mail. Service shall be deemed completed when so mailed. (2112,95-1,3287,4252)

2. Within ten (10) days of service of said notice, the responsible party shall either pay the fine to the Building Safety Director, or designee, or request a hearing on the violation by filing a written request for hearing with the Building Safety Director. If the responsible party pays the fine, the allegations in the notice shall be deemed admitted, and such person shall be deemed responsible for having committed the offenses described in the notice. If a hearing is requested, the City Manager shall appoint a Hearing Officer. (2112,95-1,3287)
3. Failure to respond timely to a notice of violation shall result in a default judgment finding the party responsible for the violations described in the notice and imposing the penalties provided for in this Chapter. Unpaid judgments, whether by default or after hearing, may be recorded as liens against the responsible party’s property. (2112,195-1,3287)

4. Each instance of noncompliance with this Chapter or each instance of failure to maintain a smokefree environment where required under this Chapter shall constitute a separate civil offense. For the first civil offense, the fine is one hundred dollars ($100.00). For the second civil offense, the fine is two hundred dollars ($200.00). For the third civil offense, the fine is three hundred dollars ($300.00). For each offense thereafter, the violator shall be subject to criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five hundred dollars ($500.00), a maximum fine of two thousand five hundred dollars ($2,500.00), six (6) months in jail, or both such fine and imprisonment. (3287)

5. If the Hearing Officer or judge determines that a violation of this Chapter has occurred, they shall issue an order imposing a sanction in accordance with the schedule in paragraph 4 above and in addition, shall assess against the responsible party the City’s personnel, mailing, and other costs incurred in investigating and hearing the case. (2112,195-1,3287)

(C) Inspection and Investigation. To the maximum extent allowed by law, the Building Safety Director, or designee, is authorized to inspect for compliance with all requirements of this Chapter and the Mesa City Code, including all technical requirements the Building Safety Director is authorized to develop under this Chapter and any hardship order the Building Safety Director may issue under this Chapter. The Building Safety Director’s authority includes, but is not limited to, requiring information from persons subject to the Mesa City Code and investigating the truth of that information, as necessary to determine compliance with the City Code. Persons regulated under this Chapter shall retain for at least three (3) years all information necessary to validate compliance with this Chapter. (3287,4252)

(D) Suspension, Revocation of Hardship Exception or Phase-in. A material change in circumstances or failure of any person to comply at all times with all terms and conditions of a hardship exception or phase-in shall be grounds for revocation or suspension of the hardship exception or phase-in that was granted. The Building Safety Director is authorized to initiate revocation or suspension proceedings pursuant to the civil hearing procedures in this Section. (3287,4252)
6-11-13: NONRETALIATION:
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, customer, or other person because such person exercises any right to a smokefree environment afforded by this Chapter. (3287)

6-11-14: CITY MANAGER IMPLEMENTATION DECISIONS:
Any affected person with questions about the implementation of this Chapter and desiring written guidance indicating how the City will apply this Chapter may write to the Mesa City Manager, P.O. Box 1466, Mesa, AZ. The City Manager is authorized to provide binding, written direction in response to such requests. Such direction shall be consistent with the purposes of this Chapter, as reflected in Section 6-11-1, and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1)*. The City Manager’s directions shall also be consistent with the City Charter’s requirement that the City Manager faithfully execute all laws of the City, the City Charter, and all acts of the City Council. The City Manager’s directions under this Section are subject to challenge in the Maricopa County Superior Court under the special action provisions, Volume 17B, A.R.S., to the extent and in the manner provided therein. (3287)

6-11-15: (RESERVED)
6-11-16: (RESERVED)
6-11-17: (RESERVED)
6-11-18: (RESERVED)
6-11-19: (RESERVED)
6-11-20: (RESERVED)

*The text of Proposition 200 (Initiative 95-1) contained the following preamble:

WHEREAS the city of Mesa adopted Ordinance 2112 Sept. 8, 1986, and since that time much more scientific and medical research is reported from the U.S. Environmental Protection Agency (EPA), the U.S. Surgeon General and other researchers, more fully documenting the health risks and health effects of both active and passive smoking; and

WHEREAS smoking is the most prevalent and preventable cause of death in the U.S.A., leading to more than twice as many deaths as the other leading causes combined (including alcohol, illegal drugs, motor vehicles, murders, suicide, AIDS, fires, firearms, etc.); and

WHEREAS the EPA has determined that "widespread exposure to environmental tobacco smoke (ETS) in the United States presents a serious and substantial public health impact" and that ETS contains many harmful chemicals and carcinogens and is a serious health risk to human beings, especially to infants, children, and pregnant women; and

WHEREAS in children, in the U.S.A., ETS exposure is causally associated with hundreds of thousands of respiratory infections and up to a million cases of increased severity of asthma, as well as being a serious risk factor for new cases of asthma in children; and

WHEREAS an increasing majority of voters in Mesa (nearly 75%) "support a complete ban on smoking in public places" as reported by O'Neil Associates' Valley Monitor Poll, in a public opinion survey of Mesa registered voters, October 1994.
ARTICLE II

STORAGE AND DISPLAY OF TOBACCO PRODUCTS

SECTION:

6-11-21: DEFINITIONS

6-11-22: STORAGE AND DISPLAY OF TOBACCO PRODUCTS

6-11-23: PENALTY

6-11-21: DEFINITIONS:

In this Article, unless the context otherwise requires: (3563)

1. "Person" means the State, the County, a political subdivision of the State, other governmental entities, a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual. "Person" also includes a trustee, receiver, an assignee, or similar representative. (3563)

2. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other manner of ingestion. (3563)

6-11-22: STORAGE AND DISPLAY OF TOBACCO PRODUCTS:

(A) No person who owns, conducts, operates, or maintains a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products, shall store or display, or cause to be stored or displayed, such tobacco products in an area or manner that is accessible to the public without employee assistance. (3563)

(B) A person is exempt from the requirement of this Section if both: (3563)

1. The business where tobacco products are sold prohibits entry of individuals under the age of eighteen (18) at all times; and (3563)

2. Photographic identification is required from any individual who appears to be twenty-six (26) years of age or younger prior to entering the business where tobacco products are sold. (3563)

6-11-23: PENALTY:

Each instance of violation of this Article shall constitute a separate civil offense. For the first civil offense at a retail site, the fine is one hundred dollars ($100). For the second and third civil offense at a retail site, the fine is five hundred dollars ($500). However, if more than three (3) violations occur at a retail site in any consecutive twelve- (12-) month period, the person or entity operating such retail site shall be subject to a minimum fine of five hundred dollars ($500) or a maximum fine of two thousand five hundred dollars ($2,500). The City, through its Code Compliance Supervisor, or designee, will follow the civil offense procedures set forth in Section 6-11-12(B), Mesa City Code. (3563)
CHAPTER 12

OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES
(749, 1635, 2034, 2466, 2610, 3770, 4028, 4253, 4942, 4962)

SECTION:

6-12-1: INTRODUCTION

Certain noise levels must be tolerated by all citizens in order for the normal functions of city life to continue. (4942)

However, any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying is subject to regulation as provided herein. (4942)

Children playing, construction equipment, barking dogs, amplified musical instruments, trash trucks, airplanes, and loud parties are all examples of noise found within our community. (4942)

6-12-2: PROHIBITED NOISES, STANDARD

(A) The following activities are prohibited if they produce: (4942)

1. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; and (4942)

2. Are continuous or intermittent for a period of at least fifteen (15) minutes; or (4942)

3. Occur after 10:00 p.m. but before 6:00 a.m.; and (4942)

4. Are plainly audible beyond the property line of the property on which conducted; and (4942)

5. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities or special event. (4942)

(B) Allowing or causing any noise by using, operating or permitting to be played any electronic music device, television, amplifier, musical instrument, or instrument, machine or device used for the production, reproduction or emission of sound. (4942)
(C) Creating or allowing any noise in connection with the loading or unloading of any vehicle. (4942)

(D) Owning, possessing, harboring or permitting any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or makes other sounds. (4942)

(E) Allowing or causing any malicious or willful shouting, yelling, screaming, or any other form of raucous vocalization by a person or group of people. (4942)

6-12-3: OTHER PROHIBITED NOISES:

(A) Use any automobile, motorcycle or other vehicle, engine or motor of whatever size, stationary or moving, instrument, device or thing, in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise. (4942)

(B) Operating any mechanical device operated by gasoline, or otherwise, without having a muffler, in good working order and in constant operation, to prevent excessive or unusual noise and smoke; and no person shall use a muffler cutout, bypass or similar device. (4942)

(C) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any reasonable person of normal sensibilities or neighborhood in the vicinity. (4942)

(D) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person normal sensibilities to be aware of vibration accompanying the sound at a distance of fifty (50) feet. (4942)

(E) Maintaining or operating an outdoor speaker that is affixed to any structure or placed upon any property where:

1. The speaker is audible for a distance of more than fifty (50) feet from the source; or (4942)

2. The speaker is two hundred fifty (250) feet or closer to a location that is zoned or developed for residential use. This restriction shall not apply to intercommunication systems that are utilized from 9:00 a.m. to 6:00 p.m. for the sole purpose of conducting the internal business affairs of the establishment. (4942)

3. This provision does not prohibit use of an outdoor speaker where a temporary exemption has been granted by the City Manager or designee. (4942)

6-12-4: UNRULY GATHERING:

A gathering of two (2) or more persons on any private or public property, including property used to conduct business, in a manner which disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities and/or creates noise prohibited under 6-12-2. (4942, 4962)

6-12-5: ABATEMENT OF UNRULY GATHERING:

A peace officer may abate an unruly gathering by reasonable means including, but not limited to, citation and/or order dispersal of the persons attending the gathering. (4942)
6-12-6: **GENERAL EXEMPTIONS:**
The following activities are exempted from the provisions of 6-12-2 and 6-12-3: (4942)

(A) Emergency work necessary to restore property to a safe condition following a fire, accident or natural disaster; to restore public utilities; or to protect persons or property from an imminent danger; (4942)

(B) Sound made to alert persons to the existence of an emergency, danger or attempted crime; (4942)

(C) Activities or operations of governmental units or agencies; (4942)

(D) Parades, concerts, festivals, fairs or similar activities that have been approved by the City for a special events permit; (4942)

(E) Athletic, musical or cultural activities or events (including practices and rehearsals) conducted by or under the auspices of public or private schools, and public or private colleges or universities; (4942)

(F) Activity, including commercial activity, which is permitted under the zoning code. (4942)

(G) Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting, including crafts and hobbies, or excavation work conducted between 6:00 a.m. through 8:00 p.m. Mondays through Fridays. Also, a person may engage in or allow such activities at that person’s residence between 6:00 a.m. and 8:00 p.m. on Saturdays or Sundays. (4942)

6-12-7: **TEMPORARY EXEMPTIONS:**

(A) The City Manager or designee is authorized to grant a temporary exemption from the requirements established by this article if such temporary exemption would be in the public interest and there is no feasible and prudent alternative to the activity, or the method of conducting the activity, for which the temporary exemption is sought. (4942)

(B) A temporary exemption must be in writing and signed by the City Manager or designee and must set forth the name of the party granted the exemption, the location of the property for which it is authorized, the date(s) and time(s) for which it is effective. (4942)

(C) A temporary exemption may be granted only for the period of time that is reasonably necessary to conduct the activity, which in no case may exceed thirty (30) days, unless otherwise specified. (4942)

(D) The following factors shall be considered by the City Manager or designee in determining whether to grant a temporary exemption: (4942)

1. The balancing of the hardship to the applicant, the community and other persons in not granting the variance against the adverse impact on the health, safety and welfare of persons adversely affected and any other adverse effects of the granting of the variance; (4942)

2. The nearness of any residence or residences, or any other use; (4942)

3. The level of the sound to be generated by the event or activity; (4942)
4. Whether the type of sound to be produced by the event or activity is usual or unusual for the location or area for which the variance is requested; (4942)

5. The density of population of the area in which the event or activity is to take place; (4942)

6. The time of day or night which the activity or event will take place; (4942)

7. The nature of the sound to be produced, including but not limited to whether the sound will be steady, intermittent, impulsive or repetitive. (4942)

6-12-8: PERSONS RESPONSIBLE FOR NOISE VIOLATIONS:
(A) The person responsible for an activity that violates this section shall be deemed responsible for the violation. (4942)

(B) If the person responsible for an activity that violates this section cannot be determined, the owner, property manager or agent of the owner, sponsor of the event, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation. (4942)

(C) Any person in attendance who engaged in any conduct causing the disturbance may also be deemed responsible for the violation. (4942)

(D) After three (3) violations on the same property, in addition to the above, the owner of the property may also be deemed responsible for the violation. (4942)

6-12-9: ENFORCEMENT:
(A) The Police Department and any other City department as designated by the City Manager is authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible for a violation of this section. (4942, 4962)

(B) Officers responding to a complaint under the provisions of this section may:
1. Advise the concerned parties of the violation and seek to gain voluntary compliance; or (4942)
2. Issue a civil infraction violation. (4942)

6-12-10: PENALTY:
(A) Any person who shall violate any of the provisions of this Chapter or of the Mesa City Code as amended herein shall be guilty of a civil infraction. (4942)

(B) The penalty for a person found responsible for a first violation shall be a mandatory minimum fine of two hundred and fifty dollars ($250.00); a mandatory minimum fine of five hundred dollars ($500.00) for a second violation; and a mandatory minimum fine of two thousand and five hundred dollars ($2,500.00) for a third or subsequent violation. (4942)

(C) The Court may, in its own discretion, grant cost recovery for law enforcement services and/or establish a surcharge. (4942)

(D) Each subsequent violation shall be a separate offense, punishable as hereinabove described. (4942)
CHAPTER 13

ABANDONED MOTOR VEHICLES (1185,1635,2132)

(Repealed by 2568)

CHAPTER 14

FAIR HOUSING

SECTION:

6-14-1: DEFINITIONS
6-14-2: ESTABLISHMENT OF A FAIR HOUSING POLICY
6-14-3: PROHIBITED ACTIONS
6-14-4: PENALTY

6-14-1: DEFINITIONS:
Except where otherwise indicated by the context, the following definitions shall apply in the interpretation and enforcement of this Chapter: (1278,1635,2671)

DISCRIMINATE OR DISCRIMINATION: Shall mean to make, directly or indirectly, any distinction prohibited under state or federal law with respect to any person or persons based on sex, race, color, religion, national origin, familial status, or handicap. (1278,1635,2671)

FAMILIAL STATUS: Shall be defined as provided in the Fair Housing Amendments Act of 1988. (2671)

HANDICAP: Shall be defined as provided in the Americans with Disabilities Act of 1990. (2671)

HOUSING: Shall mean (a) any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous, located in the City used for the building or the placing of one (1) or more housing or rooming units owned by, or otherwise subject to the control of, one (1) or more persons; and/or (b) any real property, or any interest therein, located in the City; and/or (c) any single-family dwelling or multiple-family dwelling or trailer house or trailer space, or any portion thereof, including a housing unit or rooming unit, or any interest therein, located in the City which is used or occupied or intended, arranged, assigned, or designated to be used or occupied as the home, home site, residence, or sleeping place of one (1) or more persons; and/or (d) a single room, suite of rooms, or apartment, with or without cooking and kitchen facilities, occupied or intended for occupancy as living quarters by a person, by a family, or by a group of persons living together. (1278,1635)
OWNER: Shall include a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession or the right to sell, rent, or lease any housing. (1278,1635)

REAL ESTATE BROKER OR REAL ESTATE SALESPERSON: Shall mean an individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who, with the intention or expectation of receiving or collecting same, lists, sells, purchases, exchanges, rents, or leases any housing accommodations, including options thereupon; or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer to any housing accommodation; or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, exchange, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these. (1278,1635)

6-14-2: ESTABLISHMENT OF A FAIR HOUSING POLICY:
It is hereby declared to be among the civil rights of the people of the City to be free from discrimination in the occupancy and provision of housing. Accordingly, it shall be contrary to the policy of the City and unlawful to discriminate against individuals or families because of race, color, sex, religion, ancestry, national origin, familial status, or handicap in the purchase, lease, rental, exchange, advertising, display, promotion, or financing of housing within the City. The foregoing policy shall be interpreted in light of applicable federal and state laws, regulations, and judicial decisions and shall be subject to the following restrictions and exemptions: (1278,1635,2671,3712)

(A) Certain groups may be restrictive:

1. Religious organizations and private clubs may limit the sale, rental, or occupancy of noncommercial units to their members unless membership is limited by race, color, or national origin and handicap; (2671)

2. Governmental agencies may impose limits to the numbers of people permitted to occupy a structure; and/or (2671)

3. Governmental or private agencies which address the conduct of a person(s) convicted of the illegal manufacture or distribution of a controlled substance. (2671)

(B) Exemptions exist for: (2671)

1. Federal and/or state projects for the elderly; (2671)

2. Projects where one hundred percent (100%) of the residents are at least sixty-two (62) years old after September 13, 1989; and/or (2671)

3. Projects where eighty percent (80%) of the units have at least one (1) inhabitant at least fifty-five (55) years old; (2671,3712)

4. A room or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other and if the owner occupies one (1) such living quarter as his residence (four- [4-] plex or less). (Discriminatory advertising is not exempted.) (2671)
(C) Except for discriminatory advertising, the sale or rental of a single-family home is exempted, provided: (2671)

1. The owner does not own or have any interest in more than three (3) single-family houses at one time; (2671)

2. A real estate professional or a property manager is not involved in the transaction; and/or (2671)

3. If the dwelling is not owner occupied or most recently occupied by the owner prior to the transaction, then the exemption applies only if there is only one (1) sale per any twenty-four- (24-) month period. (2671)

6-14-3: PROHIBITED ACTIONS:
It is hereby declared to be unlawful: (1278,1635,2671)

(A) For any person, including but not limited to, owners, lessees, agents, real estate brokers, real estate salespersons, trustees, mortgagees, financial institutions, title companies, or insurance companies, except as exempted under Section 6-14-2: (1278,1635,2671)

1. To discriminate against any person because of sex, race, color, religion, ancestry, national origin, familial status, or handicap in the sale, lease, rental, or other transfer of interest in housing. (1278,1635,2671)

2. To so discriminate in the extension of loans, credit, insurance, or other services relating to the transfer of interest in housing. (1278,1635)

3. To print or circulate or cause to be printed or circulated any publication or to use any form of application or to make any inquiry in connection with prospective sales, leases, rentals, or other transfers of interest in housing or the extension of credit, loans, insurance, or other services relating to the transfer of interest in housing which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, ancestry, national origin, familial status, or handicap or expresses intent to make any such limitation, specification, or discrimination. (1278,1635,2671)

(B) To refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent, or lease any housing from or to a person because of his sex, race, color, religion, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(C) To refuse to negotiate for the sale, purchase, exchange, rental, or lease of any housing to a person because of his sex, race, color, religion, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(D) To represent to a person that any housing is not available for inspection, sale, purchase, exchange, rent, or lease when in fact it is available or to refuse to permit a person to inspect any housing because of his sex, race, color, religion, ancestry, national origin or place of birth, familial status, or handicap. (1278,1635,2671)

(E) To induce or attempt to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of any person or persons of a particular race, color, religion, national origin, familial status, or handicap. (1278,1635,2671)

(F) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this Chapter or attempt to do so. (1278,1635)

6-14-4: PENALTY:
Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each violation shall constitute a separate offense. The imposition of any sentence shall not exempt the offender from compliance with the requirements of this Chapter. (1635,2466,2671)
CHAPTER 15

ALARM SYSTEMS

(1758, 1993, 2466, 2540, 3106, 4111, 5079)

SECTION:

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6-15-1: APPLICABILITY: (4111, 5079)

This Chapter is intended to regulate the activities and responsibilities of those persons who purchase, lease, or rent and those persons who own or conduct the business of selling, leasing, renting, maintaining, or monitoring alarm systems, devices, or services. It is further intended to encourage the improvement in reliability of those systems, devices, and services and to ensure that Police Department personnel will not be unduly diverted from responding to actual criminal activity as a result of responding to false alarms. This Chapter specifically encompasses "burglar alarms" and "robbery/panic" alarms, both audible and inaudible (silent). Specific exclusions and exceptions will be detailed within this Chapter. (4111, 5079)
DEFINITIONS: (4111, 5079)

Except where otherwise indicated by the context, the following definitions shall apply in the interpretations and enforcement of this Chapter: (4111)

ALARM OR ALARM SYSTEM: Any mechanical or electrical device which is used to detect unauthorized entry into a building or other premises or to alert others of the occurrence of the commission of an unlawful act against a person or within a building or other premises, and that may be designed to emit an audible alarm, and/or transmit a signal or message when activated. Alarm or alarm system includes, but is not limited to, silent, panic, holdup, robbery, duress, burglary, and proprietor alarms. (4111, 5079)

ALARM AGENT: Any person who is employed by an alarm business, either directly or indirectly, whose duties include any of the following: maintaining, servicing, or repairing any alarm or alarm system in or on any building, place, or premises. Any person whose duties consist solely of resetting an alarm following activation shall not be deemed to be an alarm agent. (4111)

ALARM BUSINESS: The business by an individual, partnership, corporation, or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing, or monitoring an alarm or alarm system in or on any building, structure, or facility. (4111)

ALARM SITE: A single fixed premises or location served by an Alarm System or Systems. Each Unit, if served by a separate Alarm System in a multi-unit building or complex, shall be considered a separate Alarm Site unless owned and/or operated by one entity. (5079)

ALARM USER: Any person, firm, partnership, corporation, or business who (which) leases, rents, purchases, or uses any monitored or proprietor alarm, alarm system, device, or service. (4111)

AUDIBLE ALARM: A device designed for the detection of an unauthorized entry of premises and which, when activated, generates an audible sound on the premises. (4111)

AUTOMATIC DIALER: Any electrical, electronic, mechanical or other device capable of being programmed to send a prerecorded voice message, when activated or if self-activated, over a telephone line, radio or other communication system, to the City of Mesa. (5079)

COMMON CAUSE: A common technical difficulty or malfunction which causes an alarm system to generate a series of false alarms, all of which occur within a twenty-four (24) hour period. The series of false alarms shall be counted as one false alarm only if the cause of the series of false alarms is repaired within 72 hours and/or before it generates additional false alarms, documentation of the repair is provided to the Coordinator, and during the thirty-day period following the repair, the alarm system generates no additional false alarms from the documented cause. (4111, 5079)

COORDINATOR: The Chief of Police of the Mesa Police Department or the individual designated by the Chief of Police to enforce the provisions of this Chapter. (4111)

ENHANCED CALL VERIFICATION: A monitoring procedure requiring that a minimum of two calls be made prior to making an alarm dispatch request. The two calls must be made to different phone numbers where a responsible party can typically be reached. (5079)
FALSE ALARM: An alarm notification to the Police Department when the responding officer finds no evidence of a criminal offense or attempted criminal offense. Excluded from this definition are: (4111)

(A) Alarms occurring during electrical storms, hurricanes, tornados, blizzards, and acts of God; or (4111)

(B) The intermittent disruption or disruption of the telephone circuit beyond the control of the alarm company and/or alarm user; or (4111)

(C) Electrical power disruption or failure; (4111)

LICENSING AUTHORITY: The City of Mesa Tax and Licensing Division or the Police Department, as applicable, who has the authority to issue licenses or permits pursuant to this Chapter or the Reciprocal Alarm Licensing Ordinance of another city or town. (4111)

MOBILE PANIC ALARM/BUTTON: Any mobile, mechanical or electronic device that can be worn or carried by a person, designed so that a person may intentionally activate it to summon police assistance. (5079)

MONITORED ALARM: A device designed for the detection of an unauthorized entry into premises and which, when activated, generates an audible or inaudible signal to a monitoring station. (4111, 5079)

PERSON: An individual, firm, partnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit and the plural as well as the singular number. (4111)

PRIMARY ALARM BUSINESS LICENSE: A license issued by the licensing authority of a city or town that has adopted the Reciprocal Alarm Licensing Ordinance to an alarm business that has its headquarters, main office, corporate office, or designated branch of the alarm business located within this State. In the event that an alarm business has its headquarters, main office, corporate office, or designated branch in a city or town that does not require the licensing of alarm businesses, the alarm business may apply for a primary alarm business license from any city or town in this State that has adopted the Reciprocal Licensing Ordinance. (4111)

PROPRIETOR ALARM: Any alarm or alarm system which is not leased or rented from or owned or maintained under contract by an alarm business. (4111)

RECIPIOCAL ALARM BUSINESS LICENSE: A license issued by the licensing authority of a city or town that has adopted the Reciprocal Alarm Licensing Ordinance, and in which that alarm business conducts business. This license shall be issued only to an alarm business that has a valid primary alarm business license from a similar licensing authority within this State that has adopted the Reciprocal Alarm Licensing Ordinance. (4111)

RECIPIOCAL ALARM LICENSING ORDINANCE: An ordinance that is substantially the same in its material terms to the reciprocal alarm licensing provisions codified in this Article and that is intended by the adopting jurisdiction to be recognized as being reciprocal with alarm licensing ordinances adopted by other cities and towns in this State. Minor or non-material variations that are enacted in a particular city or town to accommodate local conditions or needs shall not affect the reciprocal nature of the Ordinance. (4111)

RESPONSIBLE PARTY: A person to be notified when an alarm system is activated, as designated by an alarm user. (5079)

ROBBERY/PANIC ALARM OR BURGLARY ALARM SYSTEM: Any mechanical or electrical device designed so that a person may intentionally activate it to summon Police assistance. (4111)
6-15-3: ALARM BUSINESS DUTIES: (4111, 4419, 5079)
The duties of an alarm business shall be as follows: (4111)

(A) To install an alarm system compatible with the environment, to take reasonable measures to prevent the occurrence of false alarms, and, if it has agreed to provide maintenance or repair service to the system, to service the system within seventy-two (72) hours of a request for service. The alarm business shall not install a single action non-recessed button as a device to activate a panic alarm. (4111)

(B) To instruct each of its alarm users and/or the principal occupants of the buildings or premises protected by an alarm system in the proper operation of the system. Such instruction will specifically include all necessary instructions in turning the system on and off and in avoiding false alarms. (4111)

(C) To provide each purchaser and user with a City of Mesa alarm user permit application. (4111)

(D) Upon leasing or renting an alarm system: (4111)

1. To conspicuously place on the premises a tag identifying the pertinent alarm business, including the telephone number to call when the alarm has been activated. (4111)

2. To maintain current records of the location of these alarm systems, devices, or services and the name and telephone number of the persons and alternate to be notified whenever the alarm is activated. (4111)

3. To inactivate or cause to be inactivated any audible alarm within twenty (20) minutes of the notification of its activation. (4111)

(E) Upon monitoring an alarm system: (4111)

1. To establish a central receiving station in order to monitor these alarm systems. (4111)

2. To organize its central receiving station in order to be able to readily and positively identify the type of alarm, i.e., burglary, or robbery, and the location of the alarm if there is more than one (1) system. (4111)

3. The central receiving station shall attempt to contact the alarmed location and/or the alarm user, and two (2) attempts shall be made either to different numbers or locations, by telephonic or other electronic means on every alarm signal - except that no attempts shall be required on a robbery/panic alarm activation - whether or not actual contact with a person is made, before requesting police response to an alarm system signal. (4419)

4. To maintain current records as to each of these alarms or alarm systems, which shall include the alarm permit number, the name of the owner or occupant of the premises, the name and telephone number of the user or primary person and at least one (1) alternate responsible for responding to the premises when the alarm is activated, and information concerning whether the alarm system includes an audible alarm. (4111,4419)

5. To make notification of activated alarm systems in the manner prescribed by the Coordinator, including the alarm permit number, suite or apartment number, and such other reasonable information concerning the alarm system as the Coordinator may request. (4111,4419)
6. To arrange, upon request, for either the alarm user, alarm agent, or other responsible representative to go to the premises of an activated alarm system in order to be available to assist the police in determining the reason for activation and securing the premises. In no event shall there be unreasonable delay in arriving at the location of the alarm. (Thirty [30] minutes shall be deemed as reasonable.) If the Police depart the premises prior to the arrival of the user, alarm agent, or other responsible representative, then the user, alarm business, or proprietor may document their required response through telephonic notification of the Police Department upon their arrival at the location of the alarm signal. In the event this requirement is not met and the police are unable to determine the reason for the activation, such activation shall be deemed a false alarm. (4111, 4419, 5079)

(F) To cease responsibility for an alarm system pursuant to this Chapter, the alarm business shall promptly notify the Police Department in the event the alarm business ceases to lease, rent, maintain, service, or monitor any alarm system. Said notice shall be sent within ten (10) days. (4111)

(G) Alarm businesses which sell alarms but do not monitor, maintain, lease, service, or install alarms or alarm systems shall not be subject to Subsections (A), (B), (C), (D), (E), or (F) of this Section but shall be responsible for instructing each person who purchases an alarm or alarm system in the proper use and operation of the alarm. Each instruction will specifically include all necessary instructions in turning off said alarm(s) and in avoiding false alarms. (4111)

(H) An Alarm Company shall provide the Alarm Coordinator with a customer list in a format acceptable to the Alarm Coordinator, upon request, to assist the Alarm Coordinator with creating the law enforcement’s tracking data. (5079)

(I) The Alarm Business shall complete and sign the City of Mesa Alarm Information Checklist with the proprietor or alarm user and submit the form as required below. The form must be signed by an alarm company representative and the alarm user or proprietor before submission to the Police Department. The Alarm Business shall submit the form, in the manner prescribed by the Coordinator, to the Police Department within 10 days of commencement of service for the alarm system. (5079)

6-15-4: ALARM USER DUTIES: (4111)
The duties of an alarm user shall be as follows: (4111)

(A) To instruct all personnel who are authorized to place the system or device into operation in the appropriate method of operation. (4111)

(B) To inform personnel who are authorized to place the alarm system into operation of the provisions of this Chapter, emphasizing the importance of avoiding false alarms. A current copy of the provisions of this Chapter shall be maintained on the premises and be made available to persons who are authorized to place an alarm system into operation. (4111)

6-15-5: PROPRIETOR'S ALARM RESPONSIBILITIES: (4111)
The duties of a proprietor shall be as follows: (4111)

(A) To be familiar with the provisions of this Chapter. (4111)

(B) To maintain the alarm or alarm system in good working order and take reasonable measures to prevent the occurrence of false alarms. (4111)
(C) To notify the Police Department of the name, address, and telephone number of the primary person and at least one (1) alternate to be notified in case the alarm is activated, unless the alarm system is not audible and is monitored at a remote location. (4111)

(D) Upon the purchase of any alarm system device or service which includes an audible alarm: (4111)

1. To notify the Police Department of the name, address, and telephone number of the primary person and at least one (1) alternate who should be notified when the alarm is activated. (4111)

2. To inactivate or cause to be inactivated the alarm system within twenty (20) minutes of notification of its activation. (4111)

6-15-6: ALARM USER PERMIT REQUIREMENTS: (4111, 4419, 5079)

(A) Every alarm user shall apply for and receive an alarm permit from the Mesa Police Department. Application shall be made to the Mesa Police Department Alarm Unit for a permit within 30 days of the installation date of an alarm system. Users of alarm systems having both robbery/panic and burglary alarm capabilities shall obtain one (1) permit per alarm site. The application for an alarm user's permit shall be made on a form approved by the Coordinator and shall be accompanied by the permit fee as prescribed in Appendix A. All permits issued pursuant to this Section shall be for a period of three hundred and sixty-five calendar days from the date of issue and shall be renewable annually, three hundred and sixty-five calendar days from the original date of issue or renewal, as applicable, and subject to a permit renewal fee as prescribed in Appendix A. An alarm user's permit shall be available within the premises protected by the alarm and shall be available for inspection by the Mesa Police Department. Permits are not transferable from one user to another user or from one address to another address. (4111, 4419, 5079)

(B) Alarm systems operated by the County, State, or Federal government and installed on premises such entity occupies or uses for governmental purposes, and State public school (non-charter and charter) buildings and facilities, as well as accredited private schools offering curriculum between kindergarten and twelfth (12th) grade, shall not be subject to payment of fees pursuant to this Section. (4111, 4339)

6-15-7: ALARM BUSINESS LICENSE REQUIREMENTS; ADMINISTRATION; DURATION; DUPLICATE LICENSE: (4111, 5079)

(A) It shall be unlawful for any person to conduct, operate, or engage in or carry on an alarm business, or to engage in the occupation of alarm agent, or represent oneself as an alarm agent, without first having obtained such licenses as are required. A separate license is required for each business name under which an alarm business conducts business or advertises. In the event that the licensing authority has reasonable cause to believe that an alarm business does not have a valid alarm business license as required or that a person is engaged in the alarm business without a valid alarm business license, the licensing authority or its designee, with the assistance of the Police Department, shall issue a warning to the alarm business stating that it is in violation of the Mesa City Code ordinance. The warning shall direct the alarm business to apply for an alarm business license within ten (10) calendar days of the date of the warning. The alarm business receiving such a notice shall not engage in the alarm business until an alarm business license is issued. (4111)

(B) The duty of prescribing forms is vested in the licensing authority. License application shall be submitted to the licensing authority, which shall have the authority to issue, deny, suspend, or revoke a license. (4111)
(C) The license required shall be in addition to any other licenses or permits required by the City, County, or State in order to engage in business, including the City zoning laws, as may be required to be licensed. Failure of any applicant or licensee, as applicable, to meet the requirements of Subsection (C) shall be grounds for denial, suspension, or revocation of a license. (4111)

(D) All licenses issued pursuant to this Chapter shall be for a period of one (1) year from the date of issue and shall be renewable annually, one (1) year from the original date of issue or renewal, and be renewed in accordance with provisions of Section 6-15-12: Renewal of License. (4111)

(E) Upon written request and the payment of a fee as prescribed in Appendix A, the licensing authority shall issue a duplicate license to a licensee whose license has been lost, stolen, or destroyed. (4111, 5079)

(F) It shall be unlawful for an alarm business to use or to contract with for purposes of using the service of an unlicensed alarm business or alarm agent. (4111)

6-15-8: TYPES OF LICENSES; RECIPROCITY: (4111)

(A) The types of licenses issued pursuant to this Chapter are as follows: (4111)

1. Primary Alarm Business License. A primary alarm business license may be applied for by an alarm business that is physically located within this City, in a jurisdiction that has not adopted this Reciprocal Alarm License Ordinance, or in a jurisdiction outside this State. (4111)

2. Reciprocal Alarm Business License. An alarm business, whether physically located within or outside the State of Arizona, that has a valid primary alarm business license issued by a jurisdiction within this State that has adopted the Reciprocal Alarm License Ordinance shall be entitled to the issuance of a reciprocal alarm business license upon compliance with the requirements of this Section. (4111)

3. Alarm Agent License. A person desiring to engage in the business or occupation of alarm agent shall apply for and receive an alarm agent license from the jurisdiction that issues the primary alarm business license for the alarm business for which the alarm agent is or will be working. A person holding a valid alarm agent license, who desires to work for an alarm business holding a reciprocal alarm license, does not have to obtain a separate license, but shall provide a copy of his or her license, upon request, to the jurisdiction in which the reciprocal license has been issued. (4111)

6-15-9: ALARM BUSINESS LICENSE APPLICATIONS; CONTENTS: (4111)

(A) All applications for alarm business licenses(s) shall include the following: (4111)

1. The name, business address, mailing address, and telephone number of the alarm business. If the applicant is a corporation, general or limited partnership, limited liability company, or other legal entity, the name of the applicant shall be set forth exactly as shown in its articles of incorporation, charter, certificate of limited partnership, articles of organization, or other organizational documents, as applicable, together with the state and date of incorporation and the names, residence addresses, and dates of birth of each controlling person. If one (1) or more of the partners, members, or shareholders of the applicant is a corporation or other legal entity, the provisions of this Subsection relating to the information required of a corporation shall apply. (4111)
2. In the event that the applicant is a corporation, general or limited partnership, limited liability company, or other legal entity, the applicant shall designate one (1) of its officers, general partners, or members to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this Article. The applicant shall provide a copy of their corporation, partnership, or limited liability company formation documents. (4111)

3. The name of the applicant and each controlling person, any alias or other name used or by which the applicant or any controlling person has been previously known, his or her current residence and business addresses, telephone numbers, including facsimile numbers and e-mail addresses, if applicable. (4111)

4. The names and addresses of the alarm agents employed by the alarm business. (4111)

5. The residence and business address of the applicant and each controlling person for the five-year period immediately preceding the date of filing of the application and the inclusive dates of each such address. (4111)

6. Proof that the applicant, and each controlling person, is at least eighteen (18) years of age, as indicated on a current driver's license with picture, or other picture identification document issued by a governmental agency. (4111)

7. Height, weight, color of eyes and hair, and date of birth of the applicant and each controlling person. (4111)

8. Two (2) current two-inch by two-inch (2" x 2") photographs of the applicant and each controlling person. (4111)

9. The employment history of the applicant and each controlling person for the five-year period immediately preceding the date of the filing of the application. (4111)

10. Information as to whether the applicant or any controlling person, or the business on behalf of which the license is being applied for, has ever been refused or denied any similar license or permit, or has had any similar permit or license revoked, canceled, or suspended, and the reason(s) for the revocation, cancellation, or suspension. (4111)

11. Whether or not the applicant or any controlling person has ever been convicted of a crime, regardless of whether the conviction was later set aside or expunged, in any domestic, foreign, or military court. "Crime" means any and all felonies, misdemeanors, and serious driving offenses, including driving under the influence of intoxicating liquor or drugs, reckless driving, driving on a suspended, revoked, canceled, or refused driver's license, or any driving offense for which the possible penalty includes jail time. "Crime" does not include minor or civil traffic offenses. "Convicted" means having pleaded guilty or nolo contendere to a crime, having been found guilty of a crime, or having been sentenced for a crime, whether incarcerated, placed on probation, fined, or having received a suspended sentence. An applicant or controlling person shall also answer "yes" to this question, even though he or she has not been convicted of a crime, if the applicant or controlling person is presently pending trial or other court proceeding for a crime. (4111)

12. For initial and renewal applications for primary alarm business licenses only, one (1) full set of fingerprints on fingerprint cards, or fingerprint data, as specified in Section 6-15-19: Background Investigation; Fingerprints, for the applicant and each controlling person. Fingerprints or fingerprint data must be submitted on fingerprint cards provided or approved by the licensing jurisdiction, but may be taken by any law enforcement or other government agency. (4111)
13. Copies of the State of Arizona Registrar of Contractor's C-11, C-12, or L-67 license, as applicable, or a copy of the K-67 license for combined residential and commercial, issued to the alarm business applicant, and copy of the State of Arizona transaction privilege tax license, if applicable. (4111)

14. A list of all Arizona counties, cities, and/or towns where the applicant conducts business. (4111)

15. An express agreement by the alarm business that any and all records of the alarm business, whether written or recorded, electronically or otherwise, or in any other form, relating to information required to be supplied to the Police Department in case of an alarm, shall be immediately made available at any time upon request for inspection by agents of the Police Department. (4111)

16. A copy of a valid primary alarm business license if the application is made for an original or renewal reciprocal alarm business license. (4111)

17. Such other information, evidence, statements, or documents as may be deemed by the licensing authority to be reasonably necessary to process and evaluate the application or renewal. (4111)

(B) Applicants for primary or reciprocal alarm business licenses, or applicants for renewal of any such licenses, shall notify the licensing authority, in writing, of any change in the information contained in the license application or renewal application. Notification shall be given to the licensing authority within fifteen (15) calendar days of the occurrence of the change. (4111)

6-15-10: ALARM AGENT LICENSE APPLICATIONS: (4111)

(A) An alarm agent license application and an alarm agent license renewal application shall include the following information about the applicant: (4111)

1. The name of the applicant and any alias or other name, used by the applicant or by which the applicant has previously been known, his or her current residence and business addresses, telephone numbers, including facsimile numbers, and e-mail addresses, if applicable. (4111)

2. The name, business address, and business telephone number of the alarm business where the applicant is or will be employed. (4111)

3. Proof that the applicant is at least eighteen (18) years of age, as indicated on a current driver's license with picture, or other picture identification document issued by a governmental agency. (4111)

4. Height, weight, color of eyes and hair, and date of birth of the applicant. (4111)

5. Two (2) current two-inch by two-inch (2" x 2") photographs of the applicant. (4111)

6. The applicant's business and/or employment history for the five- (5-) year period immediately preceding the date of the filing of the application. (4111)

7. Information as to whether, in this City or elsewhere, the applicant has ever been refused or denied any similar license or permit, or has had any similar permit or license revoked, canceled, or suspended and the reason(s) for the revocation, cancellation, or suspension. (4111)
8. Whether or not the applicant has ever been convicted of a crime, regardless of whether the conviction was later set aside or expunged, in any domestic, foreign, or military court. "Crime" means any and all felonies, misdemeanors, and serious driving offenses, including driving under the influence of intoxicating liquor or drugs, reckless driving, driving on a suspended, revoked, canceled, or refused driver's license, or any driving offense for which the possible penalty includes jail time. "Crime" does not include minor or civil traffic offenses. "Convicted" means having plead guilty or nolo contendere to a crime, having been found guilty of a crime, or having been sentenced for a crime, whether incarcerated, placed on probation, fined, or having received a suspended sentence. An applicant shall also answer "yes" to this question, even though he or she has not been convicted of a crime, if the applicant is presently pending trial or other court proceeding for a crime. (4111)

9. One (1) full set of fingerprints on fingerprint cards, or fingerprint data, as provided in Section 6-15-19: Background, Investigation; Fingerprints. Fingerprints or fingerprint data must be submitted on fingerprint cards provided or approved by the licensing jurisdiction, but may be taken by any law enforcement or authorized government agency. (4111)

10. A list of all Arizona counties, cities, or towns where the applicant conducts business. (4111)

11. Such other information, evidence, statements, or documents as may be deemed by the licensing authority to be reasonably necessary to process and evaluate the application or renewal. (4111)

(B) Applicants for alarm agent licenses, or applicants for renewal of such licenses, shall notify the licensing authority, in writing, of any change in the information contained in the license application or renewal application. Notification shall be given to the licensing authority within fifteen (15) calendar days of the occurrence of the change. (4111)

6-15-11: FEES; DISPLAY OF LICENSES: (4111, 5079)

(A) All license application fees, as prescribed in Appendix A, shall accompany the initial application or renewal application. All licensing fees are non-refundable, non-transferable, and will not be separated. (4111, 5079)

(B) Alarm business licenses shall state whether they are primary alarm business licenses, or reciprocal alarm business licenses. The primary alarm business license or reciprocal alarm business license, as applicable, shall be at all times conspicuously displayed at the alarm business's central office or station. (4111)

(C) Alarm agent licenses shall be carried on the person of an alarm agent at all times while so employed and the alarm agent shall display the license to any police officer or authorized representative of this City upon request. (4111)

6-15-12: RENEWAL OF LICENSE: (4111)

(A) The holder of a primary alarm business license, reciprocal alarm business license or alarm agent license shall renew the license annually by submitting a renewal application containing the information listed in Section 6-15-9: Alarm Business License Applications; Contents, and Section 6-15-10: Alarm Agent License Applications, as applicable, and paying the required renewal fee and the costs for a criminal history investigation. The holder of a reciprocal alarm business license, as a condition of renewal, shall also submit a copy of the approved primary alarm business license upon which reciprocity is based. (4111)

(B) Applications for license renewal shall be filed with the licensing authority not later than ninety (90) days prior to the expiration of the license currently in effect. Applications for license renewal shall not be accepted after ninety (90) days prior to the expiration date of the license. In the event that a license expires without the licensee having submitted a timely application for renewal, the holder of the expired license must file a new application for initial license and shall comply with all of the requirements provided herein for obtaining an initial license. (4111)
6-15-13: ISSUANCE; GROUNDS FOR DENIAL: (4111)

(A) The licensing authority will issue a license provided for by this Article to an applicant, or renew a license, if applicable, when the following conditions of the applicable licensing provisions have been fully satisfied: (4111)

1. All application requirements have been met, including any criminal history background checks and fingerprint requirements. (4111)

2. All fees have been paid in full. (4111)

3. No grounds for denial listed in this Section exist. (4111)

(B) The licensing authority shall deny a license or deny the renewal of a license if, at the time of the filing of an original application or a request for renewal, the licensing authority has reasonable grounds to believe that an applicant, licensee, or controlling person: (4111)

1. Has been previously convicted, in any jurisdiction, of a felony; or a misdemeanor involving fraud, theft, dishonesty, moral turpitude, physical violence, assault, indecent exposure, illegal use or possession of a deadly weapon, or a violation of Arizona Revised Statutes Title 13, Chapter 34 (drug offenses, including but not limited to those relating to possession, sale, or other conduct involving marijuana, narcotic drugs, precursor chemicals, and prescription drugs), or offenses committed in another jurisdiction, which if committed in Arizona would be in violation of Arizona Revised Statutes Title 13, Chapter 34, within the five- (5-) year period immediately preceding the filing of an original application or a request for renewal, whether or not the conviction(s) have been expunged from court records pursuant to law. (4111)

2. Has prepared or filed an application or request for renewal which contains false or misleading information, submitted false or misleading information in support of such application or request, or failed or refused to make full disclosure of all information required by this Section. (4111)

3. Has had a license relating to alarm businesses or agents, as applicable, or a license of similar character, issued by the city of another authority, suspended, canceled, or revoked within the five- (5-) year period immediately preceding the date of the filing of the application. (4111)

4. Is not a United States citizen or lawful permanent resident alien or an alien who is authorized to work by the United States Department of Justice Immigration and Naturalization Service. (4111)

5. Has violated a provision of this Article, or has committed any act, which if committed by a licensee, would be grounds for the denial or revocation of a license pursuant to this Section. (4111)

(C) Notice shall be given of any denial of a license application, or a request for renewal, in writing, and either by hand-delivery or by mail, to the address of record. The notice shall include the reasons for denial of the license or license renewal. (4111)
6-15-14: LICENSE SUSPENSION OR REVOCATION; GROUNDS: (4111)

(A) The licensing authority may suspend or revoke any primary or reciprocal alarm business or alarm agent license, when the licensing authority has reasonable grounds to believe any of the following: (4111)

1. The licensee, or any controlling person, has violated any of the grounds for denial of a license, as described in Section 6-15-13(B): Issuance; Grounds for Denial. (4111)

2. The licensee or any controlling person has failed to comply with the requirements of this Section, including failure to provide changes in license information, as required. (4111)

3. The licensee has failed to comply with the requirements of Section 6-15-3: Alarm Business Duties, as specified for alarm business or alarm agent responsibilities and false alarms. (4111)

4. The licensee has failed to maintain in good standing all licenses or permits that are required pursuant to this Section to hold a primary or reciprocal alarm business license, or alarm agent license, as applicable. (4111)

6-15-15: LICENSE SUSPENSION OR REVOCATION PROCEDURE: (4111)

(A) The licensing authority shall give notice of its intent to suspend or revoke a license. Notice shall be given in writing, either by hand-delivery or by mail, to the address of record. The notice shall include the reasons for the suspension or revocation. (4111)

(B) The licensing authority shall transmit, by facsimile, notice of the suspension or revocation, when such action is final, to all counties, cities, and towns listed on the licensee's application. The suspension or revocation of a primary alarm business license shall result in the same action being taken as to all reciprocal alarm business licenses, which are derived from that primary alarm business license. (4111)

6-15-16: LICENSE REVIEW AND APPEALS: (4111)

(A) Any person wanting to appeal a decision with respect to either the denial of an application for a license, or renewal, or the suspension or revocation of a license, which is subject to this Section, is entitled to the review and appeal procedures in accordance with this Code. (4111)

6-15-17: APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE: (4111)

(A) No person, association, firm, corporation, or other legal entity may apply for any license required under this Chapter within one (1) year from the denial of any such license to such applicant, or from the non-renewal or revocation of any such license, unless the cause of such denial, revocation, or non-renewal has been, to the satisfaction of the licensing authority, removed within such time. This Section shall be inapplicable to denials of applications or renewal when the reason for denial was for an administrative, technical, or otherwise non-material reason. (4111)
6-15-18: TERMINATION AND/OR CANCELLATION OF LICENSE; NOTICE: (4111)

(A) An alarm agent who terminates employment with an alarm business shall immediately surrender his or her alarm agent license to the licensing authority. (4111)

(B) An alarm agent who terminates his employment with an alarm business to change employment to another alarm business licensee shall notify the licensing authority of the transfer, in writing, within fifteen (15) calendar days of the change in employment. (4111)

(C) An alarm business may cancel an alarm business license by filing a notice of cancellation of the license with the licensing authority. The notice of cancellation shall include the effective date of the cancellation. In the event of the cancellation of a primary alarm business license, notice shall be given to all jurisdictions in which reciprocal alarm business licenses have been issued and are active. Reciprocal alarm business licenses shall be canceled as of the effective date of the cancellation of the primary alarm business license, unless the licensee requests the license be canceled sooner. (4111)

6-15-19: BACKGROUND INVESTIGATION; FINGERPRINTS: (4111)

(A) As a condition of the issuance of licenses pursuant to this Chapter, the licensing authority shall require each applicant and controlling person to furnish one (1) full set of fingerprints, or fingerprint data, to enable the licensing authority to conduct a criminal background investigation to determine the suitability of the applicant or controlling person. (4111)

(B) The licensing authority shall submit or electronically transmit all completed fingerprint cards to the Department of Public Safety to conduct a statewide criminal history check. The applicant or controlling person shall bear the cost of conducting the criminal background investigation. The cost shall not exceed the actual cost of obtaining the criminal history information. Criminal history records checks shall be conducted pursuant to Section 41-1750, Arizona Revised Statutes, and Public Law 92-544, as amended. The Department of Public Safety is authorized to exchange the submitted fingerprint card information with the Federal Bureau of Investigation for a national criminal history records check. (4111)

6-15-20: FALSE ALARMS; PENALTY ASSESSMENTS AND PERMIT REVOCATION: (4111, 4419, 5079)

(A) Any robbery/panic alarm system, whether permitted or not, which has more than one (1) false alarm within a three hundred and sixty-five-calendar-day-period shall be subject to penalty assessments as prescribed in Appendix A. (4111, 5079)

1. If a second false alarm within a three hundred and sixty-five-calendar-day-period for any robbery/panic alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false robbery/panic alarms. (4111, 5079)

2. If a third and/or any subsequent false alarm within the same three hundred and sixty-five-calendar-day-period for any robbery/panic alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment per occurrence, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false robbery/panic alarms. (4111, 5079)
Any burglary alarm system that has one recorded false alarm within a three hundred and sixty-five-calendar-day-period shall be subject to penalty assessments as follows: (4111, 4419, 5079)

1. On the first recorded false alarm within a three hundred and sixty-five-calendar-day-period for any burglary alarm system, the Alarm Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of the receipt of the false alarm notice. This assessment shall be waived if the alarm user successfully completed the City of Mesa Alarm Awareness class prior to the first recorded false alarm, or if the alarm user successfully completes the class within sixty (60) days after the first recorded false alarm. (4111, 4419, 5079)

2. If a second false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4111, 4419, 5079)

3. If a third false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4111, 4419, 5079)

4. If a fourth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A, within sixty (60) days of receipt of the notice of excessive false alarms. (4419, 5079)

5. If a fifth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. (4419, 5079)

6. If a sixth false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. (4419, 5079)

7. If a seventh false alarm within the same three hundred and sixty-five-calendar-day-period for any burglary alarm system is recorded, the Coordinator shall notify the alarm user by regular mail and direct that the user pay to the City a penalty assessment, as prescribed in Appendix A within sixty (60) days of receipt of the notice of excessive false alarms. Any subsequent false alarms within the same three hundred and sixty-five-calendar-day-period shall be assessed, as prescribed in Appendix A for each occurrence. (4419, 5079)

Multiple false alarms generated in a twenty-four- (24-) hour period by a common cause shall be deemed to be one (1) false alarm for assessment purposes. (4111)
(D) Any alarm system which has ten (10) or more false alarms within a three hundred and sixty-five-calendar-day-period shall also be subject to permit revocation. (4111, 5079)

1. If ten (10) or more false alarms within a three hundred and sixty-five-calendar-day-period for any alarm system are recorded, the Coordinator shall notify the alarm user by certified mail of such fact and shall direct that the alarm user, within ten (10) days of receipt of the notice of excessive false alarms, submit a report to the Coordinator describing the actions taken or to be taken to discover and eliminate the cause of the false alarms. A copy of the notification shall be sent by regular mail to the alarm business providing service or inspection to the user. (4111, 5079)

(E) If the alarm user submits a report as directed, the Coordinator shall determine if the actions taken or to be taken will prevent the reoccurrence of false alarms. The Coordinator shall notify the alarm user in writing that the permit will not be revoked at that time and that if subsequent false alarms occur within the three hundred and sixty-five-calendar-day-period, the permit may be summarily revoked. (4111, 5079)

(F) If no report is submitted as required or if the Coordinator determines that the actions taken or to be taken by the alarm user will not prevent the reoccurrence of false alarms, the Coordinator shall give notice by certified mail to the alarm user that the permit will be revoked without further notice on the tenth (10th) day after the date of the notice. (4111)

(G) If the alarm user fails to pay the penalty assessment within the time provided after receipt of written notification from the Coordinator as provided in this Section, the Coordinator may summarily revoke the alarm user's permit through written notification mailed to the alarm user by certified mail, which notification shall be effective on the third (3rd) day following the mailing of said notice of revocation. The Coordinator shall have the authority to summarily revoke an alarm user's permit for failure to pay a penalty assessment. (4111)

(H) An alarm user whose permit has been revoked shall be immediately furnished written notification by certified mail of such revocation and shall within three (3) days after the furnishing of such written notification discontinue the use of the alarm system with respect to which a permit has been revoked. It shall be unlawful for any alarm user to fail to disconnect such system within three (3) days after written notification has been furnished advising the alarm user of the revocation of the alarm user permit, and such failure shall subject the alarm user to the penalties hereinafter provided. (4111)

(I) For purposes of any written notification to be provided under the terms of this Chapter, such notice shall be effective if the same is mailed by certified mail addressed to the alarm user at the address furnished to the Coordinator in connection with a permit application or at such other address as the alarm user may furnish in writing to the Mesa Police Department, and such notice shall be effective if mailed to the alarm business at the address provided to the Coordinator in connection with the filing of alarm user instructions or, alternatively, to the last known address of said alarm business. Any notice required hereunder shall be effective on the third (3rd) day after the notice has been deposited in the United States Certified Mails with sufficient postage attached. Failure to mail notice to an alarm business shall not impair or invalidate any notice furnished to the alarm user. (4111)
(J) An alarm user whose alarm permit has been revoked may have it reinstated by paying all overdue assessments, submitting a corrective report detailing the corrective action taken with proof of inspection for malfunctions attached, and paying a reinstatement fee as prescribed in Appendix A. (4111, 5079)

(K) Any alarm company that fails to comply with alarm business duties as outlined in this Chapter is subject to penalty assessments as prescribed in Appendix A. (5079)

(L) Any alarm user that is found to be operating an alarm system without a valid alarm permit is subject to penalty assessments as prescribed in Appendix A. (5079)

6-15-21: GENERAL REGULATIONS: (4111, 5079)

(A) Each alarm system shall be inspected and serviced by the permittee at least once in each twelve (12) month period. Records shall be maintained by the permittees for each system showing dates of inspection and the name of the person making such inspection. Records shall be kept for a minimum of two (2) years and be open to the Police Chief or his designee on his request upon twenty-four (24) hours' notice. (4111, 5079)

(B) It shall be unlawful for any person to intentionally activate any robbery panic or robbery alarm for any reason other than to warn of an actual robbery or to intentionally activate any burglar alarm for any reason other than to warn of an unauthorized entry into an alarm-protected premises. This Subsection shall not apply to the testing of alarm systems when the testing has been done in accordance with the prescribed guidelines set by the Police Department and when the Police Department has been given advance notice of such testing. (4111)

(C) No person or business who (which) purchases, leases, rents, or uses an audible alarm system, device, or service which is not connected to a central receiving station (of an alarm business) shall allow said alarm to sound in excess of twenty (20) minutes. (4111)

(D) No person shall use or cause to be used any Automatic dialing device or device attachment that automatically selects a public primary telephone trunk line of the City of Mesa and then reproduces any prerecorded message or signal. (5079)

1. Within sixty (60) days after the effective date of this Chapter, all existing automatic dialing devices programmed to select a public primary telephone trunk line of the City of Mesa and then reproduce any prerecorded message or signal shall be disconnected. (5079)

6-15-22: UNLAWFUL ACTS AND PENALTIES: (4111, 5079)

(A) In addition to the unlawful acts hereinabove specified, it shall be unlawful for any alarm user to install an alarm system for use within the City without obtaining a permit as required by this Chapter. It shall be unlawful for any alarm user to fail to disconnect an alarm system after the revocation of an alarm user's permit in accordance with the terms and provisions of this Chapter. It shall be unlawful to operate an alarm system without a permit. (4111, 5079)

(B) Penalty. Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. (4111)
6-15-23:  **APPEALS PROCEDURES: (4111, 5079)**

(A) Any party aggrieved by a decision of the Coordinator made pursuant to Section 6-15-20 may, within ten (10) days of receipt of notice of the decision, appeal to a Hearing Officer so designated by the City Manager. A copy of the appeal request shall be sent to the Coordinator. (4111)

(B) The request for an appeal shall set forth the specific objections to the decision of the Coordinator, which form the basis of the appeal. (4111)

(C) The Hearing Officer shall set a time and place for the hearing as soon as practicable. (4111)

(D) The decision of the Hearing Officer shall be based upon the evidence presented and it shall:

1. Affirm the decision of the Coordinator, in which case any assessment imposed shall be sustained; or (4111, 5079)

2. Reverse the decision of the Coordinator, in whole or part, in which case no assessment shall be imposed. (4111)

6-15-24:  **LIABILITY OF CITY LIMITED: (4111)**

The Police Department shall take every reasonable precaution to assure that alarm notifications received are given appropriate attention and are acted upon with dispatch. Nevertheless, the City shall not be liable for any failure or neglect to respond appropriately upon receipt of an alarm notification or the failure or neglect of any person with a license issued pursuant to the Chapter or with a franchise in connection with the installation and operation of equipment, the transmission of alarm signals, or the relaying of such signals and messages. In the event the City finds it necessary to order the revocation or disconnection of an alarm device, the City shall incur no liability by such action. (4111)
## Appendix A: Fines, Fees and Assessments (5079)

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<tr>
<td>Panic/Holdup Function</td>
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<td>Burglary Function and Panic/Holdup Function</td>
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<td>Operating an Alarm System without a permit</td>
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### False Alarm Assessments – Burglary

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### Alarm Company Licensing – Initial License Fees

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### Alarm Company Licensing – Renewal License Fees

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### Alarm Company Assessments

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<td>Failure to Provide Cancel/New Subscriber Lists as required</td>
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(5079)
CHAPTER 16

SEXUALLY ORIENTED BUSINESSES

SECTION:

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6-16-2: CLASSIFICATION
6-16-3: LICENSE REQUIRED
6-16-4: ISSUANCE OF LICENSE
6-16-5: FEES
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6-16-1: DEFINITIONS:

ADULT ARCADE (ALSO KNOWN AS "PEEP SHOW"): Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed exhibit "specified sexual activities" or "specified anatomical areas." (2618,3740)

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE: A commercial establishment which offers sexually explicit material for sale or rental, for any form of consideration, and meets any one (1) or more of the following criteria: (2618,3740)

(A) That has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618,3740)

(B) That has a substantial or significant portion of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618,3740)
(C) That derives thirty percent (30%) or more of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)

(D) That derives a substantial or significant portion of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)

(E) That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equal to at least two hundred (200) square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two (2) dimensions and all areas that are reserved for foot traffic shall be included; or (3740)

(F) That displays a substantial or significant amount of sexually explicit material in its display area. (3740)

ADULT CABARET: A nightclub, bar, restaurant, or other commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays:

(A) Persons who appear in a state of nudity or semi-nude; or (2618)

(B) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (2618)

(C) Films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters which depict or describe "specified sexual activities" or "specified anatomical areas." (2618,3740)

ADULT MOTEL: A hotel, motel, or similar commercial establishment that:

(A) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that depict or describe "specified sexual activities" or "specified anatomical areas" and has a sign visible from the public right-of-way which advertises the availability of adult, nude, sex, or "XXX" movies, videos, films, or other similar reproductions; or (2618,3740)

(B) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or (2618)

(C) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours. (2618)

ADULT MOTION PICTURE THEATER: A commercial establishment that features, exhibits, or displays during any part of two (2) or more days within any continuous thirty- (30-) day period for any form of consideration films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that exhibit "specified sexual activities" or "specified anatomical areas." (2618,3740)
ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays persons who appear in a state of nudity or semi-nude or live performances that expose or exhibit "specified anatomical areas" or "specified sexual activities." (2618,3470)

BOARD OF ADJUSTMENT: The board established pursuant to ARS §9-462.06 and Mesa City Code Section 11-18-5. (2618)

CHIEF OF POLICE: The Chief of Police of the City of Mesa or the designated agent of the Chief of Police. (2618)

EMPLOY, EMPLOYEE, AND EMPLOYMENT: Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. (2618)

ESTABLISHMENT: Means and includes any of the following: (2618)

(A) The opening or commencement of any sexually oriented business as a new business; or (2618)

(B) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or (2618)

(C) The addition of any sexually oriented business to any other existing sexually oriented business; or (2618)

(D) The relocation of any sexually oriented business. (2618)

LICENSEE: In the case of a business, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license, and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business. (2618)

NUDE MODEL STUDIO: Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly exhibited, before other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of Arizona or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or a structure: (2618,3740)
(A) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and (2618)

(B) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and (2618)

(C) Where no more than one (1) nude or semi-nude model is on the premises at any one time. (2618)

NUDITY OR A STATE OF NUDITY:

(A) The appearance of a human anus, male genitals, female genitals, or female breast; or (2618)

(B) A state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or areola of the female breast. (2618)

OPERATES OR CAUSES TO BE OPERATED: To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business. (2618)

PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity. (2618)

RESIDENTIAL DISTRICT: The Single Residence districts, the Multiple Residence districts, and the Town Center Residence districts described and defined in the Mesa Zoning Ordinance. (2618)

RESIDENTIAL USE: All uses allowed in residential districts under the Mesa Zoning Ordinance. (2618)

SEMI-NUDE: A state of dress which shows the female breast below a horizontal line across the top of the areola at its highest point, or which shows the male or female buttocks. This definition shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed in whole or in part. (2618,3740)

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that offers for any form of consideration or features, displays, exhibits, or permits: (3740)

(A) Physical contact in the form of wrestling or tumbling between two (2) or more persons when one (1) or more of the persons is in a state of nudity or semi-nude; or (2618,3740)

(B) Two (2) or more persons engaging in "specified sexual activities" or exposing "specified anatomical areas." (3740)
SEXUALLY EXPLICIT MATERIAL: Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, videocassettes, video reproductions, slides, or other products offered in photographic, electronic, magnetic, digital, or other imaging medium, or other visual representations that are distinguished or characterized by an emphasis on matters that depict, describe, or exhibit "specified sexual activities" or "specified anatomical areas," or instruments, devices, or paraphernalia, excluding condoms and other birth control and disease prevention products, that are designed for use in connection with "specified sexual activities." (3740)

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter center, or any combination of the foregoing. (2618,3740,5367)

SPECIFIED ANATOMICAL AREAS MEANS: (a) Human genitals in a state of sexual arousal; (b) the appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or (c) a state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or the areola of the female breast. (2618,3740)

SPECIFIED SEXUAL ACTIVITIES: Means and includes any of the following: (2618)

(A) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, that occurs directly and not through clothing; or (2618,3740)

(B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or (2618)

(C) Masturbation, actual or simulated; or (2618)

(D) Excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above. (2618)

SUBSTANTIAL ENLARGEMENT: Of a sexually oriented business, the increase in floor area occupied by the business by more than twenty-five percent (25%) as the floor area exists on August 1, 1991. (2618)

TAX AND LICENSING ADMINISTRATOR: The City of Mesa Tax and Licensing Administrator or the designated agent of the Tax and Licensing Administrator. (2618)

TRANSFER OF OWNERSHIP OR CONTROL: Of a sexually oriented business, means and includes any of the following: (2618)

(A) The sale, lease, or sublease of the business; (2618)
(B) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or (2618)

(C) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2618)

6-16-2: CLASSIFICATION:
Sexually oriented businesses are classified as follows: (2618)

(A) Adult arcades; (2618)
(B) Adult bookstores or adult video stores; (2618)
(C) Adult cabarets; (2618)
(D) Adult motels; (2618)
(E) Adult motion picture theaters; (2618)
(F) Adult theaters; (2618)
(G) Nude model studios; (2618, 5367)
(H) Sexual encounter centers; (2618, 3740, 5367)
(I) Adult novelty stores; and (3740, 5367)
(J) Any combination of classifications set forth above. (2618, 3740, 5367)

6-16-3: LICENSE REQUIRED:

(A) It is unlawful: (2618)

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Tax and Licensing Administrator pursuant to this Chapter. (2618)

2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Tax and Licensing Administrator pursuant to this Chapter. (2618)

3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Chapter. (2618)
(B) An application for a license must be made on a form prescribed by the Chief of Police. An application for a sexually oriented business license must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (+/-6”). (2618)

(C) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Chief of Police and the Tax and Licensing Administrator to determine whether the applicant meets the qualifications established in this Chapter. (2618)

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 6-16-4 and each applicant shall be considered a licensee if a license is granted. (2618)

6-16-4: ISSUANCE OF LICENSE:

(A) Within thirty (30) days after receipt of a completed application, the Tax and Licensing Administrator will approve or deny the issuance of a license to an applicant for a sexually oriented business license and to an applicant for a sexually oriented business employee license. The Tax and Licensing Administrator will approve the issuance of a license to an applicant unless the Chief of Police finds one (1) or more of the following to be true: (2618)

1. An applicant is under eighteen (18) years of age. (2618)

2. An applicant has been employed in a sexually oriented business in a managerial capacity in Mesa or any other jurisdiction within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)

3. The application and investigation fee or the license fee required by this Chapter have not been paid. (2618)

4. An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business. (2618)

5. An applicant has failed to provide information required in order to determine the qualifications of the applicant under this Chapter for issuance of the license or has falsely answered a question or request for information on the application form. (2618)

6. An applicant or the proposed establishment is in violation of or is not in compliance with this Chapter or the Mesa City Code. (2618)
7. An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. (2618)

8. An applicant or an applicant's spouse has been convicted of a crime: (2618)

(a) Involving: (2618)

(i) Any of the following offenses as described in Chapter 14 of the Arizona Criminal Code: (2618)

(aa) Indecent exposure; (2618)

(bb) Public sexual indecency; (2618)

(cc) Public sexual indecency to a minor; (2618)

(dd) Sexual abuse; (2618)

(EE) Sexual conduct with a minor; (2618)

(ff) Sexual assault; (2618)

(gg) Sexual assault of a spouse; (2618)

(hh) Molestation of a child; (2618)

(ii) Lewd and lascivious acts. (2618)

(ii) Any of the prostitution or pandering offenses described in Chapter 32 of the Arizona Criminal Code; (2618)

(iii) Any of the following offenses as described in Chapter 35 of the Arizona Criminal Code: (2618)

(aa) Production, publication, sale, possession, and presentation of obscene items; (2618)

(bb) Coercing acceptance of obscene articles or publications; (2618)

(cc) Furnishing obscene or harmful items to minors; (2618)

(dd) Public display of explicit sexual materials; (2618)

(EE) Creation, transportation, or distribution of obscene films, photographs, or motion pictures of minors; (2618)

(ff) Obscene or indecent telephone communications to minors for commercial purposes; (2618)
(iv) Any of the following offenses described in Chapter 35.1 of the Arizona Criminal Code: (2618)
    
    (aa) Commercial sexual exploitation of a minor; (2618)
    
    (bb) Sexual exploitation of a minor; (2618)
    
    (cc) Admitting minors to public displays of sexual conduct; (2618)
    
(v) Any of the following offenses described in Chapter 36 of the Arizona Criminal Code: (2618)
    
    (aa) Incest; (2618)
    
    (bb) Contributing to delinquency and dependency; (2618)
    
    (cc) Permitting life, health, or morals of a minor to be imperiled by neglect, abuse, or immoral
        associations; (2618)
    
(vi) Any offense described in Chapter 1 of Title 6 of the Mesa City Code pertaining to obscene live
    performances; (2618)
    
(vii) Any similar offenses to those described above under the criminal or penal code of Arizona, other
    states, Mesa, other cities, or other countries; (2618)
    
(viii) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; (2618)
    
(b) For which: (2618)
    
    (i) Less than two (2) years have elapsed since the date of conviction or the date of release from
        confinement imposed for the conviction, whichever is the later date, if the conviction is of a
        misdemeanor offense; (2618)
    
    (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from
        confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
        (2618)
    
    (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from
        confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or
        more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-
        four- (24-) month period. (2618)
(B) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse. (2618)

(C) An applicant who has been convicted or whose spouse has been convicted of an offense listed above may qualify for a sexually oriented business license only when the time period required by this Section has elapsed. (2618)

(D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the classification or classifications of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. All licenses, both those pertaining to the business as well as those applicable to employees, shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. (2618)

6-16-5: FEES:

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar ($500.00) nonrefundable application and investigation fee. (2618)

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Tax and Licensing Administrator an annual nonrefundable license fee of five hundred dollars ($500.00) within thirty (30) days of license issuance or renewal. (2618)

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by a fifty dollar ($50.00) nonrefundable application and investigation fee. (2618)

(D) All license applications and fees shall be submitted to the Tax and Licensing Administrator. (2618)

6-16-6: INSPECTION:

(A) A business license applicant or licensee shall permit representatives of the Police Department or any other city, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, or welfare or structural safety to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business. (2618)

(B) A person who operates a sexually oriented business or his agent or employee commits an offense if such person refuses to permit a lawful inspection of the premises by the persons designated above. (2618)

(C) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (2618)
6-16-7: EXPIRATION OF LICENSE:
All licenses shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-16-3. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected. (2618)

6-16-8: SUSPENSION:
The Tax and Licensing Administrator is authorized to, and will, suspend a sexually oriented business license and a sexually oriented business employee license for a period not to exceed thirty (30) days if the Chief of Police determines that a business licensee or an employee has: (2618)

(A) Violated or is not in compliance with this Chapter or with the Uniform Codes adopted by the City in Title 4 of the Mesa City Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or (2618)

(B) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises; or (2618)

(C) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter; or (2618)

(D) Permitted illegal gambling by any person on the sexually oriented business premises; or (2618)

(E) Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)

6-16-9: REVOCATION:

(A) The Tax and Licensing Administrator is authorized to, and will, revoke a license if a cause of suspension in Section 6-16-8 occurs and the license has been suspended within the preceding twelve (12) months. (2618)

(B) The Tax and Licensing Administrator is authorized to, and will, revoke a sexually oriented business license and a sexually oriented business employee license if the Chief of Police determines that a business licensee or an employee: (2618)

1. Gave false or misleading information in the material submitted to the City during the application process; or (2618)

2. Has allowed the possession, use, or sale of controlled substances on the premises; or (2618)

3. Has allowed prostitution on the premises; or (2618)

4. Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or (2618)
5. Has been convicted of an offense listed in Section 6-16-4(A)(a) for which the time period required in Section 6-16-4(A)(b) has not elapsed; or (2618)

6. On two (2) or more occasions within a twelve- (12-) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 6-16-4 for which a conviction has been obtained and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or (2618)

7. Has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or oral sexual contact to occur in or on the licensed premises. The term "oral sexual contact" shall have the same meaning as defined in Section 13-1401, Arizona Criminal Code; or (2618)

8. Is delinquent in payment to the City of hotel occupancy taxes, ad valorem taxes, sales taxes, or the annual license fee or any other fee or tax related to the sexually oriented business or other business of the licensee. (2618)

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license. (2618)

(D) Subsection (B)(7) (above) does not apply to adult motels as a grounds for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view. (2618)

(E) When the Tax and Licensing Administrator revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business or employee license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Tax and Licensing Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (B)(5) (above), an applicant may not be granted another license until the appropriate number of years required under Section 6-16-4(A)(b) has elapsed. (2618)

6-16-10: APPEAL:

If the City denies the issuance of a license or suspends or revokes a license, the City will send to the applicant or licensee by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the person whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the State Superior Court. An appeal to the Arizona Superior Court must be filed within thirty (30) days after the receipt of notice of the decision of the City. Licensee's filing of an appeal or other legal action, in good legal order, challenging the City's decision to suspend or revoke a license under this Chapter shall have the effect of maintaining the status quo until a judge hears and decides the merits of the matter. Applicant's filing of an appeal or other legal action, in good legal order, challenging the City's decision not to issue a license under this Chapter shall result in the City issuing a temporary license to applicant to operate until a judge hears and decides the merits of the matter. The licensor shall bear the burden of proof in court. (2618,3740)
6-16-11:   TRANSFER OF LICENSE:
A licensee shall not transfer a license to another nor shall a business licensee operate a different classification of a sexually oriented business than that designated in the application or operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. No sexually oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business. (2618)

6-16-12:   LOCATION OF A SEXUALLY ORIENTED BUSINESS:

(A) A person commits an offense if that person operates or causes to be operated a sexually oriented business in any zoning district other than the C-3 district (General Commercial), the M-1 district (Limited Industrial), the M-2 district (General Industrial), or the PEP district (Planned Employment Park) as defined and described in the Mesa Zoning Ordinance. (2618)

(B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of: (2618)

1. A church; or (2618)
2. A public or private elementary or secondary school; or (2618)
3. A public or private day care center, preschool, nursery, kindergarten, or similar use; or (2618)
4. A boundary of a residential district as defined in this Chapter; or (2618)
5. A public park; or (2618)
6. The property line of a lot devoted to a residential use as defined in this Chapter; or (2618)

7. An establishment having an Arizona Spirituous Liquor License with any of the following classifications: Bar License (Series #06), Beer and Wine Bar License (Series #07), or the equivalent of such licenses. (2618)

(C) A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business. (2618)

(D) A person commits an offense if the person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business. (2618)
(E) For the purposes of Subsection (B) (above), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, a public or private elementary or secondary school, a public or private day care center, preschool, nursery, kindergarten or similar use, or establishment having the designated Spirituous Liquor License or to the nearest boundary of an affected public park, residential district, or residential lot. The presence of city, county, or other political boundaries shall be irrelevant for purposes of calculating and applying the distance requirements of this Chapter. (2618)

(F) For purposes of Subsection (C) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located. (2618)

(G) Any sexually oriented business that fails to comply with Subsections (A), (B), or (C) of this Section but was lawfully operating before this Chapter took effect shall not be deemed to be in violation of this Chapter when this Chapter takes effect. However, such business will only be permitted to continue in noncompliance with Subsections (A), (B), or (C) (above) for a period not to exceed three (3) years from the effective date of this Chapter, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. In addition, during those three (3) years, such business shall not be increased, enlarged, extended, or altered, except that the business may be changed so as to fully comply with this Chapter. (2618)

(H) A sexually oriented business lawfully operating is not rendered in violation of this Chapter by the location, subsequent to the granting or renewal of the sexually oriented business license, of a church, public or private elementary or secondary school, public park, residential district, or residential lot within one thousand feet (1,000') of the sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked. (2618)

6-16-13: EXEMPTION FROM LOCATION RESTRICTIONS:

(A) If the City denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 6-16-12 of this Chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Clerk a written request for an exemption from the locational restrictions of Section 6-16-12. (2618)

(B) If the written request is filed with the City Clerk within the ten- (10-) day limit, the Board of Adjustment shall hear and consider the request. The Board of Adjustment shall set a date for the hearing within sixty (60) days from the date the written request is received. (2618)

(C) The Board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply. (2618)
(D) The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Section 6-16-12 if it makes the following findings: (2618)

1. That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare; and (2618)

2. That the granting of the exemption will not violate the spirit and intent of this Chapter of the City Code; and (2618)

3. That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of blight; and (2618)

4. That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of neighborhood renewal or restoration; and (2618)

5. That all other applicable provisions of this Chapter and the Mesa City Code will be observed. (2618)

(E) If the Board grants the exemption, the exemption is valid for one (1) year from the date of the Board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 6-16-12 until the applicant applies for and receives another exemption. (2618)

(F) If the Board denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action. (2618)

(G) The granting of an exemption does not exempt the applicant from any provisions of this Chapter other than the locational restrictions of Section 6-16-12. (2618)

6-16-14: HOURS OF OPERATION:
No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one (1:00) A.M. and six (6:00) A.M. on weekdays and Saturdays and one (1:00) A.M. and ten (10:00) A.M. on Sundays. (2618)

6-16-15: (RESERVED) (5367)
**6-16-16: ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:**

(A) A nude model studio shall not employ any person under the age of eighteen (18) years. (2618)

(B) A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Subsection if the person under eighteen (18) years was in a rest room not open to public view or persons of the opposite sex. (2618)

(C) A person commits an offense if the person appears semi-nude or in a state of nudity or knowingly allows another to appear semi-nude or in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way. (2618)

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (2618)

**6-16-17: ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS:**

(A) A person commits an offense if the person knowingly allows a person under the age of eighteen (18) years to appear semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)

(B) A person under the age of eighteen (18) years commits an offense if the person knowingly appears semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)

(C) It is a defense to prosecution under Subsections (A) and (B) of this Section if the person under eighteen (18) years was in a rest room not open to public view or to persons of the opposite sex. (2618)

**6-16-18: ADDITIONAL REGULATIONS FOR ADULT MOTELS:**

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Chapter. (2618)

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, such person rents or sublets a sleeping room to another and within ten (10) hours from the time the room is rented, such person rents or sublets the same sleeping room again. (2618)

(C) For purposes of Subsection (B) of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (2618)
6-16-19: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements: (2618)

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (+/-6”). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. (2618)

2. The application shall be sworn to be true and correct by the applicant(s). (2618)

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or his designee. (2618)

4. It is the duty of the owners and operator of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. In the case of an adult arcade (or "peep show"), it is the duty of the owners and operator of the premises and the licensed employees who are present to ensure that no more than one (1) person occupies a viewing room or "peep" booth at any time and that all other entrances to peep booths or other viewing areas (and to the aisles, walkways, and hallways leading to peep booths or other viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain, or other device. (2618)

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station. (2618)

6. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises, to ensure that the line of sight and view area specified in Subsection 5 (above) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this Section. (2618)
7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level. (2618)

8. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present on the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (2618)

9. No operator, owner, or employee shall allow openings of any kind to exist between viewing rooms or booths. (2618)

10. No person shall make or attempt to make an opening of any kind between viewing booths or rooms. (2618)

11. The operator or owner shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist. (2618)

12. The owner or operator shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting. (2618)

13. The owner or operator shall cause all wall surfaces and seating surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight inches (48") of the floor. (2618)

(B) A person having a duty under Subsections 1 through 13 of Subsection (A) (above) commits an offense if the person fails to fulfill that duty. (2618)

6-16-20: CRIMINAL PENALTY:
Any person who violates any provision of this Chapter or of the Mesa City Code as amended by this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment. (2618)

6-16-21: CIVIL INJUNCTION:
Any person who violates this Chapter or the Mesa City Code as amended by this Ordinance is subject to a civil suit for injunction as well as prosecution for criminal violations and liability for licensing sanctions such as suspension or revocation. (2618)

6-16-22: LIABILITY AND LIABILITY FOR THE CONDUCT OF OTHERS: (3740)

(A) The offenses and violations described in this Chapter require proof, direct or indirect, of culpable mental state. (2618,3740)

(B) A licensee of a sexually oriented business is jointly and individually liable for violations of and offenses under this Chapter by the employees of the sexually oriented business and for all civil and criminal sanctions or remedies for such violations and offenses, including but not limited to, license suspension or revocation, prescribed herein, when that licensee knew, or a reasonable licensee would have known, of those violations and offenses. (2618,3740)

6-16-23: EXCLUSIONS: (5367)
The licensing requirements of this Chapter shall have no application, no effect upon, and shall not be construed as applying to escorts, escort assistants or escort bureaus with a valid, unsuspended license to operate issued pursuant to Mesa City Code Title 6, Chapter 24. (5367)
CHAPTER 17

TATTOOING AND BODY PIERCING

SECTION:

6-17-1: DEFINITIONS (3425)
6-17-2: UNLAWFUL ACT
6-17-3: PENALTY

6-17-1: DEFINITIONS: (3425)
For the purposes of this Section, the term "tattoo" shall mean a permanent mark or design made on the skin by a process of pricking and ingraining an indelible pigment into or under the skin or by raising scars. The term "body piercing" shall mean cutting, injecting, poking, or inserting instruments upon or under the skin for the purpose of attaching earrings, rings, jewelry, jeweled studs, or other metallic, glass, or plastic object for the purpose of wearing such object. (2981,3425)

6-17-2: UNLAWFUL ACT:
It is unlawful for anyone to body pierce or cause a body pierce or to place a tattoo or cause a tattoo to be placed on any other person under the age of eighteen (18) years except with the consent of a parent or legal guardian. The parent or guardian must be present at the time of body piercing and/or tattooing. (2981,3425)

6-17-3: PENALTY:
Among other penalties that may apply, any person, firm, or corporation that violates any provision of this ordinance shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500) or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000). Each violation continued shall be a separate offense, punishable as described above. (2981,3425)
CHAPTER 18

CONTESTED PROPERTY DISPUTES

SECTION:

6-18-1: DISPUTES INVOLVING PROPERTY IN THE POSSESSION OF THE POLICE DEPARTMENT

(A) When the Police Department possesses property that it has obtained in the normal course of work but no longer needs, the Police Department shall determine whether disposal of the property is provided for by law. (2993)

(B) If disposal of the property described in Subsection (A) of this Section is not provided for by law, then the Police Department shall determine whether a dispute exists over the ownership of the property. If no dispute exists, then the Police Department may return the property to the person claiming ownership. (2993)

(C) If property described in Subsection (A) of this Section is claimed by more than one (1) person, then the Police Department shall send a request to the Mesa City Court for a hearing to be conducted to determine the ownership of the property. The Police Department shall mail copies of the request to each person who is claiming ownership. (2993)

(D) Upon receiving a request, the City Court shall schedule a hearing on the matter and shall provide written notification of the hearing date, time, and location to each person who is claiming ownership of the property. The hearing shall be informal. The technical rules of evidence shall not apply; decisions shall be based upon the preponderance of the evidence. The City Court shall allow testimony to be given orally or through sworn written affidavits. (2993)

(E) Final decisions of the City Court are subject to appeal to Superior Court pursuant to Arizona Revised Statutes Title 12, Chapter 6, Article 6. When the time for appeal has expired or, if the decision of the City Court is appealed, when a final order is issued by the Superior Court, the City Court shall notify the party awarded the property that they may obtain the property from the Police Department. (2993)

CHAPTER 19

RECOVERY OF COSTS FOR POLICE SERVICES

(Repealed by 4942)
CHAPTER 20
OPERATING A MOTOR VEHICLE ON UNPAVED SURFACE
(4820)

SECTION:

6-20-1: DEFINITIONS (4820)
6-20-2: VIOLATIONS (4820)
6-20-3: EXCEPTIONS (4820)
6-20-4: PENALTIES (4820)

6-20-1: DEFINITIONS: (4820)
For purposes of this Section, unless the context otherwise requires:

(A) "Motor Vehicle" means every motorized, electric, or other self propelled conveyance by which any person or property is or may be transported or drawn upon the ground, excepting devices moved by human power or used exclusively upon stationary rails or tracks. Motor vehicle includes all on and off-road vehicles, all-terrain vehicles and off-road recreational vehicles. (4820)

(B) "Unpaved Road" means any road, equipment path, or driveway that is not covered by asphalt, asphalitic concrete, or concrete pavement. (4820)

(C) "Unstabilized Surface" means any surface that is not covered by:

1. Asphaltic concrete,
2. Cement concrete,
3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, or
4. A stabilization method approved by the City Manager or Designee. (4820)

6-20-2: VIOLATIONS: (4820)
It is unlawful to operate or drive or leave any motor vehicle, on an unpaved road or unstabilized surface that is:

(A) Not a public or private road, street or lawful easement; and

(B) That is closed by the landowner by rule or regulation of a federal agency, this state, a county or a municipality or by a proper posting. (4820)
6-20-3: EXCEPTIONS: (4820)

(A) This Chapter 20 shall not apply to the operation of vehicles used in the normal course of business or the normal course of government operations. (4820)

(B) This Chapter 20 shall not apply to operations directed by utilities for operation, distribution and transmission systems provided that both of the following conditions are satisfied:

1. Operations are performed with a marked company vehicle; and

2. If operations are performed with a personal vehicle, then identification of the company shall be visible and readable by the public. (4820)

6-20-4: PENALTIES: (4820)

(A) As mandated by A.R.S. §9-500.27, a person who violates this Chapter 20 of the ordinance is guilty of a Class 3 Misdemeanor. (4820)

(B) As mandated by A.R.S. §9-500.27, if a person is deemed to have violated this Chapter 20 in addition to or in lieu of a fine, a judge may order the person to perform at least eight (8) but not more than twenty-four (24) hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both. (4820)
CHAPTER 21

FIREWORKS

(5021)

SECTION:

6-21-1: DEFINITIONS (5021)
6-21-2: FIREWORKS PROHIBITED; EXCEPTIONS (5021, 5260)
6-21-3: SALE OF FIREWORKS (5021)
6-21-4: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY (5021)
6-21-5: AUTHORITY TO ENFORCE VIOLATIONS; MEANS OF ENFORCEMENT; PENALTY (5021)

6-21-1: DEFINITIONS. (5021)

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Consumer firework means those fireworks defined by Arizona Revised Statutes Section 36-1601. (5021)

2. Display firework means those fireworks defined by Arizona Revised Statutes Section 36-1601. (5021)

3. Fireworks means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601. (5021)

4. Novelty items means federally deregulated novelty items that are known as glowworms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601. (5021)

5. Permissible consumer fireworks means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the City of Mesa. (5021)

6. Supervised public display means a monitored performance of display fireworks open to the public and authorized by permit by the City of Mesa Fire Chief or his designee. (5021)

7 Public facilities means any building or real property, excluding public right of way, which is owned, leased or otherwise operated by a governmental entity. (5021)
6-21-2: FIREWORKS PROHIBITED; EXCEPTIONS. (5021)

(A) The use, discharge or ignition of permissible consumer fireworks within the City of Mesa corporate limits, is prohibited except as provided for in this section:

(i) The use, discharge or ignition of permissible consumer fireworks is limited to June 24th through July 6th and December 24th through January 3rd on private property with the property owner’s permission. (5021, 5260)

(ii) The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities. (5021)

(B) Nothing in this section shall be construed to prohibit the use, discharge or ignition of novelty items as defined in Section 6-21-1(A)(4) or the occurrence of a supervised public display of fireworks. (5021)

(C) Permits may be granted by the City of Mesa Fire Chief or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. Additionally, a permit may be denied or revoked during time periods of High Fire Danger warnings. The City of Mesa Fire Chief or designee has authority to impose conditions on any permits granted. (5021)

6-21-3: SALE OF FIREWORKS. (5021)

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under 16 years of age. (5021)

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law. (5021)

(C) The sale of permissible consumer fireworks within the City of Mesa corporate limits is limited to May 20 through July 6 and December 10 through January 3 each year. (5260)

6-21-4: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY. (5021)

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following: (5021)

(i) The use, discharge or ignition of permissible consumer fireworks may only be used within the Mesa city limits between June 28th through July 4th and December 30th through January 1st on private property with the property owner’s permission. The use, discharge or ignition of fireworks is prohibited in all public parks, public retention basins and public facilities. Mesa City Code 6-21-2 (5021)

(ii) Permissible consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16. (5021)

(B) Signs required under this Section shall be placed at each cash register and in each area where permissible consumer fireworks are displayed for sale. (5021)

(C) The City of Mesa Fire Chief or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be filed with the Mesa City Clerk’s Office. (5021)
(A) The City of Mesa Fire Chief or designee or a City of Mesa police officer may issue complaints to enforce violations of this Chapter. (5021)

(B) Using, discharging or igniting permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties: (5021)

(i) A first offense is punishable by a fine of seventy-five dollars ($75.00). (5021)

(ii) A second offense within 12 months of the first offense is punishable by a fine of one hundred fifty dollars ($150.00). (5021)

(iii) A third offense within 12 months of the second offense is punishable by a fine of five hundred dollars ($500.00). (5021)

(iv) For each offense thereafter occurring within 12 months of the preceding offense is punishable by a fine of seven hundred fifty dollars ($750.00). (5021)

(C) All owners, managers, operators, tenants or other persons in control of a business offering for sale fireworks under this Chapter are jointly and individually liable for compliance with this Chapter. (5021)

(D) Selling or offering for sale permissible consumer fireworks in violation of this Chapter is a civil offense and is subject to the following penalties: (5021)

(i) A first offense is punishable by a fine of two hundred fifty dollars ($250.00). (5021)

(ii) A second offense within 12 months of the first offense is punishable by a fine of five hundred dollars ($500.00). (5021)

(iii) A third offense within 12 months of the second offense is punishable by a fine of one thousand dollars ($1000.00). (5021)

(iv) For each offense thereafter, the violator shall be subject to class one criminal misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the defendant is subject to a maximum fine of two thousand five hundred dollars ($2,500.00) and up to six (6) months in jail. (5021)

(E) The penalties provided for in Subsection (B) and (D) are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from issuing warnings for violations under this Chapter or seeking voluntary compliance with the provisions of this Chapter. (5021)
CHAPTER 22

CONVENIENCE STORES

(5056, 5279)

SECTION:

6-22-1: PURPOSE OF CHAPTER (5056)
6-22-2: DEFINITIONS (5056)
6-22-3: AUTHORITY OF THE CHIEF (5056)
6-22-4: DELIVERY OF NOTICES (5056)
6-22-5: REGISTRATION REQUIRED (5056)
6-22-6: CERTIFICATE OF REGISTRATION (5056)
6-22-7: ISSUANCE, DENIAL, AND DISPLAY OF CERTIFICATE OF REGISTRATION (5056)
6-22-8: EXPIRATION AND RENEWAL OF CERTIFICATION OF REGISTRATION (5056)
6-22-9: REVOCATION OF CERTIFICATE OF REGISTRATION (5056)
6-22-10: ASSESSMENT; SECURITY MEASURES APPLICABILITY; GRANDFATHERED CONVENIENCE STORES (5056, 5279)
6-22-11: INSPECTIONS (5056, 5279)
6-22-12: ALTERNATIVE SECURITY PLAN (5056)
6-22-13: APPEALS (5056)
6-22-14: VIOLATIONS; PENALTIES (5056)

6-22-1: PURPOSE OF CHAPTER. (5056)

The purpose of this Chapter is to protect the health, safety, and welfare of the citizens of the City of Mesa by reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores in the City. To this end, this Chapter establishes a registration program for convenience stores and provides requirements relating to security of the stores. (5056)

6-22-2: DEFINITIONS. (5056)

In this Chapter, the following words and phrases shall have the meanings stated in this Section unless the context otherwise requires: (5056)

(A) AGGREGATE AREA means the area contained within the perimeter of the inside surface of the exterior walls. (5279)

(B) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the Chief under this Chapter to the owner or operator of a convenience store. (5056)

(C) CHIEF means the Chief of Police of the City of Mesa or the designated agents of the Chief of Police. (5056)

(D) CONVENIENCE STORE means retail establishments that sell a limited line of groceries, prepackaged food items, tobacco and tobacco products, magazines, and other household goods, primarily for off-premises consumption and typically having extended hours of operation in a small building of less than 7,500 square feet. This definition includes small retail stores located on the same parcel as, or operated in conjunction with, a service station. (5056)
(E) DROP SAFE means a cash management device in which money can be deposited without the depositor having immediate access to the contents. (5056)

(F) EMPLOYEE means any person who performs any service on the premises of a convenience store on a full-time, part-time, temporary or contract basis (including managers), whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair, maintenance or cleaning of the premises or for the delivery of goods to the premises. (5056)

(G) GRANDFATHERED CONVENIENCE STORE means a convenience store constructed and in existence prior to September 12, 2011 that has not been remodeled since September 12, 2011. (5279)

(H) HEIGHT MARKER means a measuring strip that may be attached on or near a door frame of a convenience store to aid in identifying the height of a person entering or exiting the convenience store. (5056)

(I) MANAGER means the person designated in the registration application filed under this Chapter as being responsible for the daily operation of a convenience store. (5056)

(J) NEWLY CONSTRUCTED CONVENIENCE STORE means a convenience store built on vacant land or rebuilt on the existing foundation of a demolished building whose permit applications for the newly constructed convenience store were received and accepted by the City of Mesa Building Official on or after September 12, 2011. (5279)

(K) NOTICE means any written notice that the Chief is required to give an applicant or registrant under this Chapter. (5056)

(L) PERSON means any individual, corporation, organization, partnership, association, or any other legal entity. (5056)

(M) POLICE CALLS FOR SERVICE means the number of calls to the Mesa Police Department for criminal or suspected criminal activity. (5056)

(N) REGISTERED AGENT means the person identified in the registration application filed under this Chapter who is authorized to receive on behalf of the convenience store any legal process or notice required or provided for in this Chapter. (5056)

(O) REGISTRANT means a person issued a certificate of registration for a convenience store under this Chapter and includes all owners, lessees and operators of the convenience store identified in the registration application filed under this Chapter. (5056)

(P) REMODELED means any convenience store undergoing either of the following on or after September 12, 2011: (I) an increase in the floor area of an existing convenience store by fifty percent (50%) or more; or (II) alterations where the work area exceeds fifty percent (50%) of the aggregate area of the building. (5279)

6-22-3: AUTHORITY OF CHIEF. (5056)
The Chief shall implement and enforce this Chapter and may establish rules, regulations, or procedures as necessary to carry out the purpose of this Chapter. (5056)
6-22-4: DELIVERY OF NOTICES (5056)
A notice is deemed to be delivered: (1) on the date the notice is hand delivered to the applicant, registrant, or the registered agent of the applicant or registrant; or (2) when placed in the United States mail with postage affixed thereto and addressed to the applicant, registrant, or the registered agent of the applicant or registrant at the address provided for in the registration applicant. Delivery of the notice to any applicant or registrant on the application or the registered agent shall constitute sufficient notice to all registrants. (5056)

6-22-5: REGISTRATION REQUIRED. (5056)
(A) Each convenience store within the City of Mesa must have a valid certificate of registration within thirty (30) calendar days after it has opened for business. (5056)

(B) A registrant shall obtain a new certificate of registration within thirty (30) calendar days after any change in the information contained in the application for a certificate of registration for a convenience store, including, but not limited to, any changes in ownership of the convenience store, and any changes in the registered agent, manager, or emergency contact person for the convenience store. If the convenience store holds an Alternative Security Plan at the time that the change of information is provided, the Chief shall review the Plan to determine whether it shall remain effective. (5056)

6-22-6: CERTIFICATE OF REGISTRATION (5056, 5279)
(A) To obtain a certificate of registration for a convenience store, a person must submit to the Chief a notarized application on a form provided by the Mesa Police Department. The applicant must be the person who will own, operate, or manage the convenience store. (5056)

(B) Convenience stores that are not required to implement the security measures identified in Section 6-22-10(D) shall include a listing of any security measures under 6-22-10(D) that are in place in their stores. (5056, 5279)

6-22-7: ISSUANCE, DENIAL, AND DISPLAY OF CERTIFICATE OF REGISTRATION. (5056)
(A) The Chief shall issue to the applicant a certificate of registration for a convenience store if the Chief determines that the applicant has complied with all requirements for issuance of the certificate of registration. (5056)

(B) If the Chief determines that the requirements of Section 6-22-6 have not been met, the Chief shall deliver written notice to the applicant that the application is denied and shall include in the notice the reason for denial and a statement informing the applicant of the right of appeal pursuant to Section 6-22-13. (5056)

(C) A certificate of registration must be displayed in a conspicuous manner and location in the convenience store that is visible to the public inside the store. The certificate of registration must be presented upon request to the Chief or any other peace officer or regulatory officer or official having responsibility for enforcement of this Code for examination. (5056)

6-22-8: EXPIRATION AND RENEWAL OF CERTIFICATE OF REGISTRATION (5056, 5279)
(A) A certificate of registration for a convenience store expires two (2) years after the date of issuance. (5056)

(B) A certificate of registration may be renewed by making application in accordance with Section 6-22-6. A registrant shall apply for renewal at least thirty (30) calendar days before the expiration of the certificate of registration. (5056)
6-22-9: REVOCATION OF CERTIFICATE OF REGISTRATION

(A) The Chief may revoke a certificate of registration for a convenience store if the Chief determines that any registrant made a false statement as to a material matter in the application or in a hearing concerning the certificate of registration. The Chief may also revoke a certificate of registration for a convenience store if any registrant, agent or employee, at registrant’s convenience store has been found responsible (whether by admission, default or after a hearing) of three or more violations of this Chapter within a period of thirty-six months. (5056, 5279)

(B) A Notice of Revocation shall be sent to the registrant. The Notice shall include the reason for the revocation, the date the Chief orders the revocation, and a statement informing the registrant of the right to appeal pursuant to Section 6-22-13. The revocation is final unless the registrant files an appeal with the City Manager or designee within ten (10) calendar days after Notice of Revocation is delivered to the registrant. The appeal shall be in writing and shall state the grounds for the appeal. The City Manager, or designee, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. The revocation is stayed pending a final determination following the appeal. (5056, 5279)

6-22-10: ASSESSMENT; SECURITY MEASURES APPLICABILITY; GRANDFATHERED CONVENIENCE STORES (5056, 5279)

(A) Assessment. The Police Department shall have the authority to assess every convenience store in every odd year to determine the number of calls for police service per year. (5056, 5279)

(B) Applicability of Security Measures. In addition to all other requirements of this Chapter, newly constructed convenience stores and remodeled convenience stores shall comply with the security measures set forth in this Section. (5279)

(C) Grandfathered Convenience Stores. A grandfathered convenience store is not required to comply with the security measures set forth in this Section unless the store has had an average of thirty (30) or more calls for police service per year for the four (4)-year period immediately preceding an assessment by the Police Department. If a grandfathered convenience store required to comply with the security measures in this Section due to calls for service is determined not to have had an average of thirty (30) or more calls for police service per year for the four (4)-year period immediately preceding a subsequent assessment, then the requirement that the grandfathered convenience store comply with the security measures in this Section is suspended. If the grandfathered convenience store is again determined to have had an average of thirty (30) or more calls for police service in the four (4)-year period immediately preceding an assessment subsequent to suspension of the requirement to comply with the security measures, then the grandfathered convenience store shall forever be required to comply with the security measures. (5279)

(D) Security Measures. Newly constructed convenience stores, remodeled convenience stores, and grandfathered convenience stores identified under Paragraph C of this Section shall comply with the following security measures: (5056, 5279)
1. **Security Signs**: (5056, 5279)

   (a) Metal “NO TRESPASSING” signs shall be posted on each of the exterior sides of the building. Each sign shall state “NO TRESPASSING” in both English and Spanish with letters that are at least two inches tall. Each NO TRESPASSING sign must also state “A.R.S. 13-1502.” The signs may contain additional language as required by law and must be in a format approved by the Chief. For convenience stores located in a strip mall and not having more than two (2) exterior walls, one (1) of the above-mentioned metal “NO TRESPASSING” signs shall be affixed to the back door side of the building. (5279)

   (b) NO TRESPASSING signs shall be posted at each public entrance and exit of a convenience store. Each sign shall state “NO TRESPASSING” in both English and Spanish with letters that are at least one inch tall. Each “NO TRESPASSING” sign must also state “A.R.S. 13-1502.” The signs may contain additional language as required by law and must be in a format approved by the Chief. (5279)

   (c) One (1) current Trespass Enforcement Program sticker provided by the Mesa Police Department shall be affixed to the glass front door next to or below the entrance door handle. (5279)

   (d) A sign stating “Store is Under Video Surveillance” in letters at least one (1) inch high must be posted at each public entrance and exit of the convenience store and must be readable from inside and outside the store. (5279)

   (e) A sign indicating that an alarm system is in use must be posted at each public entrance and exit of the convenience store. (5279)

   (f) A sign indicating that employees cannot open the drop safe and that employees have minimum cash on hand must be posted at each public entrance and exit of the convenience store. (5279)

2. **Height Marker**: A height marker must be posted at each public exit door of a convenience store depicting the actual height of an individual exiting the store. (5056)

3. **Store Visibility**: A registrant shall provide for and maintain visibility in a convenience store as follows: (5056)

   (a) An unobstructed line of sight that allows a view of and from the cash register and sales transaction area through all windows and public entrance and exit doors must be maintained in the convenience store at all times. The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground. For purposes of measurements in this Subsection only, measurements shall be made from the inside of the store, starting at the floor and measuring upward. (5056, 5279)

   (b) All public entrance and exit doors of a convenience store must be made of glass or another transparent material. (5056)
4. Employee Safety Training: (5056, 5279)

(a) A registrant shall ensure that safety training is provided for and completed by employees of the convenience store in compliance with this Section. The safety training shall consist of completing a safety training program offered by the City of Mesa Police Department or a comparable training program approved by the Mesa Police Department. (5056, 5279)

(b) Each employee of a convenience store (with the exception of temporary employees) must complete the safety training program within thirty (30) calendar days after beginning employment with the convenience store. (5056, 5279)

(c) Each employee of a convenience store (with the exception of temporary employees) shall complete the safety training program every twenty-four (24) months or as otherwise directed by the Chief. (5279)

(d) If the convenience store hires temporary employees (either directly or through a temporary agency), those employees must complete the safety training program prior to beginning work. (5056, 5279)

(e) Each employee shall sign the “Mesa Police Department Approved Convenience Store Employee Safety Training Completion Statement” provided by the Mesa Police Department, which indicates the date and time of completion of the safety training. The employee’s supervisor shall also sign the Training Completion Statement verifying that the employee completed the required safety training. Copies of each employee’s statements must be maintained on file in the convenience store or electronically for six (6) months after the employee leaves employment with the convenience store or until the next bi-annual training is completed by that employee. The statements must be made available to the Chief or any other peace officer immediately upon request. (5056, 5279)

5. Telephone Access: Landline telephone access must be provided at each convenience store for use by employees to contact law enforcement or other emergency response if needed. (5056)

6. Trespass Enforcement Program Affidavit:

(a) A registrant shall execute a Trespass Enforcement Program affidavit, on a form provided by the Chief, which authorizes the police department to enforce, on behalf of the registrant, all applicable trespass laws on the premises of the convenience store. This form expires two (2) years from the date of the application. A renewal application for this affidavit shall be submitted thirty (30) calendar days prior to the expiration date. (5056)

(b) A Trespass Enforcement Log will be kept in the premises at all times out of public view, but accessible to staff and representatives of the Mesa Police Department on request. This log is a form provided by the Mesa Police Department where the trespassed individuals, along with their pertinent information, are listed for future reference in case of any further violations. (5056, 5279)
7. **General Safety Conditions:**

(a) Exterior entrances to the convenience store shall be illuminated with a minimum of five (5) foot candles, which equals five (5) lumens per square foot, of light at ground level to six (6) feet vertical from dusk to dawn. (5056)

(b) Existing exterior lamps provided on the building and in the parking areas for security of patrons and employees shall be repaired within forty-eight (48) hours when the light is not operational to maximize the lighting efficiency. (5056)

(c) If the convenience store has outdoor pay phones, they must be lit from dusk to dawn with a minimum of five (5) foot candles, which equals five (5) lumens per square foot, of light. (5056)

(d) The exterior refuse area of the store must have lighting from dusk to dawn that has a minimum of five (5) foot candles, which equals five (5) lumens per square foot of light. In lieu of having such lighting, a convenience store may employ one of the following measures: (i) have a fully functioning and operational professional grade automatic motion detector; or (ii) have a company policy in writing, acknowledged in writing by store employees, which prohibits employees from going to and from the exterior refuse area during hours of darkness. The written policy and all written employee acknowledgments of such policy must be made available to the Chief or any other police officer immediately upon request. (5279)

(e) Any graffiti that may appear on the registrant’s property shall be removed or covered within forty-eight (48) hours of discovery or when notice is given by the Police Department. (5056)

(f) Anytime the lobby or area open to the public is unattended and void of customers, the lock on the entry doors must be engaged. A “Reopen in 10 Minutes” or similar sign shall be placed on the customer entrance door during this time. An audible door alarm on entry doors that can be heard in each individual area of the store can serve as an alternative to locking the entry doors. Employees are then required to make every effort to return to the lobby or area open to the public as soon as the door alarm is activated, so as not to leave the area unattended when occupied by customers. (5056, 5279)

(g) Eight (8) inch tall address numbers must be installed in the form of paint, vinyl, plastic or other manmade material, wood or metal and maintained 1) on each street facing side of building; 2) on a stand-alone sign; or 3) posted above each entrance door for emergency address identification. (5056, 5279)

(h) Coolers containing beer or other alcoholic beverages will be secured or locked from public access from 2:00 a.m. to 6:00 a.m. (Monday through Sunday). (5056, 5279)

8. **Surveillance Camera System:** (5056, 5279)

(a) A registrant shall provide, maintain, and operate a minimum of two (2) color digital high resolution surveillance cameras inside the convenience store. (5279)

(b) A registrant shall provide, maintain, and operate a minimum of two (2) color or black and white digital high resolution surveillance cameras on the exterior of the building viewing the parking lot and/or gas pump area. (5279)

(c) Each camera must be capable of providing a digital image that clearly depicts the facial features of the person being filmed. The recorded image must be of such clarity, quality, and detail that it is useful in identifying a person suspected of committing a crime. (5056, 5279)
(d) One (1) interior camera must be positioned to provide coverage of the person operating the cash register and shall be positioned to provide a clear, full facial view of any person who approaches the cash register.

(e) One (1) interior camera must be positioned to provide a clear view of each individual entering or exiting the main public entrance of the store. The coverage of the cameras required by this Subsection must remain unobstructed by any display, sign, or other item. (5056, 5279)

(f) All cameras must remain unobstructed by any display sign or other item. (5279)

(g) Each camera must be operating and recording at all times, including hours when the store is not open for business. (5056, 5279)

(h) Each camera must be operated in a fixed position and not in a panning motion. (5279)

(i) Each camera must display the correct date and time of each recording. (5056, 5279)

9. Video Recording and Storage:

(a) One (1) or more digital video recording devices must be used to record images from each surveillance camera in the convenience store. Each recording device must be kept in a secured location that is remote from the surveillance cameras. (5056)

(b) The video recording devices must be designed, equipped, and operated, at a minimum, to digitally record images from the surveillance cameras every time motion occurs in the convenience store, whether or not the store is open for business. (5056)

(c) All digital video recordings must be maintained for at least fifteen (15) calendar days. (5056)

(d) A digital video recording must be made available to the Chief or any other peace officer for viewing as soon as possible but no later than seventy-two (72) hours after being requested. (5056)

10. Alarm System: A registrant shall provide, maintain, and operate an alarm system in the convenience store. (5056)

(a) A convenience store must have a silent panic or holdup alarm system for which a valid alarm license is held in compliance with Title VI, Chapter 15 of this Code. The system must, at a minimum, include a panic button located within reach of the cash register and out of view of the customer. The panic button must generate a silent alarm signal indicating a holdup or other life-threatening emergency requiring an immediate police department response. (5056)

11. Drop Safes: A registrant shall provide and maintain drop safes and signs indicating the use of drop safes in the convenience store. (5056)

(a) A convenience store shall have a cash accountability policy mandating the maximum amounts of cash that can be kept in cash registers. (5056)

(b) A drop safe must be bolted to the floor of the convenience store. A drop safe may have a time-delay mechanism to allow small amounts of change to be removed. (5056)
12. **Right to Require Additional Security Measures:** The Chief shall continue to monitor the number of calls for police service of those convenience stores that have implemented the security measures required in Section 6-22-10. If the Chief determines that a convenience store continues to have excessive calls for police service despite compliance with all security measures identified in 6-22-10, the Chief may order the convenience store to take additional security measures targeted at the specific criminal act(s) or suspected criminal activity(s) occurring at the convenience store by issuing a Notice to the registrant of additional measures required. Any such measures must be implemented in accordance with the timeframes set forth in the Notice. (5056, 5279)

**6-22-11: INSPECTIONS (5056, 5279)**

**Property Inspections:** Newly constructed convenience stores, remodeled convenience stores, and grandfathered convenience stores required to comply with the security measures under Section 10 of this Chapter pursuant to 6-22-10(C) shall permit, without notice during business hours and at other reasonable times upon request, representatives of the Police Department to inspect the interior and exterior of the convenience store, including but not limited to surveillance camera systems (if applicable), for the purpose of ensuring compliance with this Chapter. (5056, 5279)

**6-22-12: ALTERNATIVE SECURITY PLAN (5056)**

(A) Grandfathered convenience stores that are required to comply with the security measures set forth in Section 10 of this Chapter may request that the Chief approve an alternative Safety and Security Plan in lieu of one or more of the security measures required by Section 6-22-10. The Alternative Security Plan will (1) outline which security measures described in Section 6-22-10 will be implemented; (2) outline what alternative safety and security measures the registrant will implement and (3) explain how this Alternative Security Plan will meet the goals of this ordinance, including reducing crime; preventing the escalation of crime; and increasing the successful prosecution of crime that does occur. (5056, 5279)

(B) If the Chief determines that the Alternative Security Plan will meet the goals of this ordinance, he may approve the Alternative Security Plan. In determining whether to approve or disapprove the request for an Alternative Security Plan, the Chief will consider the following criteria: (5056)

1. The proposed security measures; (5056)

2. The number of calls for police service from the registrant’s convenience store; (5056)

3. The types of calls for police service from the registrant’s convenience store; (5056)

4. The cost of compliance with the security measures required by Section 6-22-10; and (5056)

5. The overall safety and security issues in the surrounding neighborhood. (5056)

(C) The Chief may grant an Alternative Security Plan subject to such terms and conditions as the Chief deems reasonably necessary to protect the health and safety of employees and the public, in light of the “Purpose” section of this Chapter. (5056)
(D) Eligibility

1. Convenience stores constructed or remodeled after the effective date of this Chapter are not eligible for an Alternative Security Plan. (5056)

2. A person who owns or operates a convenience store subject to this Chapter may request an Alternative Security Plan at any time. Forms for requesting an Alternative Security Plan will be provided by the Mesa Police Department. (5056)

(E) Review of Alternative Security Plan: If a registrant notifies the City of a change of registration information or if a registrant or convenience store receives a citation and the convenience store holds an Alternative Security Plan, the Chief shall review the Plan to determine whether it shall remain effective. Any changes to the Plan that are deemed necessary by the Chief to protect the health and safety of employees and the public, in light of the “Purpose” section of this Chapter shall be made within the timeframe set forth by the Chief. (5056)

6-22-13: APPEALS (5056, 5279)

If the Chief denies issuance or renewal of a certificate of registration, denies or modifies an Alternative Security Plan, or revokes a certificate of registration, this action is final unless the applicant or registrant files an appeal with the City Manager or designee within ten (10) calendar days after Notice of such decision is delivered to the applicant or registrant. The appeal shall be in writing and shall state the grounds for the appeal. The City Manager, or designee, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. A revocation of the Certificate of Registration is stayed pending a final determination following the appeal. (5056, 5279)

6-22-14: VIOLATIONS; PENALTIES. (5056)

(A) A person who violates a provision of this Chapter, or who fails to perform an act required of the person by this Chapter, commits a civil offense. (5056)

(B) All owners, managers, operators, tenants or other persons in control of a convenience store regulated under this Chapter are jointly and individually liable for compliance with this Chapter. (5056)

(C) Any police officer or City employee designated by the City Manager is authorized to commence an enforcement action under the provisions of this Chapter by issuing a uniform civil code complaint citation in substantially the form authorized under Title I of the Mesa City Code. (5056)

(D) When a violation of this Chapter is discovered, a person shall be given a written warning and shall have fourteen (14) days to correct the violation. If the violation is not corrected within fourteen (14) days, a person may be given a citation for a violation of this Chapter after evaluation of the circumstances. Only one warning for a particular violation need be given. Once a person has been given a warning for a particular violation, the person may be repeatedly cited for the same violation without any additional warnings. Once any person has been found responsible (whether by admission, default or after a hearing) for committing violations of this Chapter on three (3) separate dates and within a thirty-six (36) month time period, no additional warnings need be given for any violations of this Chapter. (5056, 5279)

(E) When any person is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, the court shall order the person to pay a mandatory civil sanction in the amount of one hundred and fifty dollars ($150.00) per violation. When any person is found responsible for any violation of this Chapter, whether by admission, default, or after a hearing, for a second time within thirty-six (36) months of any prior violations of this Chapter, the court shall order the person to pay an enhanced civil sanction of two hundred and fifty dollars ($250.00) per violation. When any person is found responsible for any violation of this Chapter, whether by admission, default, or after a hearing, for a third time within thirty-six (36) months of any prior violation(s) of this Chapter, the court shall order the person to pay an enhanced civil sanction of five hundred dollars ($500.00) per violation. (5056, 5279)
(F) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on three (3) separate dates within a thirty-six (36) month period, whether by admission, default, or after a hearing, shall be subject to Class One Criminal Misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the court may impose a sentence authorized by the laws of the State of Arizona for a Class One Misdemeanor, including incarceration not to exceed six (6) months in jail, a fine not to exceed two thousand five hundred dollars ($2,500.00), and up to three (3) years of unsupervised probation. The court shall order a person who has been convicted of a violation of this Section to pay a fine in the amount of at least five hundred dollars ($500.00) for each violation for which a conviction has been obtained. (5279)

(G) The thirty-six (36) month provision of this Section shall be calculated by the dates the violations were committed. The responsible person shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within thirty-six (36) months of the commission of another violation for which the responsible party was convicted or otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5279)

(H) Each day in which a violation of this Chapter continues shall constitute a separate offense. (5279)

(I) The penalties provided for in this Section are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5279)
CHAPTER 23

HOTEL REGISTRATION AND RECORDS

(5033)

SECTION:

6-23-1: DEFINITIONS (5033)
6-23-2: REGISTRATION AND RECORDS REQUIREMENTS (5033)
6-23-3: MAINTENANCE AND INSPECTION OF RECORDS (5033)
6-23-4: COMMENCEMENT OF AN ENFORCEMENT ACTION; CIVIL VIOLATIONS (5033)
6-23-5: CIVIL PENALTIES (5033)

6-23-1: DEFINITIONS (5033)
In this Chapter the following words and phrases shall have the meanings stated in the Section unless the context otherwise requires:

HOTEL: Any public or private space or structure, building or part of a building or group of buildings including but not limited to any hotel, inn, hostel, tourist home, house, motel, rooming house, apartment house, trailer, hostel, youth hostel or other place within the City offering lodging designed for or primarily occupied by transients for a fee, rent or in exchange for any form of consideration including money or any other thing of value. It does not include foster homes, rest homes, sheltered care homes, nursing homes, licensed health care facilities, jails, half-way houses, hospitals, asylums, sanitariums, orphanages, prisons or detention facilities. (5033)

OPERATOR: Any person, partnership, corporation or association who owns, leases, controls, manages, operates or is employed by a hotel. (5033)

PRE-APPROVED IDENTIFICATION SYSTEM: A database of information maintained by a hotel’s corporate office, such as a gold club membership or frequent stay rewards program, that requires a registrant to register online and identify him-or herself in exchange for certain benefits or perquisites offered by the hotel. (5033)

REGISTRATION RECORDS: A register maintained by a hotel containing the name and method of payment of every person who rents, pays a fee, or exchanges anything of value to occupy a room in the hotel, for any period of time. Such register shall include all information required by this Chapter. (5033)

REGISTRANT: At least one person over the age of eighteen who shall occupy the available lodging at a hotel. In the event of a family or youth group activity requiring the reservation of multiple rooms under one adult name, that adult shall be the registrant for all such rooms. (5033)

RESPONSIBLE PARTY: Any operator who violates provisions of this Chapter or has control over any operator who violates a provision of this Chapter. (5033)

OCCUPANT: A person other than the registrant, who occupies, dwells in, controls or takes possession of available lodging at a hotel for any period of time. (5033)

TRANSIENT: Any person who obtains lodging or the use of any lodging on a temporary basis. (5033)
6-23-2: REGISTRATION AND RECORDS REQUIREMENTS (5033)

(A) Operators shall require every registrant to provide evidence of identity: (5033)

1. Through a pre-approved identification system; or (5033)

2. Through credit card payment; and/or (5033)

3. Through a government issued identification or other identification, which contains the following information (5033)

   (a) Person’s full name; (5033)

   (b) Person’s date of birth or age; (5033)

   (c) Person’s residence address; and (5033)

   (d) Photograph of the person (5033)

(B) Operators shall keep a record of all registrants of the hotel which shall include the name and residence or billing address of the registrant, in addition to the following information: (5033)

1. The day, month, year and time of arrival of the registrant; (5033)

2. The number or location of the room(s) assigned to the registrant; (5033)

3. The date that the registrant and occupant(s) are scheduled to depart; (5033)

4. The rate charged and amount collected for the lodging; and (5033)

5. The method of payment for the lodging. (5033)

(C) In addition, if evidence of identity is provided under Section (A) (3) above, and the registrant pays by cash to occupy the room, operators shall take reasonable steps to verify the identification presented by the registrant and operators shall keep a record of items (A) (3) (b) and (A) (3) (c). (5033)

(D) Operators may request that all registrants provide the make, model and license plate number and state of any vehicle parked on hotel premises, and this information, if provided, shall be kept with the registration records of the hotel. (5033)
6-23-3: MAINTENANCE AND INSPECTION OF RECORDS (5033)

(A) Operators shall keep and maintain all registration records required by this Chapter for a period of 30 calendar days from the date of departure. (5033)

(B) No registration record(s) as defined in this Chapter shall be altered, erased or defaced so as to interfere with any inspection of the record. The registration records may be maintained in an electronic format, so long as the records comply with other provisions of this Chapter. (5033)

(C) The Mesa Police Department is hereby authorized to make inspections of the registration records to determine compliance with the provisions of this Chapter, in connection with any lawful investigation or for any other lawful purpose. (5033)

(D) Information contained in the registration records remains the property of the hotel and shall not be subject to public disclosure or considered public record unless such registration records become part of a City record; in such event, such information shall only be disclosed in accordance with public records laws. (5033)

(E) It is unlawful for any operator of a hotel to fail to maintain the registration records required by this Chapter or to fail to make the records available to the Mesa Police Department for inspection or investigation or any other law enforcement purpose upon demand. (5033)

6-23-4: COMMENCEMENT OF AN ENFORCEMENT ACTION; CIVIL VIOLATIONS (5033)

(A) Any police officer or City employee designated by the City Manager is authorized to commence an enforcement action under the provisions of this Chapter by issuing a uniform civil code complaint citation in substantially the form authorized under Title 1 of the Mesa City Code. (5033)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter, or from enforcing this Chapter through notices of violation, warnings or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5033)

(C) The responsible party shall, within ten (10) days of the issuance of the citation, either pay the civil sanction and the fees, or appear in person or through an attorney before the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the responsible party pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in 6-23-5. If the responsible party appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing. (5033)
(D) If a responsible party served with a citation fails to pay the civil sanction and the fees or to appear on or before the time directed to appear or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose a civil sanction plus the applicable fees and charges in accordance with Section 6-23-5 of this Chapter. (5033)

(E) All proceedings before the Civil Hearing Officer shall be non-adversarial, informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Rules of Procedure for Special Actions of the Arizona Supreme Court, Volume 17B of the Arizona Revised Statutes. (5033)

(F) Any judgment issued pursuant to this Article may be collected as any other civil judgment. (5033)

6-23-5: CIVIL PENALTIES (5033)

(A) Any operator who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than two hundred fifty dollars ($250.00) or more than one thousand five hundred dollars ($1,500.00). A second finding of responsibility for a violation of this Chapter shall result in a civil sanction of not less than two hundred and fifty dollars ($250.00) or more than two thousand five hundred dollars ($2,500.00). A third finding of responsibility for a violation of this Chapter shall result in a civil sanction of not less than five hundred dollars ($500.00) or more than two thousand five hundred dollars ($2,500.00). (5033)

(B) The Hearing Officer may take mitigating factors into consideration such as the size of the hotel to include the number of units and previous calls for police service in determining the amount of the sanction. (5033)

(C) The Hearing Officer may grant cost recovery for law enforcement services and/or establish a surcharge. (5033)

(D) Each subsequent violation shall be a separate offense, punishable as hereinabove described. (5033)
CHAPTER 24

ESCORT SERVICES

(5367)

SECTION:

6-24-1: PURPOSE AND INTENT (5367)
6-24-2: DEFINITIONS (5367)
6-24-3: ADMINISTRATION (5367)
6-24-4: LICENSE REQUIRED (5367)
6-24-5: TERM OF LICENSE; LICENSE RENEWAL (5367)
6-24-6: LICENSE APPLICATION AND FEES (5367)
6-24-7: LICENSE APPLICATION INVESTIGATION (5367)
6-24-8: ISSUANCE OF LICENSE; CHANGE IN INFORMATION (5367)
6-24-9: ADDITIONAL REGULATIONS (5367)
6-24-10: ESCORT BUREAU DUTIES (5367)
6-24-11: ADVERTISING
6-24-12: DENIAL, REVOCATION AND SUSPENSION OF LICENSE (5367)
6-24-13: APPEALS (5367)
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6-24-15: EXCLUSIONS (5367)

6-24-1: PURPOSE AND INTENT (5367)

It is the purpose and intent of the City Council, by the adoption of this Chapter, to regulate the escort industry: (1) for the protection of the public from criminal activity (such as prostitution, assault, sex trafficking of adults and children, and human trafficking) and health risks through the spread of sexually transmitted diseases; and (2) for the preservation of the peace and welfare of the community. (5367)

6-24-2: DEFINITIONS (5367)

The below words and phrases, wherever used in this Chapter, shall be construed as defined in this Section unless, clearly from the context, a different meaning is intended. 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. (5367)

(A) APPLICANT: A person who applies for a license issued pursuant to this Chapter and who, upon approval of the application, will be licensee. (5367)

(B) BUSINESS SERVICES DIRECTOR: The City’s Business Services Director or his/her designee. (5367)

(C) CITY: The City of Mesa, Arizona. (5367)

(D) CONSIDERATION: Money or money’s worth, payment, reward, fee, salary, commission, profit or anything regarded as a return given or suffered by one for the act or promise of another. (5367)
(E) **CONTROLLING PERSON:** (A) any individual who has a ten percent (10%) or greater interest in the ownership or the earning of the business of a licensee/applicant, and (B) any of the following persons for a licensee/applicant: (5367)

1. The president or other executive officers of a corporation; (5367)
2. Each general partner of a limited partnership or any partner of a non-limited partnership; (5367)
3. The managing members or officers of a limited liability company/corporation; or (5367)
4. A sole proprietor. (5367)

(F) **ESCORT:** Any person, who for consideration acts as, advertises as, or is held out to the public as available for hire to consort with or to accompany another person(s) to social affairs, places of amusement or entertainment, within any place of public or private resort, including within any private quarters. (5367)

(G) **ESCORT ASSISTANT:** Any person, not an escort, who for consideration: (5367)

1. Assists an escort in the escort’s services, including a person who drives an escort, provides scheduling or referral services, provides security services, offers or furnishes an escort, or introduces patrons to escorts; or (5367)
2. Acting as the agent for either an escort bureau or a patron, contacts or meets with patrons or escort bureaus at any location, whether that person is employed by the escort bureau or any other business, or is self-employed. (5367)

(H) **ESCORT BUREAU:** Any person, who for consideration, furnishes, refers or offers to furnish or refer escorts, or provides, or offers to introduce, patrons to escorts; the definition includes, but is not limited to, services provided by an escort agency or escort service. (5367)

(I) **HEARING OFFICER:** The Business Services Director or an independent contractor hired by the City to serve as a hearing officer to conduct a hearing and make an impartial determination on an appeal requested by a licenses/applicant pursuant to this Chapter. (5367)

(J) **LICENSE:** A license issued pursuant to this Chapter. (5367)

(K) **LICENSEE:** A person who is the holder of a valid license under this Chapter. A licensee includes an agent, servant, employee, controlling person or other person, while acting on behalf of that licensee, whenever such licensee is or would be prohibited from doing or performing an act or acts under this Chapter. (5367)

(L) **LICENSING ADMINISTRATOR:** The City’s Business Licensing and Revenue Collections Administrator or his/her designee. (5367)

(M) **LICENSING OFFICE:** The division of the City’s Business Services Department under the supervision of the City’s Licensing Administrator. (5367)

(N) **OFFER TO PROVIDE ACTS OF SEXUAL CONDUCT:** To offer, propose or solicit to provide sexual conduct to a patron including, but not limited to, conversations, advertisements and acts which would lead a reasonable person to conclude that such acts were to be provided or engaged in. (5367)

(O) **PATRON:** Any person who agrees, arranges, contacts, pays or attempts to hire the services of an escort, escort assistant or escort bureau. (5367)
(P) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual (natural person). The definition includes a trustee, receiver, assignee or similar representative. (5367)

(Q) **POLICE DEPARTMENT:** The City of Mesa Police Department. (5367)

(R) **PROSTITUTION:** Engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person. (5367)

(S) **SEXUAL CONDUCT:** Includes any of the following committed by or on a person: (5367)

1. Oral contact with the penis, vulva, breast or anus. This definition does not include an act of breast-feeding by a mother. (5367)

2. Flagellation or torture by or on a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed. (5367)

3. Any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast. (5367)

4. Penetration into the penis, vulva or anus by any part of the body or by any object. (5367)

(T) **SEXUALLY ORIENTED ESCORT:** An escort who: (5367)

1. Works for (as an agent, employee or independent contractor) or is referred to a patron by a sexually oriented escort bureau; (5367)

2. Engages in advertising to make a reasonable person believe that acts of sexual conduct or sexual stimulation will be provided; (5367)

3. Solicits, offers, agrees to provide or does provide acts of sexual conduct to a patron; or (5367)

4. Accepts an offer or solicitation to provide acts of sexual conduct for a fee, in addition to the fee charged by the escort bureau. (5367)

(U) **SEXUALLY ORIENTED ESCORT BUREAU:** An escort bureau which: (5367)

1. Engages in advertising to make a reasonable person believe that acts of sexual conduct or sexual stimulation will be provided by an escort; (5367)

2. Uses as escorts persons known to have violated the law regarding prostitution; (5367)

3. Solicits, offers or agrees to provide or does provide escorts who perform acts of sexual conduct to a patron; or (5367)

4. Employs, contracts with, refers or provides to a patron, a sexually oriented escort. (5367)

(V) **SEXUAL STIMULATION:** To excite or arouse the prurient interest, or to offer or solicit acts of sexual conduct as defined under “offer to provide acts of sexual conduct.” (5367)
6-24-3: ADMINISTRATION (5367)

It shall be the duty and responsibility of the Licensing Administrator to administer the provision of this Chapter. Pursuant to this duty, the Licensing Administrator shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. (5367)

6-24-4: LICENSE REQUIRED (5367)

(A) Any person desiring to engage in, conduct or carry on, in or upon any premises or real property located or situated within the City, the activities of an escort, must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to the provisions of this Chapter. (5367)

(B) Any person desiring to work or perform services as, conduct, manage, operate, or maintain an escort bureau located or situated within the City, or whose escorts or escort assistants will work in the City, must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to this Chapter. (5367)

(C) Any person desiring to work or perform services as an escort assistant upon any premises or real property located or situated within the City must first obtain and maintain in effect a current, unrevoked and unsuspended license issued pursuant to this Chapter. (5367)

6-24-5: TERM OF LICENSE; LICENSE RENEWAL (5367)

(A) Any license issued pursuant to this Chapter: (i) is non-transferable; (ii) shall be valid for a term of one (1) year from the date of issuance; and (iii) may be renewed by a licensee in accordance with this Chapter and such renewal shall be valid for a term of one (1) year. (5367)

(B) To renew a license, the completed renewal application must be submitted by the licensee, with the applicable fee, no later than forty-five (45) calendar days prior to the expiration of the license; failure to do so shall mean that the license will expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license must file a new application for a license and, if their license has expired, may not operate until a new license has been issued. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. (5367)

6-24-6: LICENSE APPLICATION AND FEES (5367)

(A) Any person desiring to obtain a license or renew an existing license to operate as an escort, escort assistant or escort bureau shall make application to the Licensing Office. An application must be accompanied by the applicable application or renewal fee established by the City. All fees are nonrefundable and are not prorated, except as otherwise required by law. Neither the filing of an application for a license, nor payment of an application or renewal fee, shall authorize the conducting of the business of an escort, escort assistant or escort bureau until such license has been granted or renewed. (5367)

(B) Each application for a license shall consist of the information set forth in the Subsection (B). Each applicant must provide, at a minimum, all of the following information, as applicable, in order to obtain a license: (5367)

1) Applicant’s full legal name, business name, all telephone numbers and email addresses under which applicant will be doing business or advertising, website(s), business entity information, and legal (business) address of the applicant (which may not be a P.O. Box). (5367)
(2) If the applicant is an individual (natural person) or sole proprietorship: (5367)

(a) Applicant’s physical description, and date and place of birth; (5367)

(b) Applicant’s addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application; (5367)

(c) Applicant’s business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment; and (5367)

(d) A current picture identification document, issued by a governmental agency, demonstrating applicant has reached the age of eighteen (18) years. (5367)

(3) If applicant is applying for a license to operate as an escort bureau: (5367)

(a) The address at which the applicant desires to do business that is open to the public or patrons; (5367)

(b) The true names and residential addresses of all persons employed or intended to be employed as escorts; and (5367)

(c) All business names, trade names or fictitious names under which the escort bureau is doing business or advertising. (5367)

(4) The names and contact information of all controlling persons for the applicant. (5367)

(5) Any other names by which the applicant or a controlling person is or has been known. (5367)

(6) The mailing address for the purpose of receiving City notices and other licensing correspondence relating to the applicant/licensee or the enforcement of this Chapter. (5367)

(7) The business or regulatory license history of the applicant for the ten (10) year period immediately preceding the date of application; whether the applicant, while operating under a business or regulatory license issued by a governmental jurisdiction, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation. (5367)

(8) Applicant’s felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, excluding those for civil traffic offenses, and the grounds for such convictions. (5367)

(9) For an applicant that is a business entity, the Articles of Incorporation, Articles of Organization or Certificate of Limited Partnership, together with any amendments thereto. (5367)

(10) A detailed description of the exact nature of the business to be conducted. (5367)

(11) Such other identification or information as the Police Department or Licensing Office may require: (i) in order to discover the truth of the matters required to be set forth in the application; or (ii) that is relevant to the issuance of a license pursuant to the requirements of this Chapter. (5367)
6-24-7: LICENSE APPLICATION INVESTIGATION (5367)

(A) Any applicant for a license shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as prescribed in this Chapter. (5367)

(B) Each person applying for a license and the controlling persons for the applicant shall submit a full set of fingerprints to the City in a manner approved by the Licensing Office. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. (5367)

(C) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of applicants/licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license. (5367)

(D) The Police Department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license in accordance with this Chapter. (5367)

6-24-8: ISSUANCE OF LICENSE; CHANGE IN INFORMATION (5367)

(A) Every license shall be issued in accordance with the applicable law including, but not limited to, A.R.S. § 41-1080 and Arizona Revised Statutes Title 9, Chapter 7, Article 4 (Municipal Regulations). No license shall be issued to an individual if the individual does not present one (1) or more of the documents listed in A.R.S. § 41-1080, indicating the individual’s presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act. (5367)

(B) When any change occurs regarding the written information provided to the City required in an application, the applicant/licensee shall give written notification of such change to the Licensing Office within ten (10) calendar days after such change. (5367)

6-24-9: ADDITIONAL REGULATIONS (5367)

(A) Any person licensed as provided in this Chapter must operate under the name or conduct business under the designation specified in such license. (5367)

(B) Any escort bureau licensed as provided in this Chapter must only conduct business at the location specified in such license and post their license in a conspicuous place upon the business premises. (5367)

(C) No escort bureau shall employ as an escort any person under eighteen (18) years of age. (5367)

(D) No escort, escort assistant or escort bureau shall furnish any escort or accept employment from any patron or person to be escorted or introduced, who is under eighteen (18) years of age. (5367)

(E) No person is permitted to operate or perform services as a sexually oriented escort or sexually oriented escort bureau, regardless of license. (5367)

(F) Each licensee operating as an escort or escort assistant shall carry their issued license upon his or her person when acting as an escort or escort assistant, and produce the same for inspection upon request, along with a government issued photo identification. (5367)
Escorts are prohibited from: (i) sexual conduct with patrons; (ii) groping the clothing covering a patron’s genitals or groping the clothing covering the breasts of a female patron; (iii) touching himself or herself, or asking a patron to himself or herself, on the genitals, buttocks or breasts (of a female patron); or (iv) requesting that a patron take off his or her clothing so as to expose the patron’s genitals or breasts (female patron). (5367)

6-24-10: ESCORT BUREAU DUTIES (5367)

(A) The escort bureau shall provide to each patron a written contract and receipt of payment for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount of money such services shall cost the patron, and any special terms or conditions relating to the service to be performed. (5367)

(B) The escort bureau, in terms of permitting consequences, is responsible and liable for the acts of all its employees, independent contractors and agents while working for the escort bureau including, but not limited to, telephone receptionists and escorts who are referred by the escort bureau with the escort is with the patron. (5367)

(C) An escort bureau shall not advertise, offer, solicit, or agree to provide escorts for sexual conduct. An escort bureau shall employ or provide only escorts who possess an escort license issued pursuant to this Chapter. (5367)

(D) No escort bureau may use, do business under, or advertise a telephone number until that number has first been reported to the Licensing Office on a form prescribed by the Licensing Office for that purpose. (5367)

(E) No escort bureau may use a business name, trade name or fictitious name until that name has first been reported to the Licensing Office on a form prescribed by the Licensing Office for that purpose. (5367)

6-24-11: ADVERTISING (5367)

No person is permitted to advertise or hold out to the public the availability of an escort, escort assistant or escort bureau without first obtaining a license therefore as provided in this Chapter, whether the actual business of an escort, escort assistant or escort bureau, as defined in this Chapter, is performed. The license number must be prominently displayed in such advertisements and prefaced with the letters “COM” to indicate a City of Mesa license number. This number must be included in all written, audio or electronic media advertisements. (5367)

6-24-12: DENIAL, REVOCATION AND SUSPENSION OF LICENSE (5367)

(A) Denial. In addition to any penalties set forth in this Chapter, a license issued pursuant to this Chapter (renewal or new) will only be granted if all of the below requirements of this Subsection (A) are met; the failure to meet any of the requirements will result in denial of the application. (5367)

(1) The required fees have been paid. (5367)

(2) The application, applicant and activities conform in all respects to the provisions of this Chapter, the ordinances of the City and laws of the State of Arizona. (5367)

(3) The applicant has not made a material misrepresentation of fact in the application. (5367)

(4) The applicant has provided in a timely manner all information required herein or reasonably necessary for issuance of the license. (5367)

(5) Neither the applicant or a controlling person has been convicted, in a court of competent jurisdiction, within the last ten (10) years, of a felony or misdemeanor, involving fraud, prostitution, pimping pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude. (5367)
(6) The applicant has not had a license similar to the one issued pursuant to the provisions of this Chapter issued by another governmental authority, revoked within the ten (10) year period immediately preceding the date of the filing of the application. (5367)

(7) The applicant or a controlling person does not owe a current debt to the City related to any open or closed account maintained or formerly maintained with the City (see Mesa City Code Title 1, Section 32). (5367)

(8) Applicant or a controlling person does not have: (5367)

(a) An outstanding warrant for his or her arrest; or (5367)

(b) Pending charges in a court of competent jurisdiction of the type listed in Section 6-24-12(A)(5). A renewal license may be issued if the licensee or a controlling person has a felony or misdemeanor charge of the aforementioned type pending in a court of competent jurisdiction; however, the issuance of such renewal license shall not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge. (5367)

(B) Suspension. (5367)

(1) In addition to any penalties set forth in this Chapter, a license shall be suspended if, during the term of the license, the Licensing Administrator determines that a licensee or controlling person has violated any of the provisions of this Chapter; however, the violation of certain provisions of this Chapter, as specifically set forth in Subsection (C) below, will result in revocation, rather than suspension, of a license. (5367)

(2) The penalty for a suspension of a license shall be: (5367)

(a) For the first suspension of a license during a twenty-four (24) month period, the license will be suspended up to fourteen (14) calendar days. (5367)

(b) For the second suspension of a license during a twenty-four (24) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days. (5367)

(c) For the third suspension of license during a twenty-four (24) month period, the license will be revoked in accordance with Subsection (C) below. (5367)

(C) Revocation. (5367)

(1) In addition to any penalties set forth in this Chapter, a license shall be revoked if during the term of the license, the Licensing Administrator determines: (5367)

(a) Licensee or a controlling person is convicted of a felony or misdemeanor criminal offense: (5367)

(i) Involving fraud, prostitution, pimping, pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude; (5367)

(ii) Involving untrue, fraudulent, misleading, or deceptive advertising; or (5367)

(iii) Having a reasonable relationship to functions of an escort, escort assistant or escort bureau. (5367)
(b) On two (2) or more occasions within a twenty-four (24) month period, an employee, independent contractor or agent of the licensee, while working for the licensee, is convicted of a felony or misdemeanor offense involving fraud, prostitution, pimping, pandering, lewd conduct, indecent exposure, pornography, sexual misconduct or sexual assault, or any other offense involving moral turpitude. For the purpose of this Section 6-24-12(C)(1)(b): (5367)

(i) In applying the twenty-four (24) month provision, the date of the commission of an offense will be used to calculate the time period; and (5367)

(ii) The two (2) or more offenses subjecting the license to revocation do not have to be: (a) violations of the same statute or ordinance so long as they are offenses of the type listed above in Section 6-24-12(C)(1)(b); or (b) committed by the same person, so long as they are committed by an employee, independent contractor or agent of the licensee while working for the licensee. (5367)

(2) If a license is revoked, the licensee and controlling persons may not apply for a license for a period of one (1) year from the date of revocation. (5367)

(D) A licensee will be notified of any denial, suspension or revocation of the license via a mailing method capable of tracking delivery. The cause for such denial, revocation or suspension shall be set forth in the notice. The decision to deny, suspend or revoke a license may be appealed in accordance with Section 6-24-13 (Appeals). (5367)

6-24-13: APPEALS (5367)

(A) Any party aggrieved by a decision of the Licensing Administrator under this Chapter may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of a notice of the decision from the Licensing Administrator or Licensing Office. Service of any notice issued pursuant to this Chapter shall be complete upon mailing to the address of record for the licensee or applicant on file in the Licensing Office. If a hearing is not requested within ten (10) calendar days of issuance of the notice, the decision of the Licensing Administrator will be deemed final, the aggrieved party having waived their right to appeal the decision by failing to request a hearing. (5367)

(B) The appeal must meet the following requirements: (i) it must be mailed to the Licensing Office and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision; and (ii) it must set forth the grounds upon which the person is appealing the decision. If an appeal meets the requirements of this Subsection (B), a hearing with a Hearing Officer will be scheduled within thirty (30) calendar days of receipt of the appeal, or at such later time agreed upon by the aggrieved party and the City. The failure of an appeal to meet the aforementioned requirements shall entitle the Business Services Director to deny the appeal, making the decision of the Licensing Administrator final. (5367)

(C) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. The filing of an appeal will suspend the decision of the Licensing Administrator, except for decisions to deny a new application, until such time as the Hearing Officer has rendered their decision. (5367)

(D) The Hearing Officer will render a decision within sixty (60) calendar days of a hearing, unless the Hearing Officer provides notice to the parties that additional time is needed, but in no event shall a Hearing Officer take longer than one hundred twenty (120) calendar days to render a decision. The decision of the Hearing Officer is final. An appeal of the Hearing Officer’s decision may be made in accordance with Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions). (5367)
6-24-14: PENALTIES (5367)

(A) Among other penalties that may apply, any person who violates any provision of this Chapter, whether or not the act is specifically stated as being unlawful, shall be guilty of a class one misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed the amounts set forth in the Section 6-24-14(A) and may also be punished by an imprisonment for a period not to exceed six (6) months. (5367)

(1) A person convicted of any offense listed in this Chapter shall pay a fine not less than five hundred dollars ($500.00). (5367)

(2) If within a period of thirty-six (36) months a person is convicted of a second violation of this Chapter, the person shall pay a fine not less than one thousand dollars ($1,000.00). (5367)

(3) If within a period of thirty-six (36) months a person is convicted of three or more times of a violation of this Chapter, the person shall pay a fine not less than one thousand five hundred dollars ($1,500.00). (5367)

(B) In addition to the fines set forth in Subsection (A), in accordance with A.R.S. § 13-803, upon conviction of a violation of this Chapter, an enterprise (as that term is defined in A.R.S. § 13-105) may be punished by additional fines, so long as the total amount of fines for the conviction of a violation does not exceed twenty thousand dollars ($20,000). (5367)

(C) Each violation continued shall be a separate offense, punishable as described herein. (5367)

(D) The denial, suspension or revocation of a license is not a defense to prosecution. (5367)

6-24-15: EXCLUSIONS (5367)

The requirements of this Chapter shall have no application, no effect upon, and shall not be construed as applying to any of the following: (5367)

(A) Employment agency services, except that any employment agency which provides escorts as defined herein, must obtain a license as required by this Chapter. (5367)

(B) A sexually oriented business with a valid, unsuspended license to operate issued pursuant to Mesa City Code Title 6, Chapter 16. (5367)

(C) An organization which is qualified for exemption from taxation of income under A.R.S § 43-1201. (5367)

(D) The participants in an auction held for the purpose of raising funds for a charitable cause or organization at which individuals, who personally receive no consideration, are auctioned off to serve as an escort on a one-time-only basis and where no sexual conduct is advertised to or does in fact take place between the participants; such events are commonly referred to as a date auction. (5367)
CHAPTER 1

FIRE PREVENTION STANDARDS

SECTION:

7-1-1: ASSUMING JURISDICTION OF FIRE PREVENTION STANDARDS

7-1-1: ASSUMING JURISDICTION OF FIRE PREVENTION STANDARDS:
Pursuant to the provisions of A.R.S. Section 41-2163(A)(2), the City of Mesa, having in effect a
nationally recognized fire code, does hereby assume jurisdiction from the State Fire Safety Committee for
prescribing and enforcing fire prevention standards throughout the City. Such standards shall not supersede or
exempt State or County owned and operated buildings and public schools from the State Fire Safety Committee’s
established fire prevention standards. (2211)

CHAPTER 2

FIRE CODE

(3076,3695,3766,3767,4552,4789,5021,5352,5364)

Section Two. ADOPTED BY REFERENCE

7-2-1: That Title 7, Chapter 2, Section 1 of the Mesa City Code is amended and shall read as follows:

The following publications are hereby adopted by reference as if set out at length in this Code:

(1) 2006 International Fire Code, including:

   Appendix B – FIRE-FLOW REQUIREMENTS FOR BUILDINGS
   Appendix C – FIRE HYDRANT LOCATIONS AND DISTRIBUTION
   Appendix E – HAZARD CATEGORIES
   Appendix F – HAZARD RANKING
   Appendix G – CRYOGENIC FLUIDS – WEIGHT AND VOLUME EQUIVALENTS
   Appendix H – FIRE SPRINKLER PLAN SUBMISSION REQUIREMENTS
   Appendix I – FIRE ALARM PLAN SUBMISSION REQUIREMENTS

Section Three. AMENDMENTS TO THE 2006 INTERNATIONAL FIRE CODE

SECTION 7-2-2 That Title 7, Chapter 2, Section 2 of the Mesa City Code is hereby amended and shall read as
follows:

Note: Underlined indicates proposed addition and Strikethrough indicates deletions to the text of the 2006
International Fire Code.

The 2006 International Fire Code is hereby amended in the following respects:

(A) CHAPTER 1 ADMINISTRATION

(1) Revise the following:

101.1 Title. These regulations shall be known as the Fire Code of [NAME OF JURISDICTION] Mesa Fire Code,
(2) Revise the following:

102.3 Change of use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the International Building Code, Mesa Building Code and the Mesa Existing Building Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the International Building Code, Mesa Building Code and Mesa Existing Building Code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

(3) Revise the following:

102.4 Application of building code. The design and construction of new structures shall comply with the International Building Code, Mesa Building Code, and any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the International Building Code, Mesa Building Code, shall be made in accordance therewith.

(4) Add the following:

102.6.1 International codes references. Within the technical codes and the referenced codes and standards therein, specific references to the following International Codes shall be deemed and interpreted to mean the specific City of Mesa Codes as listed herein:


(5) Revise the following:

105.1.2 Types of permits. There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by Section 105.6 for either:

   1.1. A prescribed period.

   1.2. Until renewed or revoked.
2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

3. Fire Safety operational permit. A Fire Safety operational permit is required for any inspectable occupancy within the City of Mesa and requires the applicant to provide contact information annually as required by the fire code official. The permit is valid for one year from date of issuance.

**Exception:** Home-based businesses are not required to obtain a Fire Safety Operational Permit.

(6) Revise the following:

105.4.1 Submittals. Construction documents shall be submitted in one or more sets and in such form and detail as required by the fire code official. The construction documents shall be prepared by a registered design professional licensed by the State of Arizona to design fire protection systems where required by the statutes of the jurisdiction in which the project is to be constructed.

105.4.2 Information on construction documents. Construction documents shall be drawn to scale upon suitable material. Electronic media documents are allowed to be submitted when approved by the fire code official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations as determined by the fire code official. Fire sprinkler and fire alarm documents shall comply with the recommended submittal packages from the Arizona Fire Marshal’s Association and the Arizona Fire Alarm Association. See Appendix H and I.

(7) Revise the following:

105.6 Required operational permits. The fire code official is authorized to issue operational permits for the operations set forth in Sections 105.6.1 through 105.6.1346.

(8) Delete Sections 105.6.1 through 105.6.46

(9) Add the following:

105.6.1 Carnivals and fairs. An operational permit is required to conduct a carnival or fair.

105.6.2 Covered mall buildings. An operational permit is required for:

1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall.

2. The display of liquid- or gas-fired equipment in the mall.

3. The use of open-flame or flame-producing equipment in the mall.

105.6.3 Exhibits and trade shows. An operational permit is required to operate exhibits and trade shows in facilities not designed for large public gatherings (>50 people).
105.6.4 Explosives. An operational permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33.

**Exception:** Storage in Group R-3 and R-5 occupancies of smokeless propellant, black powder and small arms primers for personal use, not for resale and in accordance with Section 3306.

105.6.5 Flammable and combustible liquids. An operational permit is required:

1. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes.
2. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.
3. To install, alter, remove, abandon, and place temporarily out of service or otherwise dispose of a flammable or combustible liquid tank.
4. To use and operate temporary tanks for vehicle fuel transfer operations.

105.6.6 Gated Access. An operational permit is required to use and maintain gated access.

105.6.7 Hazardous materials. An operational permit is required to store, transport on site, dispense, use or handle hazardous materials in excess of the amounts listed in Table 105.6.21.

105.6.8 Home Delivery of Liquid Oxygen. An operational permit is required to deliver liquid oxygen to residential occupancies.

105.6.9 Open burning. An operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. A 48-hour notice is required to obtain a permit. Instructions and stipulations of the permit shall be adhered to. The permit applicant shall demonstrate that permission has been obtained by the appropriate government agency, the owner, or the owner’s authorized agent. When limits for atmospheric conditions or hours restrict burning, such limits shall be designated in the permit restrictions.

**Exception:** Recreational fires.

105.6.10 Pyrotechnic special effects material. An operational permit is required for use and handling of pyrotechnic special effects material.

105.6.11 Residential Care. An operational permit is required to operate a residential licensed Group Home.

105.6.12 Spraying or dipping. An operational permit is required to conduct a spraying or dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15.
105.6.13 Temporary membrane structures, tents and canopies. An operational permit is required to operate an air-supported temporary membrane structure or a tent having an area in excess of 400 square feet (37 m²), or a canopy in excess of 1200 square feet (112 m²).

Exceptions:

1. Tents used exclusively for recreational camping purposes.

2. Fabric canopies open on all sides which comply with all of the following:
   2.1 Individual canopies having a maximum size of 700 square feet (65 m²).
   2.2 The aggregate area of multiple canopies placed side by side without a firebreak clearance of not less than 12 feet (3658 mm) shall not exceed 700 square feet (65 m²) total.

   2.3 A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be provided.

(10) Revise the following:

105.7 Required construction permits. The Mesa Administrative Code shall apply to fire code official is authorized to issue construction permits for work as set forth in Sections 105.7.1 through 105.7.13. Any conflicts with the provisions of Sections 105.7.1 through 105.7.13 and the Mesa Administrative Code, the Mesa Administrative Code shall take precedence.

(11) Revise the following:

SECTION 108

BOARD OF APPEALS

108.1 Board of appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The fire code official shall be an ex officio member of said board but shall have no vote on any matter before the board. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. Orders, decisions, or determinations made by the fire code official may, within thirty (30) days of the receipt of the notice of the decision, be appealed to the Building Board of Appeals, Section 2-11 of the Mesa City Code. The request for an appeal shall be in writing, shall set forth the specific objections to the decision of the fire code official, and this shall form the basis of the appeal. A hearing shall be set as soon as practicable. The decision of the Building Board of Appeals shall be based on the evidence presented.

108.2 Limitations on authority. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The board shall have no authority to waive requirements of this code.

108.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems and are not employees of the jurisdiction.
(B) CHAPTER 2 DEFINITIONS

(1) Add the following:

**DIRECTED CARE SERVICE.** The care of residents who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions. Directed care services include providing life sustaining programs and services, and may include personal care or supervisory care services.

(2) Revise the following:

**FIRE CODE OFFICIAL.** The fire chief or fire marshal or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative.

(3) Add the following:

**FIXED BASE OPERATOR (FBO).** A commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction.

**GAZEBO.** A free-standing, detached, open-sided, roofed building not exceeding 50 square feet in roof area. Same as a ramada.

**GROUP I HANGAR:** A Group I Hangar is an aircraft hangar as defined by NFPA 409.

**GROUP II HANGAR.** A Group II Hangar is an aircraft hangar as defined by NFPA 409.

**GROUP III HANGAR:** A Group III Hangar is an aircraft hangar that is either a single hangar building or a hangar building cluster as defined by NFPA 409 including separation distance requirements.

**NURSING HOME.** A facility that provides nursing services to residents. Nursing services include the curative, restorative and preventive aspects of nursing care that are performed at the direction of a physician by or under the supervision of a registered nurse licensed by the State.

(4) Revise the following:
[B] Factory Industrial F-1 Moderate-hazard Occupancy. Factory industrial uses which are not classified as Factory Industrial F-2 Low Hazard shall be classified as F-1 Moderate Hazard and shall include, but not be limited to, the following:

Aircraft (manufacturing, not including aircraft repair)
Appliances
Athletic equipment
Automobiles and other motor vehicles
Bakeries
Beverages; over 12-percent alcohol content
Bicycles
Boats
Brooms or brushes
Business machines
Cameras and photo equipment
Canvas or similar fabric
Carpets and rugs (includes cleaning)
Clothing
Construction and agricultural machinery
Disinfectants
Dry cleaning and dyeing
Electric generation plants
Electronics
Engines (including rebuilding)
Food processing
Furniture
Hemp products
Jute products
Laundries
Leather products
Machinery
Machinery
Metals
Millwork (sash & door)
Motion pictures and television filming (without spectators)
Musical instruments
Optical goods
Paper mills or products
Photographic film
Plastic products
Printing or publishing
Recreational vehicles
Refuse incineration
Shoes
Soaps and detergents
Textiles
Tobacco
Trailers
Upholstering
Wood; distillation
Woodworking (cabinet)

(5) Revise the following:
[B] Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides supervisory care or personal care services. The occupants are capable of self-preservation and of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities, licensed by the State of Arizona Department of Health Services with more than 16 residents
- Congregate care facilities
- Convalescent facilities
- Group homes
- Half-way houses
- Residential board and care facilities
- Social rehabilitation facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or R-5 as applicable shall comply with the *International Residential Code* in accordance with Section 101.2 of the *International Building Code*. A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.

(6) Revise the following:

[B] Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care or directed care services on a 24-hour basis of more than five persons who because of age, mental or physical disability are not capable of self-preservation or responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Assisted living homes licensed by the State of Arizona Department of Health Services with 5 or fewer residents that are not classified as R-3 or R-5.
- Hospitals
- Nursing homes (both intermediate care facilities and skilled nursing facilities)
- Mental hospitals
- Detoxification facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or R-5 as applicable shall comply with the *International Residential Code* in accordance with Section 101.2 of the *International Building Code*.

(7) Revise the following:

[B] Group I-4, day care facilities. This occupancy group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with ten five or fewer persons, including not more than 5 infants 2 ½ years of age or less, shall be classified as Group R-3 or R-5 as applicable shall comply with the *International Residential Code* in accordance with Section 101.2 of the *International Building Code*. Places of worship during religious functions are not included.

**Adult care facility.** A facility that provides accommodations for less than 24 hours for more than ten five unrelated adults and provides supervised care supervision and personal care services shall be classified as Group I-4.

**Exception:** Where the occupants are capable of responding to an emergency situation without physical assistance from the staff the facility shall be classified as Group A-3.
**Child care facility.** A facility that provides supervision and personal care on less than a 24-hour basis for more than ten five children 2 ½ years of age or less shall be classified as Group I-4.

**Exception:** A child day care facility that which provides care for more than ten five but no more than 100 children 2 ½ years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

**Revise the following:**

[B] **Residential Group R.** Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code in accordance with Section 101.2 of the International Building Code. Residential occupancies shall include the following:

**R-1** Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:
- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

**R-2** Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:
- Apartment houses
- Boarding houses (not transient)
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

**R-3** Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4, R-5 or I, and where buildings do not contain more than two dwelling units, or one of the following including:

- Buildings that do not contain more than two dwelling units
  - Adult care facilities that provide accommodations for ten five or fewer persons of any age for less than 24 hours. Such adult care facilities that are within a single residence are permitted to comply as R-5.
  - Child care facilities that provide accommodations for ten five or fewer persons of any age for less than 24 hours. Such childcare facilities that are within a single residence are permitted to comply as R-5.
- Congregate living facilities with 16 or fewer occupants.
- Adult and child care facilities that are within a single family home are permitted to comply with the International Residential Code.
Assisted living homes licensed by the State of Arizona Department of Health Services with 5 or fewer residents that are capable of self-preservation and of responding to an emergency situation without physical assistance from staff.

Assisted living homes licensed by the State of Arizona Department of Health Services, including facilities providing directed care services, with 5 or fewer residents that are not capable of self-preservation or of responding to an emergency situation without physical assistance from staff. Such assisted living homes shall be protected with automatic sprinkler systems in accordance with Section 903.3 and a smoke alarm system in accordance with Section 907.2.10.1.3.

**R-4** Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3 or R-5, in the International Building Code for Group R-3, except as otherwise provided for in this code or shall comply with the International Residential Code. All occupants shall be capable of self-preservation and of responding to an emergency situation without physical assistance from staff. R-4 occupancies shall include, but are not limited to:

- Assisted living homes located in residentially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health Services with more than 5 but not more than 10 residents.

- Assisted living centers located in commercially zoned districts in accordance with Title 11 (Zoning) of the Mesa City Code licensed by the State of Arizona Department of Health Services with more than 5 but not more than 16 residents.

A facility such as above in which any occupant is incapable of self-preservation or of responding to an emergency situation without physical assistance from staff, shall be classified as I-2 and protected by an automatic sprinkler system and an automatic fire alarm system.

(9) Add the following:

**R-5** Residential occupancies arranged for occupancy as detached one- and two-family dwellings and multiple single-family dwellings (townhouses) and their accessory structures conforming with the Mesa Residential Code. R-5 occupancies may also include:

- Adult care facilities that provide accommodations for ten or fewer persons of any age for less than 24 hours that are within a single residence.
- Childcare facilities that provide accommodations for ten or fewer persons of any age for less than 24 hours that are within a single residence.
- Assisted living homes licensed by the State of Arizona Department of Health Services with 5 or fewer residents that are capable of self-preservation or responding to an emergency situation without physical assistance from staff.
- Assisted living homes licensed by the State of Arizona Department of Health Services, including facilities providing directed care services, with 5 or fewer residents that are not capable of self-preservation or responding to an emergency situation without physical assistance from staff. Such assisted living homes shall be protected with automatic sprinkler systems in accordance with section 903.3 and a smoke alarm system in accordance with section 907.2.10.1.3.
- Congregate living facilities with 16 or fewer occupants.
(10) Revise the following:

[B] Moderate-hazard storage, Group S-1. Buildings occupied for storage uses that are not classified as Group S-2, including, but not limited to, storage of the following:

Aerosols, Levels 2 and 3
Aircraft repair hangar
Bags: cloth, burlap and paper
Bamboos and rattan
Baskets
Belting: canvas and leather
Books and paper in rolls or packs
Boots and shoes
Buttons, including cloth covered, pearl or bone
Cardboard and cardboard boxes
Clothing, woolen wearing apparel
Cordage
Dry boat storage (indoor)
Furniture
Furs
Glues, mucilage, pastes and size
Grains
Horns and combs, other than celluloid
Leather
Linoleum
Lumber
Motor vehicle repair garages complying with the maximum allowable quantities of hazardous materials listed in Table 307.1(1) (see Section 406.6)
Photo engravings
Resilient flooring
Silks
Soaps
Sugar
Tires, bulk storage of
Tobacco, cigars, cigarettes and snuff
Upholstery and mattresses
Wax candles

(11) Revise the following:
[B] Low-hazard storage, Group S-2. Includes, among others, buildings used for the storage of noncombustible materials such as products on wood pallets or in paper cartons with or without single thickness divisions; or in paper wrappings. Such products are permitted to have a negligible amount of plastic trim, such as knobs, handles or film wrapping. Storage uses shall include, but not be limited to, storage of the following:

Aircraft hangar
Asbestos
Beverages up to and including 12-percent alcohol in metal, glass or ceramic containers
Cement in bags
Chalk and crayons
Dairy products in nonwaxed coated paper containers
Dry cell batteries
Electrical coils
Electrical motors
Empty cans
Food products
Foods in noncombustible containers
Fresh fruits and vegetables in nonplastic trays or containers
Frozen foods
Glass
Glass bottles, empty or filled with noncombustible liquids
Gypsum board
Inert pigments
Ivory
Meats
Metal cabinets
Metal desks with plastic tops and trim
Metal parts
Metals
Mirrors
Oil-filled and other types of distribution transformers
Parking garages, open or enclosed
Porcelain and pottery
Stoves
Talc and soapstones
Washers and dryers

(12) Add the following:

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care service includes assisting with activities of daily living that can be performed by persons without professional skills or professional training and may include the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed by the State.

RAMADA. See definition for Gazebo.

READILY ACCESSIBLE. Access that is capable of being reached safely and quickly for operation, repair or inspection without requiring those to whom ready access is requisite to climb over or remove obstacles, or to resort to the use of portable access equipment.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care, supervisory care or directed care services. This classification shall include, but not be limited to, the following: assisted living facilities, residential board and care facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.
SUPERVISORY CARE SERVICE. The care of residents who require general supervision, including providing daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications. Provision of any of the following services shall constitute supervisory care: cooking or meal service, laundry service, linen or maid service.

TRANSIENT AIRCRAFT. Aircraft based at another location and is at the transient location for not more than 90 days.

(C) CHAPTER 3 GENERAL PRECAUTIONS AGAINST FIRE

(1) Revise the following:

304.1.1 Waste material. Accumulations of materials such as but not limited to: wastepaper, wood, hay, straw, weeds, litter, vehicle parts, tires or combustible or flammable waste or rubbish of any type shall not be permitted to remain on a roof or in any court, yard, vacant lot, alley, parking lot, open space, or beneath a grandstand, bleacher, pier, wharf, manufactured home, recreational vehicle or other similar structure. All placement of waste material awaiting removal shall comply with 315.3.

(2) Revise the following:

311.2.2 Fire protection. Fire alarm, sprinkler and standpipe systems shall be maintained in an operable condition at all times.

Exceptions:

1. When the premises have been cleared of all combustible materials and debris and, in the opinion of the fire code official, the type of construction, fire separation distance and security of the premises do not create a fire hazard.

2. Where buildings will not be heated and fire protection systems will be exposed to freezing temperatures, fire alarm and sprinkler systems are permitted to be placed out of service and standpipes are permitted to be maintained as dry systems (without an automatic water supply) provided the building has no contents or storage, and windows, doors and other openings are secured to prohibit entry by unauthorized persons.

3. Where a fire alarm system was required for protection and/or evacuation of occupants, that system need not be maintained while the building is vacant.

(3) Revise the following:

311.5 Placards. Any building or structure determined to be unsafe pursuant to Section 110 of this code shall be marked as required by Sections 311.5.1 through 311.5.45.

311.5.1 Placard location. Placards shall be posted high on a minimum of two sides of the structure, with one side being the primary entrance to the property by responding crews. For larger or more complex structures, smaller signs of approximately 6 X 6 inches shall be posted at each entry point, and additional larger signs shall be added as approved. Placards shall be applied on the front of the structure and be visible from the street. Additional placards shall be applied to the side of each entrance to the structure and on penthouses.

311.5.2 Placard size and color. A white X on a red background, with signage size of 24 X 24 inches. Placards shall be 24 inches by 24 inches (610 mm by 610 mm) in size with a red background, white reflective stripes and a white reflective border. The stripes and border shall have a 2 inch (51 mm) stroke.
(4) Delete 311.5.4 Placard Symbols.

(5) Revise the following:

311.5.35 Informational use. The use of these symbols shall be informational only and shall not in any way limit the discretion of the on-scene incident commander.

(6) Add the following:

315.2.5 Storage Under Stairways. Storage is prohibited under stairways.

Exception: Storage is allowed under interior or exterior stairways when spaces are protected below by one-hour fire-resistance-rated construction as specified in the MBC or are protected by fire sprinklers. A minimum of 18 inches (457 mm) clearance from the sprinkler head plane to the combustible storage shall be maintained.

(7) Add the following:

315.3.3 Tire Storage. Outside storage of tires shall be in accordance with this section unless the outside storage of tires complies with Chapter 25.

(D) CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS

(1) Add the following:

401.3.2.1 Resetting alarms. No person shall reset a fire or emergency alarm system, alarm initiating device or component until the Fire Department arrives.

Exception: The person responsible for the property may investigate the building or area of alarm and if no evidence of fire or emergency is found, the system may be silenced providing the Fire Department is notified of the findings.

(2) Revise the following:

403.1 Fire watch personnel. When, in the opinion of the fire code official, it is essential for public safety in a place of assembly or any other place where people congregate, because of the number of persons, or the nature of the performance, exhibition, display, contest or activity, the owner, agent or lessee shall provide one or more fire watch personnel, as required and approved by the fire code official, to remain on duty during the times such places are open to the public, or when such activity is being conducted, or as determined by the fire code official.

403.1.1 Duties. Fire watch personnel shall keep diligent watch for fires, obstructions to means of egress and other hazards during the time such place is open to the public or such activity is being conducted and take prompt measures for remediation of hazards, extinguishment of fires that occur and assist in the evacuation of the public from the structures.

403.1.2 Qualification. Personnel utilized for fire watch shall be third-party companies or individuals and shall have no duties other than fire watch duties assigned to them. Fire watch personnel are subject to approval by the fire code official.
E) CHAPTER 5 FIRE SERVICE FEATURES

(1) Add the following:

501.5 Fire protection in Recreational Vehicle, Mobile Home and Manufactured Housing Parks, Sales Lots and Storage Lots. Recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with Sections 503 through 508.

Exception: Recreational vehicle parks located in remote areas shall be provided with fire hydrant protection and access roadways as required by the Fire Code Official.

(2) Revise the following:

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. (5283)

1. Fire apparatus access roads are not required for one and two family group R3/R5 dwellings that comply with both of the following: (I) the dwelling does not exceed 5000 square feet of conditioned space as defined by the Mesa Energy Conservation Code, and (II) the dwelling has a minimum lot frontage of 50 feet adjacent to a fire apparatus access road complying with Section 503 of the Fire Code. In addition, for one and two family group R3/R5 dwellings that do not comply with both of these requirements, the fire code official is authorized to increase the 150-foot fire access distance requirement set forth in Section 503.1.1, taking into account other hazard-mitigating factors such as, but not limited to, proximity of the property to the closest fire station, proximity of the property to a fire hydrant, the location of the property within the subdivision, or ability to access the property from two or more fire access roads. (5283, 5364)

2. Fire apparatus access roads are not required for: (5364)

   A. Detached, unoccupied telecommunications buildings. (5364)

   B. Accessory structures of Group U occupancy located on one and two family lots. (5364)

3. The fire access roadway may extend up to 300 feet (91440mm) of all portions of any building that is protected with an automatic fire sprinkler system in accordance with Section 903.3 of this code. (5364)

4. The fire code official is authorized to increase the dimension of 150 feet (45720 mm) where fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided. Examples of alternative means of fire protection that may be approved include, but are not necessarily limited to: (5283, 5352, 5364)

   A. Alternative means as prescribed in Sections 104.6.4 through 104.9 of the Fire Code. (5352)

   B. Alternative construction type VA as provided in Chapter 6 of the Mesa Building Code. (5352)

   C. Alternative construction type IIB as provided in Chapter 6 of the Mesa Building Code. (5352)

   D. Automatic fire sprinkler system installed in accordance with Section 903.3 of this Code. (5352)
(3) Revise the following:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 15 feet (4572 mm) or 12 feet six inches (1115 mm).

(4) Revise the following:

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities as determined by the fire code official.

(5) Revise the following:

503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus. Dead-end access roads may be up to 300 feet to buildings protected by an automatic fire sprinkler system in accordance with Section 903.3 of this code. Dead-end fire apparatus access road shall not have more than one turn for the fire apparatus to back around. The total aggregate of the turn shall be not more than 90º.

(6) Revise the following:

503.2.7 Grade. The grade of the fire apparatus access road shall be within the limits established by the fire code official based on the fire department’s apparatus. Whether temporary or permanent, fire apparatus access roads with grades equal to or less than 6% may be designed with materials such as materials or compacted ABC or compacted decomposed granite. All fire apparatus access roads that exceed 6% shall be designed with paved materials such as concrete or asphalt. All fire apparatus access roads with grades that exceed 12% shall be subject to the approval of the Fire Code Official.

(7) Add the following:

503.7. Residential developments. The access to residential developments shall comply with this section. A residential development may have public streets or private streets.

503.7.1. Multiple access roads. Residential developments where the number of dwelling units exceeds 30 shall be provided with a minimum of two separate and approved fire apparatus access roads, and shall meet the requirements of Section 503.7.2 or Section 503.7.3.

503.7.2 Public streets. Public streets and private streets 34 feet wide and greater in residential developments shall meet the requirements of the Mesa Sub-division Regulations.

503.7.2.1 Parking. Fire department access shall have an unobstructed width of not less than 20 feet. Road widths shall be as follows:

1. No parking on either side of the roadway when the road is 20 to 28 feet wide.
2. No parking on one side of the roadway when the road is between 28 and 34 feet wide.
3. Parking is not restricted when a road is 34 feet wide or greater.
503.7.2.2 Maintenance of Parking Restrictions. Maintenance of fire department access parking restrictions as initiated by the Fire Department will be the responsibility of the homeowners association or individual property owner of the property affected by the restriction. If there is not a homeowners association or individual property owner, the City of Mesa shall be responsible for the maintenance of the fire department access parking restrictions.

503.7.3. Private streets. Private streets in residential developments less than 34 feet wide shall meet the requirements of Section 503 and the following:

503.7.3.1. Dead-ends. Shall meet the requirements of Section 503.2.5.

503.7.3.2. Gates. Shall meet the requirements of Section 503.6.

503.7.3.2.1. Queuing distance. The queuing distance between the gate swing and arterial roadways shall accommodate the length of the fire apparatus. This distance is not required for automatic gates when no manual action is required to close and lock the gate.

503.7.3.3. Parking. Fire department access shall have an unobstructed width of not less than 20 feet. Road widths shall be as follows:

1. No parking on either side of the roadway when the road is 20 to 28 feet wide.
2. No parking on one side of the roadway when the road is between 28 and 34 feet wide.
3. Parking is not restricted when a road is 34 feet wide or greater.

503.7.3.4 Maintenance of Parking Restrictions. Maintenance of fire department access parking restrictions as initiated by the Fire Department will be the responsibility of the homeowners association or individual property owner of the property affected by the restriction.

(8) Revise the following:

504.1 Required access. Exterior doors and openings required by this code or the International Building Code shall be maintained readily accessible for emergency access by the fire department. An approved access walkway leading from fire apparatus access roads to exterior openings shall be provided when required by the fire code official.

(9) Add the following:

504.4 Access to roof. For buildings 2 stories and less, maintain a flat area at grade from the building wall to any retention area at a minimum of two faces of two building corners. The purpose of this flat area shall be to provide ladder access to the roof by a flat area out from the base of the building wall that is a minimum of a 15° protection from the roof eave or top of the parapet to a vertical line at grade plus four feet.

(10) Add the following:

505.1.1 Aircraft Operation Area. New and existing buildings shall have approved address numbers placed in a position that is plainly legible and visible from the taxiway or airport fire access road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 6 inches (152 mm) high with a minimum stroke width of 0.75 inches (19.1 mm).

505.1.2. Multiple Tenant Buildings. Strip malls and other multiple tenant buildings shall have their address and suite number posted on all rear doors of each tenant space.
(11) Revise the following:

506.1 Where required. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official.

Exceptions:

1. Buildings of other than H and I occupancies less than 12,000 square feet.
2. Buildings other than H and I occupancies that are continually occupied (24 hours a day, 365 days a year) with staff available with keys to secured areas.

(12) Add the following:

507.4 Smoke obscuration systems. Smoke obscuration systems such as those associated with security or burglar alarm systems are not allowed.

(13) Add the following:

508.2.1.1 Detectible Underground Locator Device. Underground nonmetallic water piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial.

(14) Revise the following:

508.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B an approved method.

(15) Add the following:

508.3.1 Minimum water supply sizing. Hydraulically calculate the minimum fire flows required by Section 508.3 as follows:

508.3.1.1 Hydraulic calculations. Calculations shall be submitted to verify the fire service main(s) (public or private) will provide the minimum required fire flow, as determined by Section 508.3, to the hydraulically most demanding on-site hydrants with the water supply that is available to supply the new private hydrants and mains.

508.3.1.2 System flow requirement. The minimum required fire flow rate shall be calculated using 1500 gpm increments starting at the hydraulically most demanding hydrant. An additional 1500 gpm, or remainder of the required fire flow, as determined by Section 508.3 shall be added at each successive hydrant until the minimum required fire flow has been accounted for.

508.3.1.3 System pressure requirement. A minimum 20 psi residual pressure shall be maintained in the system. All pressure losses in the system including friction loss through pipe and fittings and changes in elevation shall be accounted for from the hydraulically most demanding hydrant back to the location of the water flow test that was used to determine the water supply available to supply the new private hydrants and mains.
508.3.1.3.4 Method for determining friction loss. Friction loss through pipe and fittings shall be determined using the Hazen-Williams formula or other approved hydraulic formula. The Hazen-Williams formula is as follows:

\[ P = \frac{4.52 \times Q^{1.85}}{C^{1.85} \times D^{4.87}} \]

Where:

- \( P \) = friction loss in psig per foot of pipe
- \( Q \) = flow in gpm
- \( C \) = surface roughness coefficient Hazen-Williams coefficient of roughness, friction loss coefficient, pipe roughness coefficient
- \( D \) = actual internal diameter of the pipe in inches

508.3.2. Residential developments. The minimum fire flow for a residential development with buildings no larger than 3,600 square feet shall be as required in Section B105.1. For residential developments with buildings larger than 3,600 square feet the minimum fire flow shall be as required by Table B105.1. The minimum fire flow is then based on the square footage of the home and the construction type as defined by the Mesa Building Code. The minimum fire flow then is used in Table B105.1 to determine the required average maximum spacing for the fire hydrants. For residential developments with lots capable of having a buildable area larger than 3,600 square feet, the plat shall contain the following note:

“Fire hydrant spacing:
This sub-division has fire hydrants spaced at an average spacing of (   ) feet.
This allows the largest home on the lots to be a maximum of (   ) square feet under roof.
Constructed per the Mesa Building Code of at least Type (   ) construction.”

(16) Revise the following:

508.5.1 Where required. Fire hydrant spacing requirements shall be determined by Appendix C. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Exceptions:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).

2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

(17) Add the following:

508.5.2 Phased systems. Phased systems with piping looped through a future phase shall have the complete looped piping system installed prior to any combustible construction above ground. The loop connection may be installed with the next phase of the development if it can be shown through calculation that the system can deliver the required fire flow without the loop connection.
(18) Revise the following:

508.5.32 Inspection, testing and maintenance. Fire hydrant systems shall be subject to periodic tests as required by the fire code official. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

508.5.43 Private fire service mains and water tanks. Private fire service mains and water tanks shall be periodically inspected, tested and maintained in accordance with NFPA 25 at the following intervals:

1. Private fire hydrants (all types): Inspection annually and after each operation; flow test and maintenance annually.
2. Fire service main piping: Inspection of exposed, annually; flow test every 5 years.
3. Fire service main piping strainers: Inspection and maintenance after each use.

508.5.54 Obstruction. Posts, fences, vehicles, landscaping growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants. No parking will be allowed in front of, or in-line with fire department connections.

(19) Add the following:

Section 511 Aerial Fire Apparatus Access Roads

511.1 Where required. Aerial apparatus access roads for high-rise structures shall be provided as approved by the fire code official.

(F) CHAPTER 7 FIRE-RESISTANCE-RATED CONSTRUCTION

(1) Revise the following:

703.4 Testing. Horizontal and vertical sliding and rolling fire doors, smoke and/or fire dampers, fire shutters and smoke vents shall be inspected and tested annually to confirm proper operation and full closure. Resetting of the release mechanism shall be done in accordance with the manufacturer’s written instructions. A written record shall be maintained and be available to the fire code official.

(G) CHAPTER 8 INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS

(1) Revise the following:

806.1.1 Restricted occupancies. Natural cut trees shall be prohibited in Group A, E, I-1, I-2, I-3, I-4, M, R-1, R-2 and R-4 occupancies and other facilities licensed for directed care services, and limited to 30 days in all other occupancies, except there shall be no time restrictions in R-3 and R-5 Occupancies. Exceptions:

1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E, M, R-1 and R-2.
2. Trees shall be allowed within dwelling units in Group R-2 occupancies.
901.6 Inspection, testing and maintenance. Fire detection, alarm and extinguishing systems shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Nonrequired fire protection systems and equipment shall be inspected, tested and maintained or removed. The building owner shall be responsible for ensuring that each fire protection system is maintained in an operable condition at all times per the applicable standard for that specific system. If a backflow prevention assembly, as defined in 8-1-5 of Mesa City Code, is installed as part of a fire sprinkler system, it shall be tested in accordance with 8-1-4 of the Mesa City Code. The annual backflow prevention assembly tests shall be performed at the same time as the annual automatic fire sprinkler system tests. All work and periodic testing/maintenance shall be performed in accordance with the applicable standard for the fire protection system.

901.6.2 Contractors. Individuals or businesses conducting inspections, testing, repair or maintenance of fire protection systems shall possess an appropriate valid fire protection system license issued by the Arizona Registrar of Contractors and must provide a copy annually of such valid license and a copy of a valid City of Mesa tax I.D. number to the Fire Code Official to provide such services.

901.6.32 Records. Records of all system inspections, tests and maintenance required by the referenced standards shall be maintained on the premises for a minimum of three years and made available to the fire code official upon request. All individuals/businesses performing tests, maintenance, and/or repair on any fire protection system, shall forward itemized reports of such work to the Fire Code Official within 30 days of the work performed.

Exception: R3 and R5 occupancies not including residential care facilities.

901.6.32.1 Records information. Initial records shall include the name of the installation contractor, type of components installed, manufacturer of the components, location and number of components installed per floor. Records shall also include the manufacturers’ operation and maintenance instruction manuals. Such records shall be maintained on the premises.

(3) Delete Section 903.2. Through 903.2.10.3

(4) Add the following:

Section 903.2. Where Required. Approved automatic sprinkler systems shall be provided in the locations described in this Section.

903.2.1 New buildings or structures. All areas of new buildings or structures, and other locations required by this Chapter or the Mesa Fire Code, shall be provided with an automatic fire sprinkler system complying with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 as applicable.
Exceptions: Unless the use of the facility otherwise requires automatic fire sprinkler protection, fire sprinkler systems shall not be required for the following:

1. R-3 occupancies complying with the Mesa Residential Code, and R-5, not including residential care or assisted living facilities.

2. Detached, unoccupied telecommunications buildings which do not exceed 500 square feet.

3. Detached gazebos and ramadas.

4. Detached restroom facilities associated with golf courses, parks and similar uses.

5. Detached guard houses less than 300 square feet in floor area.

6. Detached, non-combustible shade canopies that are less than 5,000 square feet in roof area not closer than five feet to any building, property line or other shade canopy, and that shade one of the following: for vehicle parking, vehicle washing or vehicle fuel dispensing stations.

7. Detached non-residential buildings less than 360 square feet in floor area.

8. B Occupancies less than 5000 square feet, excluding outpatient surgery clinics. The firewall provisions of IBC Section 705 do not apply to this exception for determining building area.

9. Other buildings or structures accessory to and located on the same lot with R-3 or R-5 occupancies, not including residential care or assisted living facilities.

10. Fabric shade canopies less than 5,000 square feet; not closer than 5 feet to any building, property line or other shade canopy; and shading one of the following: vehicles for sale at a dealership, playground equipment, or outdoor eating areas without cooking.

11. Portable storage containers used for storage purposes and not closer than 5 feet to any building, property line or other container.

12. Exterior roofs, overhangs or canopies of Type I, II or III construction with no combustible storage beneath.

13. Exterior covered/enclosed walkways of Type I, II or III construction, not greater than 12 feet in width, no combustible storage beneath, and with enclosing walls that are at least 50 percent open.

903.2.2 Residential Care/Assisted Living Facilities. All occupancies licensed by the Arizona Department of Health Services to provide nursing services, directed care services, supervisory care services and/or personal care services shall be provided with an automatic fire protection system complying with Section 903.3, as applicable, and shall utilize fast response or residential sprinkler heads appropriate for the specific occupancy. The fire sprinkler system activation and control valves shall be monitored by an approved central station service.

Exceptions:

1. State licensed residential care/assisted living facilities in which all of the care recipients are capable of self-preservation and responding to an emergency situation without assistance from another person.

2. State licensed residential care/assisted living facilities in which some or all of the care recipients are incapable of self-preservation or of responding to an emergency situation without assistance from another person, and that legally existed prior to January 1, 2001.
903.2.3. One and Two Family Dwelling Sprinkler Option (R5). All contractors of one and two family dwellings (R5 occupancies) shall provide an option for residential fire sprinklers. The contractor or their agent shall provide an informational packet containing educational materials approved by the Fire Code Official, including a form explaining the option for residential sprinklers, to all prospective buyers and shall obtain a signed receipt for the educational material from the prospective buyer. Copies of the signed forms shall be kept on file and available for review upon request by the Mesa Fire Department. Upon the request and execution of a purchase agreement by the homebuyer, the contractor shall install the residential fire sprinklers. Such fire sprinkler systems shall comply with the requirements of Section 903.3.1.1 or 903.3.1.3.

903.2.4. Group H-5 occupancies. An automatic sprinkler system shall be installed throughout buildings containing Group H-5 occupancies. The design of the sprinkler system shall not be less than that required under the Mesa Building Code for the occupancy hazard classifications in accordance with Table 903.2.4.2.

Where the design area of the sprinkler system consists of a corridor protected by one row of sprinklers, the maximum number of sprinklers required to be calculated is 13.

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>OCCUPANCY HAZARD CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fabrication areas</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Service corridors</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Storage rooms without dispensing</td>
<td>Ordinary Hazard Group 2</td>
</tr>
<tr>
<td>Storage rooms with dispensing</td>
<td>Extra Hazard Group 2</td>
</tr>
<tr>
<td>Corridors</td>
<td>Ordinary Hazard Group 2</td>
</tr>
</tbody>
</table>

903.2.5. Change of occupancy. An existing building or portion thereof undergoing a change of occupancy shall provide an automatic sprinkler system complying with the requirements of this chapter when required by the Mesa Existing Building Code.

903.2.6. Additions. All additions to existing buildings or structures that are expanded by an addition(s) shall be provided with an automatic fire protection system complying with Section 903.3 as applicable. (5283)

Exceptions:

1. Existing non-sprinklered R-3 and R-5 occupancies complying with the Mesa Residential Code, but not including residential care facilities.

   1.1 R3 and R5 occupancies that increases conditioned space to greater than 5000 square feet shall show compliance with 503.1.1 of the Fire Code. (5283)

2. An existing non-sprinklered building or structure and additions to such existing building, provided the occupancy of the existing building is not changed, the addition is the same occupancy, and the total area of all such additions to the building do not exceed the allowable tabular amounts in Table 903.2.6.
These exceptions do not relieve the building from other Mesa City Code requirements.

Table 903.2.6
Allowed Building Additions

<table>
<thead>
<tr>
<th>Existing Building Area</th>
<th>1-1,999 sq. ft.</th>
<th>2,000-3,333 sq. ft.</th>
<th>3,334-4,000 sq. ft.</th>
<th>&gt;4,000 sq. ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Aggregate Addition Area – All occupancies, except B, including outpatient clinics</td>
<td>1,000 sq. ft.</td>
<td>Up to 50% of the existing building area.</td>
<td>1,666–1,000 sq. ft. to no more than 5,000 sq. ft. total building area.</td>
<td>1,000 sq. ft.</td>
</tr>
<tr>
<td>Maximum Aggregate Addition Area – B occupancies, not including outpatient clinics</td>
<td>Maximum total aggregate building area including all additions = 5,000 sq. ft.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above exceptions do not supersede other requirements of this Chapter or the Mesa Building Code.

903.2.7. Rubbish and linen chutes. An automatic sprinkler system shall be installed at the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Chute sprinklers shall be accessible for servicing.

903.2.8 Other hazards. Automatic sprinkler protection shall be provided for the hazards indicated in Sections 903.2.8.1 and 903.2.8.3.

903.2.8.1 During construction. Automatic sprinkler systems required during construction, alteration and demolition operations shall be provided in accordance with Section 1413.

903.2.8.2 Ducts conveying hazardous exhausts. Where required by the Mesa Mechanical Code, automatic sprinklers shall be provided in ducts conveying hazardous exhaust, or flammable or combustible materials.

Exceptions: Ducts in which the largest cross-sectional diameter of the duct is less than 10 inches (254 mm).

903.2.8.2.1 Protection of sprinklers. Automatic sprinklers installed in flammable vapor areas shall be protected from the accumulation of residue from spraying operations in an approved manner. Bags used as a protective covering shall be 0.003-inch-thick (0.076 mm) polyethylene or cellophane or shall be thin paper. Automatic sprinklers contaminated by overspray particles shall be replaced with new automatic sprinklers.

903.2.8.3 Commercial cooking operations. An automatic sprinkler system shall be installed in commercial kitchen exhaust hood and duct system where an automatic sprinkler system is used to comply with Section 904.

903.2.9 Other required suppression systems. In addition to the requirements of Section 903.2, the provisions indicated in Table 903.2.9 also require the installation of a suppression system for certain buildings and areas.

(5) Renumber Table 903.2.13 to Table 903.2.9.
(6) Revise the following:

**903.3.1.1 NFPA 13 sprinkler systems.** Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Section 903.3.1.1.1.

**903.3.1.1.1 Exempt locations.** Automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas, when approved by the fire code official, are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance rated construction or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard.

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents when approved by the fire code official.

3. Generator and transformer rooms separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. In rooms or areas that are of noncombustible construction with wholly noncombustible contents.

(7) Add the following:

**903.3.1.1.2 Minimum design requirements.** The minimum design requirements for fire sprinkler systems shall be as determined by the Mesa Fire Code or as defined in Section 903.3.1.1.2 whichever is greater.

**903.3.1.1.2.1 Shell buildings.** The minimum sprinkler system design for shell buildings shall be Ordinary Group II as defined in 903.3.1.1.

**Exception:** If the property owner records against the property a restriction stating that the building will only be a B occupancy and the building is used for Group B Occupancy, the shell building sprinkler design may be designed to light hazard occupancy according to 903.3.1.1.

**903.3.1.1.2.2 Buildings with roof structure over 20 feet.** The minimum design requirements for buildings with the roof structure over 20 feet above the finished floor shall be for rack storage of Group IV commodities as defined in Chapter 23 and Section 903.3.1.1.

**Exception:** If the property owner records against the property a restriction stating that the building will not have rack or high pile storage and the building is not used for such purposes, the shell building sprinkler design may be designed as required according to 903.3.1.1.2.1.

(8) Add the following:

**903.3.1.2.2 Required fire protection systems.** For the purpose of inspection, testing, or maintenance of NFPA 13R fire protection systems in R-1 and R-2 occupancies, there shall be provided, at the time of construction, an exterior access door on the side of the building next to the fire sprinkler riser of adequate size to allow for valves and gauges to be accessed, repaired and viewed from the exterior for testing and maintenance purposes. The dimensions of the access door will be dependent upon the design of the riser and system devices but shall, in no case, require that service personnel must enter a private dwelling or garage to reach the riser for service and/or repair.

**903.3.1.2.3 Attics.** Sprinkler protection shall be provided for attics. For areas outside the dwelling unit including attics, design criteria shall comply with NFPA 13.
(9) Revise the following:

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of City of Mesa Standard Detail M-31.6 this section and the International Plumbing Code.

(10) Add the following:

903.3.5.3 Detectible Underground Locator Device. Underground nonmetallic water and irrigation system piping larger than two (2) inches in diameter shall be installed with insulated copper tracer wire or other approved conductor located adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire size shall be not less than 18 AWG and the insulation type shall be suitable for direct burial.

(11) Revise the following:

903.3.6 Hose threads. Fire hose threads and fittings used in connection with automatic sprinkler systems shall be National Standard Thread as prescribed by the fire code official.

903.3.7 Fire department connections. The location of fire department connections shall be located on the building, nearest to the fire access road, but away from the main entry to the building. Locations shall be approved by the fire code official. Fire department connections remote from the buildings they service shall be clearly identified with address and building number with permanent, all-weather marking or signage, as determined by the fire code official approved by the fire code official.

(12) Add the following:

903.3.7.1. Fire department connection sizing. The size of the fire department connection and piping is dependent on the automatic sprinkler design flow. The maximum design flow for a 2-½ inch siamese connection is 500 gpm. For design flows greater than 500 gpm install a single 2-½ inch siamese connection and 5 inch Storz connection.

903.3.8 Safety Factor. All fire sprinkler designs shall have a 10 percent (pressure) safety margin.

903.3.9 Remodel. Fire sprinkler design drawings shall be required for tenant improvement or remodeling projects when 10 or more sprinkler heads are relocated and/or added.

903.3.10 Freeze Protection. Exterior sprinkler piping with a minimum of 2 inches may be used in lieu of freeze protection required by Section 903.3.1.1.

(13) Revise the following:

903.4 Exception 2:

2. Unless supervision is required by another provision of this Code or MBC, supervision is not required in buildings less than 12,000 square feet in total aggregate area. For the purposes of this Section, MBC Section 705 shall not apply. Note: All control valves on fire sprinkler systems that are not electrically supervised shall be locked in the open/normal position Limited area systems serving fewer than 20 sprinklers.
(14) Revise the following:

903.4.1 Signals. Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to an Underwriters Laboratory listed or Factory Mutual approved central station, remote supervising station or proprietary supervising station as defined in NFPA 72 or, when approved by the fire code official, shall sound an audible signal at a constantly attended location.

Exceptions:

1. Underground key or hub valves in roadway boxes provided by the municipality or public utility are not required to be monitored.

2. Backflow prevention device test valves located in limited area sprinkler system supply piping shall be locked in the open position. In occupancies required to be equipped with a fire alarm system, the backflow preventer valves shall be electrically supervised by a tamper switch installed in accordance with NFPA 72 and separately annunciated.

(15) Revise the following:

904.2.1 Commercial hood and duct systems. Each required commercial kitchen exhaust hood and duct system required by Section 609 to have a Type I hood shall be protected with an approved automatic fire-extinguishing system installed in accordance with this code.

Exception: type I hood serving a single electric or gas conveyor pizza oven, unless the oven manufacturer requires the fire suppression system.

(16) Revise the following:

904.11.2 System interconnection. The actuation of the fire extinguishing system shall automatically shut down the fuel or electrical power supply to the cooking equipment. The fuel and electrical supply reset shall be manual. Where resetting of the supply gas valve requires opening the valve cover, and the valve is located above ceiling, the valve shall be readily accessible.

(17) Revise the following:

905.3.4.1 Hose and cabinet. The 1½-inch (38 mm) hose connections shall be equipped with sufficient lengths of 1½-inch (38 mm) hose to provide fire protection for the stage area. Hose connections shall be equipped with an approved adjustable fog nozzle and be mounted in a cabinet or on a rack.

(18) Revise the following:

905.5.3 Class II system 1-inch hose. A minimum 1-inch (25 mm) hose shall be allowed to be used for hose stations in light-hazard occupancies where investigated and listed for this service and where approved by the fire code official.

(19) Revise the following:

905.8 Dry standpipes. Dry standpipes shall not be installed, except where approved by the Fire Code Official.

Exception: Where subject to freezing and in accordance with NFPA 14.
(20) Add the following:

905.12 Standpipe Hose. The fire hose and nozzle as part of Class II or Class III wet standpipe system(s) may be removed or eliminated with written approval of the Fire Code Official.

(21) Revise the following:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations.

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies. **Exception:** in new and existing Group A, B and E occupancies equipped throughout with quick response sprinklers, portable fire extinguishers shall be required only in locations specified in Items 2 through 6.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.1.

6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

(22) Revise the following:

907.2.10.1.2 Groups R-2, R-3, R-4, R-5 and I-1. Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4, R-5 and I-1 regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.

3. In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

(23) Add the following:

907.2.10.1.4 Groups R-3 Residential Care Facilities and R-4. Multiple-station smoke alarms shall be installed and maintained in Groups R-3 Residential Care Facilities and R-4, regardless of occupant load, throughout the facility except in bathrooms, kitchens, garages, or mechanical rooms.

(24) Revise the following:

912.5 Backflow protection. The potable water supply to automatic sprinkler and standpipe systems shall be protected against backflow as required by the International Plumbing Code.
(25) Revise the following:

914.8.2 Fire suppression. Aircraft hangars shall be provided with fire suppression as required by NFPA 409 based on Table 914.8.2.

Exception: When a Fixed Based Operator has other repair facilities on site, Group II hangars operated by a Fixed Base Operator (FBO) used for storage of transient aircraft only, as defined in NFPA 409, storing private aircraft without major maintenance or overhaul are shall have a fire suppression system, but the system is exempt from foam suppression requirements.

Table 914.8.2 Hangar Group/Fire Suppression Requirements

<table>
<thead>
<tr>
<th>Maximum Single Fire Area, sq. ft. (m²)</th>
<th>IA</th>
<th>IB</th>
<th>IIA</th>
<th>IIB</th>
<th>IIIA</th>
<th>IIIB</th>
<th>IV</th>
<th>VA</th>
<th>VB</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;40,001 (3,716)</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
<td>Group I</td>
</tr>
<tr>
<td>40,000 (3,716)</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
</tr>
<tr>
<td>30,000 (2,787)</td>
<td>Group III</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
<td>Group II</td>
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</tbody>
</table>

² All aircraft hangars with a door height greater than 28 feet shall be provided with fire suppression for a Group I hangar regardless of maximum fire area.

914.8.2.1 Hazardous Operations. Any aircraft hangar that has a Group III fire suppression system according to Table 914.8.2 and that contains hazardous operations including but not limited to the following shall be provided with a Group I or Group II fire suppression system as applicable:

1. Doping.
2. Hot work including, but not limited to welding, torch cutting, and torch soldering.
3. Fuel transfer.
4. Fuel tank repair or maintenance not including de-fueled tanks per NFPA 409, inerted tanks or tanks that have never been fueled.
5. Spray finishing operations.
6. Total fuel capacity of all aircraft within the maximum single fire area in excess of 1,600 gal.
7. Total fuel capacity of all aircraft within the maximum single fire area in excess of 7,500 gal for a hangar with a fire sprinkler system per NFPA 13.

914.8.2.2 Separation of Maximum Single Fire Areas. Maximum single fire areas shall be separated by fire walls.
(26) Add the following:

915. Firefighter Breathing Air Replenishment Systems

915.1. General. A firefighter breathing air replenishment system (FBAR System) is a complete, self-contained high pressure breathing air replenishment system for emergency responders. This system consists of a fire department air connection panel, remote air fill panels and high pressure interconnected piping, permanently installed within a structure. This allows fire department personnel to replenish empty self-contained breathing apparatus (SCBA) cylinders within close proximity to the location of the incident requiring emergency response, thus reducing the amount of travel distance, time and support personnel needed at an emergency incident.

915.2. Applicability. The requirements of this subsection shall apply to all new buildings and structures meeting the specifications set forth in paragraph 915.3.

915.3. Buildings and structures requiring FBAR System. A FBAR System shall be installed in all new buildings, existing buildings that have a change of occupancy and structures meeting any of the following criteria:

915.3.1 Buildings and structures five (5) floors or more above grade or high rise buildings as defined by the Mesa Building Code; or

915.3.2 Underground buildings and structures, or components thereof, totaling ten thousand (10,000) square feet or more that are either more than two (2) floors below grade or more than thirty (30) feet below grade.

915.4. Drawings. Submit scaled drawings of the FBAR system to the City of Mesa as required in Section 105 of the Mesa Fire Code.

915.5. Contractor qualifications. The FBAR system shall be installed, tested and maintained by a contractor with an Arizona Registrar of Contractors license and have knowledge of high pressure and medical gas piping.

915.6. FBAR System requirements. The FBAR System installation shall allow fire department personnel to simultaneously replenish four (4), 45 cubic foot self-contained breathing apparatus cylinders at any one (1) time, with two (2) connections at three thousand (3,000) psi and two (2) connections at four thousand five hundred (4,500) psi. Fire department personnel shall be able to connect into the FBAR System's fire department air connection panel at grade level from a mobile air support apparatus thereby providing a constant source of breathing air supplied directly from the air support apparatus to the system's remote air fill panels.

915.7. FBAR System components. The FBAR System shall consist of the following minimum components:

915.7.1 Exterior fire department air connection panel;

915.7.2 Interior cylinder fill panels;

915.7.3 Interconnected piping; and

915.7.4 Low pressure monitoring switches and alarm.

915.8. Exterior Fire Department Air Connection Panel.
915.8.1 Location: An exterior fire department air connection panel shall be installed on the exterior of the building or within a remote monument at a location approved by the Fire Chief with a minimum of six (6) foot – 180 degree clear unobstructed access to the front of the panel and shall be interconnected to the building's interior remote air fill panels. Locate the fire department fill panel within 50 feet of the approved fire access.

915.8.2 Enclosure: The fill inlet and associated components of the air connection panel shall be contained in a lockable, weather tight enclosure. The enclosure shall be a weather resistant metal cabinet constructed of minimum 18-gauge carbon steel or equivalent. The enclosure shall be provided with a coating or other means to protect the enclosure from corrosion.

915.8.3 Enclosure components: The exterior fire department connection panel shall contain all of the necessary gauges, isolation valves, pressure relief valves, pressure regulating valves, check valves, tubing, fittings, supports, connectors, adapters and other necessary components as may be required to allow the fire department’s mobile air unit to quickly connect and augment the system with a constant source of breathing air. The panel shall be locked at all times, unless in use by fire department personnel. The locking mechanism for the panel cover shall be contained in an approved key box installed at a location approved by the Fire Chief. The key to unlocking the cover shall be stored in the approved key box. Each fire department connection panel shall contain at least two (2) connections.

915.8.4 Pressure relief valve: Install a pressure relief valve downstream of the pressure regulator inlet. The relief valve shall meet the requirements of CGA S-1.3 Safety Relief Valves and shall not be field adjustable. The relief valve shall have a set to open pressure not exceeding 1.1 times the design pressure of the system. Pressure relief valve discharge shall terminate so that the exhaust air stream cannot impinge upon personnel in the area. Valves, plugs or caps shall not be installed in the discharge of a pressure relief valve. Where discharge piping is used the end shall not be threaded.

915.8.5 Damage protection: The fire department air connection panel shall be installed in an area protected from physical damage.

915.9. Interior cylinder fill panels.

915.9.1 New buildings. Unless otherwise approved by the chief, the interior cylinder fill panels shall be installed in the above grade portion of applicable structures in all stairwells. Install the required interior cylinder fill panels commencing on the third floor and on every other floor above the third floor. The interior cylinder fill panels are not required on the highest floor or on the floor immediately below the highest floor. Unless otherwise approved by the chief, the interior cylinder fill panels shall be installed in the below grade portion of applicable structures at stairwells, or other areas of ingress or egress approved by the chief, commencing on the third floor below ground level and every other floor below grade level thereafter or, if there are fewer than three (3) floors below ground level, the lowest floor.

915.9.2 Existing buildings. Install the interior cylinder fill panels per Section 915.9 in existing buildings within one stairwell only. The Fire Chief shall approve that stairwell. The interior cylinder fill panels may be surfaced mounted within the stairwell and shall be at the stairwell floor landing.

915.9.3 Cabinet requirements. Each cylinder fill panel shall be installed in a metal cabinet constructed of minimum 18-gauge carbon steel or equivalent. The depth of the cabinet shall not create an exit obstruction when installed in building stairwells. With the exception of the shutoff valve, pressure gauges, fill hoses and ancillary components, no system components shall be visible and shall be contained behind a minimum 18-gauge interior panel.
915.9.3.1 Door. Hinges for the cabinet door shall be located inside of the cabinet. The door shall be arranged such that when the door is open, it does not reduce the required exit width or create an obstruction in the path of egress.

915.9.3.2 Cabinet components. The cabinet shall be of sufficient size to allow for the installation of the following components:

915.9.3.2.1 The cylinder fill panel shall contain all of the gauges, isolation valves, pressure relief valves, pressure regulating valves, check valves, tubing, fittings, supports, connectors, hoses, adapters and other components to refill SCBA cylinders.

915.9.3.2.2 Cylinder filling hose. The design of the cabinet shall provide a means for storing the hose to prevent kinking. When the hose is coiled, the brackets shall be installed so that the hose bend radius is maintained at 4 inches or greater. Fill hose connectors for connection to SCBA cylinders shall comply with the requirements of NFPA 1981. No other SCBA cylinder fill connections shall be permitted.

915.9.3.2.3 Security. Each panel cover shall be maintained locked by an approved means.

915.9.3.3 Clearance and access. The panel shall be a minimum of 36 inches but not more than 60 inches above the finished floor or stairway landing. Clear unobstructed access shall be provided to each panel.

915.9.4 The interior cylinder fill panel capacity. The interior cylinder fill panels shall contain all of the necessary gauges, isolation valves, pressure relief valves, pressure regulating valves, check valves, tubing, fittings, supports, connectors, adapters and other necessary components as may be required to allow firefighters and other first responders to safely and reliably replenish a minimum of two (2) forty-five (45) cubic feet breathing air cylinders simultaneously.

915.10 Tubing, valves and fittings. Unless otherwise approved by the Fire Chief, all tubing, valves and fittings shall be compatible and support a minimum working pressure of five thousand (5,000) psi. Design the tubing, valves and fittings with a safety factor of four (4). Support the tubing not less than at five-foot intervals.

915.10.1 Tubing. Tubing shall be stainless steel complying with ASTM A269 or other approved materials that are compatible with breathing air at the system pressure. Routing of tubing and bends shall be such as to protect the tubing from mechanical damage.

915.10.2 Fittings. Fittings shall be constructed of stainless steel complying with ASTM A403/A403M or other approved materials that are compatible with breathing air at the system pressure.

915.10.3 Prohibited materials. The use of non-metallic materials, carbon steel, iron pipe, malleable iron, high strength gray iron, or alloy steel shall be prohibited for breathing air pipe and tubing materials.

915.10.4 Protection. The entire system shall be protected by a minimum of two-hour rated construction that protects the system from possible damage. When piping must pass through a fire rated or solid material, protect the piping with a sleeve that is at least three (3) times the pipe diameter. Fill both ends of the sleeve and wall gap with an approved fire stop. Label the piping with “Rescue Breathing Air” at intervals not less than 10 feet.

915.11. Low pressure monitoring and alarm. When not being utilized by fire department personnel, the FBAR System shall maintain a constant pressure of at least four thousand five hundred (4,500) psi. An alarm or monitoring system capable of detecting, and that is set to detect, a pressure drop of one thousand (1,000) psi shall be included and maintained with the FBAR System. The low-pressure alarm shall transmit a supervisory signal to the building alarm fire system and to the central alarm monitoring station when the system pressure falls below the minimum allowed pressure. A building or structure owner or designee, shall notify the fire department of any scheduled test of the system conducted by the owner of the building or structure. Unless otherwise approved by the Fire Chief, the low-pressure alarm shall be monitored by an approved fire and smoke alarm system for the building or structure.

Exception: In lieu of the low pressure monitoring and alarm, the building owner shall test the air quality of the system every three months according to NFPA 1989.
**915.12. Isolation valve.** A system isolation valve shall be installed downstream of each air fill station and shall be located in the panel or within 3 feet of the station. The isolation valve shall be marked with its function in letters that are a minimum of 3/16-inches high with a 1/16-inch brush stroke.

**915.13. Markings and record keeping.** The fire department air connection panel and the remote air fill panels shall be clearly identified by means of permanently installed signage which says: “FIREFIGHTER AIR SYSTEM” in minimum letters 1½ inch high with a ¼ inch stoke and be located where plainly visible. The building or structure owner shall keep the area in and around the fire department air connection panel and the remote air fill panels free of objects that may block use of these panels and shall maintain and test the FBAR System in accordance with NFPA Standards and manufacturer specifications. Records of all maintenance and testing of the FBAR System shall be kept on-site for a minimum of three (3) years and be available to fire department personnel upon request.

**915.14. Testing requirements.** When fabrication, assembly and installation of the FBAR System is complete, the entire system shall be tested in accordance with the following:

1. **915.14.1** The system shall be inspected for leaks by pneumatically pressure testing the system to five thousand (5,000) psi using oil-free, dry air. An approved solution shall be used on each joint and fitting in the system to detect leaks. All leaks or failure to maintain five thousand (5,000) psi pneumatic pressure shall be documented by the system installer and forwarded to the system manufacturer for inspection, repair and/or replacement.

2. **915.14.2** Upon successful completion of the five thousand (5,000) psi pressure testing, the entire system shall be pneumatically pressure tested to one and one-half (1 1/2) times the working pressure (seven thousand five hundred (7,500) psi) using oil free, dry air for at least one (1) hour. All leaks or failure to maintain seven thousand five hundred (7,500) psi pneumatic pressure shall be documented by the system installer and forwarded to the system manufacturer for inspection, repair and/or replacement.

3. **915.15. Air quality testing.** Upon completion of the pressure testing, test the air quality of the systems according to NFPA 1989.

**915.14.1 Final Proof Test.** The Authority Having Jurisdiction shall witness filling of two (2) empty sixty six (66) cubic foot capacity SCBA cylinders in three (3) minutes or less using compressed air supplied by fire department equipment connected to the exterior fire department connection panel. The SCBA cylinders shall be filled at the air fill panel or station farthest from the exterior fire department connection panel. Following this, a minimum of two (2) air samples shall then be taken from separate air filling stations and submitted to an independent certified gas analyst laboratory to verify the system's cleanliness and that the air meets the requirements of NFPA 1989. The written report shall be provided to the Authority Having Jurisdiction certifying that the air analysis complies with the above requirements.

(1) **CHAPTER 10 MEANS OF EGRESS**

(1) Add the following:

**1003.8 No exit signage.** Where a door is adjacent to, constructed similar to, and can be confused with a means of egress door, that door shall be identified with an approved sign that identifies the room name or use of room. The sign shall consist of letters having a principal stroke of not less than 0.75 inch (19.1mm) wide and at least 6 inches (152mm) high on a contrasting background.

(2) Add the following:

**1008.1.1.2 Group R-3 Residential Care Facilities and R-4.** Every required exit doorway shall be of a size as to permit the installation of a door not less than 3 feet (914 mm) in width and not less than 6 feet 8 inches (2032 mm) in height. When installed, exit doors shall be capable of opening so that the clear width of the exit is not less than 32 inches (813 mm). The door(s) shall be of the pivoted or side-hinged, swinging type.
(3) Revise the following:

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

Exceptions:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2, and R-3 and R-5 as applicable in the Mesa Administrative Code, Chapter 1.
5. In other than Group H occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

(4) Revise the following:

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint. For required exterior exit doors, approved magnetic door locking shall comply with 1008.1.8.6.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

   2.1. The locking device is readily distinguishable as locked,

   2.2. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background, 2.3. The use of the key-operated locking device is revocable by the fire code official for due cause.
3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R-1, R-2, R-3 (not including residential/care assisted living facilities) and R-5 occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Doors from individual dwelling or sleeping units of Group R-3 residential care/assisted living facilities and R-4 occupancies are permitted to be equipped with locks or latches, provided such devices are operable from the inside without the use of a key or tool and are mounted not more than 48 inches (1219 mm) above the finished floor.

(5) Revise the following:

1008.1.8.6 Delayed egress locks. Approved, listed, delayed egress locks shall be permitted to be installed on doors serving any occupancy except Group A, E and H occupancies in buildings that are equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below. A building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before entering an exit.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center.

4. The initiation of an irreversible process which will release the latch in not more than 15 seconds when a force of not more than 15 pounds (67 N) is applied for 1 second to the release device. Initiation of the irreversible process shall activate a verbal messaging system an audible signal in the vicinity of the door. This verbal message shall announce time remaining before door releases. Once the door lock has been released by the application of force to the releasing device, relocking shall be by manual means only.

Exception: Where approved, a delay of not more than 30 seconds is permitted.

5. A sign shall be provided on the door located above and within 12 inches (305 mm) of the release device reading: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15 [30] SECONDS.

6. Emergency lighting shall be provided at the door.

(6) Add the following:

1011.6 Floor-level Exit Signs. Where exit signs are required by Section 1011.1, additional approved low-level exit signs shall be provided in all corridors serving guest rooms in R-1 occupancies. Such low-level exit signs shall be internally or externally illuminated, photo luminescent or self-luminous, and shall be mounted with the bottom of the exit sign not less than 6 inches (152 mm) nor more than 8 inches (203 mm) above the floor level. For exit doors, the sign shall be mounted on the door adjacent to the door with the closest edge of the exit sign within 4 inches (102 mm) of the doorframe.

Exception: Where all sleeping units on a floor have a direct means of egress to the exterior.
(7) Revise the following:

1019.2 Buildings with one exit. Only one exit shall be required in buildings as described below:

1. Buildings described in Table 1019.2, provided that the building has not more than one level below the first story above grade plane.

2. Buildings of Group R-3 and R-5 occupancy, not licensed as a Care Facility.

3. Single-level buildings with the occupied space at the level of exit discharge provided that the story or space complies with Section 1015.1 as a space with one means of egress.

(8) No revisions to Table 1019.2

(9) Revise the following:

1028.2 Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained in good repair and free from obstructions or impediments to full instant use in the case of fire or other emergency when the areas served by such exits are occupied. Security devices affecting means of egress shall be subject to approval of the fire code official.

(10) Add the following:

1028.8 No exit signage. Where a door is adjacent to, constructed similar to, and can be confused with a means of egress door, that door shall be identified with an approved sign that identifies the room name or use of room. The sign shall consist of letters having a principal stroke of not less than 0.75 inch (19.1mm) wide and at least 6 inches (152mm) high on a contrasting background.

(J) CHAPTER 14 FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION

(1) Revise the following:

1408.2 Prefire plans. The site superintendent shall develop and maintain a pre-fire plan. The fire prevention program superintendent shall develop and maintain an approved prefire plan in cooperation with the fire chief. The fire chief and the fire code official shall be notified of changes affecting the utilization of information contained in such prefire plans.

(2) Revise the following:

1410.1 Required access. The access road shall be a minimum of 20 feet wide and shall be an all weather driving surface, graded to drain standing water and engineered to bear the imposed loads of fire apparatus (74,000 lbs/24,000lbs per axle) when roads are wet. For example, a minimum of six (6) inches of ABC compacted to 90% over an approved base would meet the requirement.

The access road shall be extended to within 200 feet of any combustible materials and/or any location on the jobsite where any person(s) shall be working for a minimum of four (4) continuous hours in any day. A clearly visible sign marked “Fire Department Access”, in red letters, shall be provided at the entry to the access road.

All open trenches shall have steel plates capable of maintaining the integrity of the access road design when these trenches cross an access road. These access roads may be temporary or permanent. This policy applies only during construction and/or demolition. Permanent access per the Mesa Fire Code shall be in place prior to any final inspection or certificate of occupancy.
(3) Revise the following:

1410.1 Required access. Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30 480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access roads are available. The access road shall be a minimum of 20 feet wide and shall be an all weather driving surface, graded to drain standing water and engineered to bear the imposed loads of fire apparatus when roads are wet.

The access road shall be extended to within 200 feet of any combustible materials and/or any location on the jobsite where any person(s) shall be working for a minimum of four (4) continuous hours in any day. A clearly visible sign marked “Fire Department Access”, in red letters, shall be provided at the entry to the access road.

All open trenches shall have steel plates capable of maintaining the integrity of the access road design when these trenches cross an access road. These access roads may be temporary or permanent. This policy applies only during construction and/or demolition. Permanent access per the Mesa Fire Code shall be in place prior to any final inspection or certificate of occupancy.

(4) Revise the following:

1412.1 When required. An approved water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material arrives on the site construction site shall meet the requirements of Appendix Chapters B and C. The minimum fire flow requirement when contractor or developer brings combustible materials on site is 1,500 gpm at 25 psi. At least one fire hydrant shall be within 500 feet of any combustible materials and capable of delivering the minimum fire flow requirement. This hydrant or hydrants may be either temporary or permanent as the project schedule permits.

In addition, there are times when hydrants and valves must be closed temporarily for repair work or construction of the water system. The developer/contractor is responsible for ensuring that the water supply is available at all times. When the work is complete, developer/contractor shall make sure that the fire hydrants are active and the valves are open.

(K) CHAPTER 15 FLAMMABLE FINISHES

Add the following:

1504.10 Exterior finishing operations. Spray-finishing operations shall not be conducted outside of approved structures.

Exceptions:

1. Spray coating of buildings or dwellings, including appurtenances and any other ornamental objects that are not normally removed prior to coating.

2. Spray coating of facility equipment or structures which are fixed in a permanent location and cannot easily be moved into an enclosure or spray booth and which are not normally dismantled or moved prior to coating.

3. Spray coating of objects, which cannot fit inside of an enclosure with internal dimensions of 10’W x 25’L x 8’H, excluding vehicles.

4. Coating operations utilizing only hand-held aerosol cans.
(L) CHAPTER 19 LUMBER YARDS AND WOODWORKING FACILITIES

(1) Revise the following:

1904.2 Portable fire extinguishers and hose. Portable fire extinguishers or standpipes supplied from an approved water system shall be provided within 50 feet (15 240 mm) of travel distance to any machine producing shavings or sawdust. Extinguishers shall be provided in accordance with Section 906 for extra-high hazards.

(2) Revise the following:

1909.5 Fire protection. An approved hydrant and hose system or portable fire-extinguishing equipment suitable for the fire hazard involved shall be provided for open storage yards. Hydrant and hose systems shall be installed in accordance with NFPA 24. Portable fire extinguishers complying with Section 906 shall be located so that the travel distance to the nearest unit does not exceed 75 feet (22 860 mm).

(M) CHAPTER 23 HIGH-PILED COMBUSTIBLE STORAGE

(1) Revise the following:

2301.1 Scope. High-piled combustible storage shall be in accordance with this chapter. In addition to the requirements of this chapter, the following material-specific requirements shall apply:

1. Aerosols shall be in accordance with Chapter 28.
2. Flammable and combustible liquids shall be in accordance with Chapter 34.
3. Hazardous materials shall be in accordance with Chapter 27.
4. Storage of combustible paper records shall be in accordance with NFPA 13 and NFPA 232 230.
5. Storage of combustible fibers shall be in accordance with Chapter 29.
6. Storage of miscellaneous combustible material shall be in accordance with Chapter 3.

(2) Add the following:

2306.4.1 Identification of sprinkler system capabilities and limitations. An adhesive label shall be permanently installed at or adjacent to each sprinkler riser. When a building contains more than four risers, the sign shall be located at an approved location inside the building. When sprinkler risers are located outside of the building, the sign shall be stamped metal. The minimum sign dimension is 6-inches high by 4-inches wide. The sign shall specify the capabilities and limitations of the automatic sprinkler system. The sign shall include the following information:

1. The design base or basis, including the edition used
2. A statement indicating if the sprinkler design is control mode density area method, control mode specific application, suppression mode, or any combination thereof.
3. When used, all of the storage conditions stipulated NFPA 13, Section 12.7 for special designs.
4. The maximum storage height
5. The minimum required aisle width
6. If storage is in racks, the maximum rack width and minimum transverse and longitudinal flue widths.
7. Commodities that can be protected by the automatic sprinkler system

8. Commodities that cannot be protected by the automatic sprinkler system

9. Limits on storage heights of idle wood and plastic storage

10. Limits on storage heights of miscellaneous Group A plastic, tire and rolled paper storage

11. Locations where in-rack sprinklers are required

12. Locations where horizontal and/or vertical barriers are required

13. Information explaining the manufacturer, sprinkler identification number, k-factor, and operating temperature of the overhead sprinklers protecting the high pile storage.

The following example illustrates a suggested label or sign:

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### Automatic Sprinkler System Capabilities & Limitations

<table>
<thead>
<tr>
<th>Stored Commodity</th>
<th>Class I water miscible flammable liquids in 1 &amp; 5 gallon polyethylene containers in fiberboard cartons</th>
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</thead>
<tbody>
<tr>
<td>Design Documents</td>
<td>NFPA 13, 2002 edition &amp; NFPA 30-2000 edition, Table 4.8.2 (g) and section 4.8.6.2 (Scheme B)</td>
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<tr>
<td>Design Type</td>
<td>Control Mode, Density/Area Method</td>
</tr>
<tr>
<td>Max. Storage Height</td>
<td>25 feet</td>
</tr>
<tr>
<td>Min. Aisle Width</td>
<td>8 feet</td>
</tr>
<tr>
<td>Max. Rack Width</td>
<td>9 feet</td>
</tr>
<tr>
<td>Plur Dimensions</td>
<td>Longitudinal: Min. 6 inches; Transverse: Min. 3 inches</td>
</tr>
<tr>
<td>System Capabilities</td>
<td>Class I-IV commodities, stored commodity, solid pile or palletized Group A plastics to 12 feet; rack storage of Group A plastics to 25 feet.</td>
</tr>
<tr>
<td>System Limitations</td>
<td>No level 2 or 3 aerosols, Class 2, 3 or 4 oxidizers</td>
</tr>
<tr>
<td>Idle Pallets</td>
<td>6 feet maximum storage height</td>
</tr>
<tr>
<td>Tire Storage</td>
<td>5 feet maximum storage height</td>
</tr>
<tr>
<td>Roll Paper Storage</td>
<td>5 feet maximum storage height</td>
</tr>
<tr>
<td>In-rack sprinklers</td>
<td>In-rack sprinklers are required at each of 3 rack tiers containing the stored commodity. In-rack sprinklers are Tyco/Central FS-B, 17/32” orifice, QR 155°F element, SIN TY0041</td>
</tr>
<tr>
<td>Horizontal Barriers</td>
<td>Required at each rack tier containing the stored commodity.</td>
</tr>
<tr>
<td>Ceiling Sprinkler</td>
<td>Tyco ELO-231B, ¾” orifice, SR 286°F element, upright, SIN TY0030</td>
</tr>
</tbody>
</table>

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(3) Revise the following:
2306.7 Smoke and heat removal. Where smoke and heat removal are required by Table 2306.2, smoke and heat vents shall be provided in accordance with Section 910. Where draft curtains are required by Table 2306.2, they shall be provided in accordance with Section 910.3.4. When automatic sprinkler systems are provided in accordance with Sections 2307, 2308 and 2309:

1. The draft curtains requirements from Table 2306.2 are not required.

2. The temperature rating of the smoke and heat vents shall be two temperature ratings higher than the sprinkler head temperature rating.

3. Provide a manual pull to operate the system located on the roof through the curb on each vent.

(4) Revise the following:

2306.8 Hose Stations and Hose Connections.

2306.8.1 Small hose stations. Install 1-½ inch hose valves when the size of high-piled storage is greater than 2,500 sq. ft for Class I-IV commodities or 500 sq. ft. of high hazard commodities at approved locations in accordance with Section 905.

2306.8.2 Fire department hose connections. Where exit passageways are required by the International Building Code for egress, a Class I standpipe system shall be provided in accordance with Section 905.

(5) Revise the following:

2308.2.2 Racks with solid shelving. Racks with solid shelving having an area greater than 32 square feet (3 m²), measured between approved flue spaces at all four edges of the shelf, shall be in accordance with this section.

Exceptions:

1. Racks with mesh, grated, slatted or similar shelves having uniform openings not more than 6 inches (152 mm) apart, comprising at least 50 percent of overall shelf area, and with approved flue spaces, are allowed to be treated as racks without solid shelves.

2. Racks used for the storage of combustible paper records, with solid shelving, shall be in accordance with NFPA 13 and NFPA 232.

(6) Revise the following:

2308.4 Column protection. Steel building columns shall be protected in accordance with NFPA 13 230.

(7) Revise the following:

2310.1 General. Records storage facilities used for the rack or shelf storage of combustible paper records greater than 12 feet (3658 mm) in height shall be in accordance with Sections 2306 and 2308 and NFPA 13 and NFPA 232 230. Palletized storage of records shall be in accordance with Section 2307.
(N) CHAPTER 24 TENTS, CANOPIES AND OTHER MEMBRANE STRUCTURES

(1) Revise the following:

2403.2 Approval required. Tents and membrane structures having an area in excess of 400 200 square feet (37 19 m²) and canopies in excess of 1200 400 square feet (148 37 m²) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the Fire Code Official.

Exceptions:

1. Tents used exclusively for recreational camping purposes.
2. Fabric canopies open on all sides which comply with all of the following:
   2.1. Individual canopies having a maximum size of 700 square feet (65 m²).
   2.2. The aggregate area of multiple canopies placed side by side without a fire break clearance of 12 feet (3658 mm), not exceeding 700 square feet (65 m²) total.
   2.3. A minimum clearance of 12 feet (3658 mm) to all structures and other tents.

(O) CHAPTER 27 HAZARDOUS MATERIALS—GENERAL PROVISIONS

(1) Revise the following:

2701.5.1 Hazardous Materials Management Plan. Where required by the fire code official, each application for a permit shall include a Hazardous Materials Management Plan (HMMP) in conformance with the City of Mesa Fire Prevention Policy and Procedure. The HMMP shall include a facility site plan designating the following:

1. Storage and use areas.
2. Maximum amount of each material stored or used in each area.
3. Range of container sizes.
4. Locations of emergency isolation and mitigation valves and devices.
5. Product conveying piping containing liquids or gases, other than utility-owned fuel gas lines and low-pressure fuel gas lines.
6. On and off positions of valves for valves that are of the self-indicating type.
7. Storage plan showing the intended storage arrangement, including the location and dimensions of aisles.
8. The location and type of emergency equipment. The plans shall be legible and drawn approximately to scale. Separate distribution systems are allowed to be shown on separate pages.
(2) Add the following:

2701.5.1.1 Hazardous Materials Management Plan (HMMP) Short Form (minimal storage). A facility shall qualify as a minimal storage site if the aggregate quantity of each hazardous material present in the facility is 500 pounds or less for solids, 55 gallons or less for liquids, and 200 cubic feet or less at NTP for compressed gasses for any classification of material. The applicant for a permit for a facility that qualifies as a minimal storage site shall be permitted to submit the short form HMMP. Such a plan shall conform to City of Mesa Fire Prevention Policy and Procedure.

(3) Revise the following:

2701.5.2 Hazardous Materials Inventory Statement (HMIS). Where required by the fire code official, an application for a permit shall include an HMIS, such as SARA (Superfund Amendments and Reauthorization Act of 1986) Title III, Tier II Report, or other approved statement. A separate hazardous materials inventory statement shall be provided for each building and control area, including its appurtenant structures, and each exterior facility in which hazardous materials are stored. The HMIS shall list all hazardous materials stored and include the following information for each hazardous material stored and include the following information:

1. Chemical name and concentration Manufacturer’s name.
2. Chemical Abstract Service (CAS) identification number Chemical name, trade names, hazardous ingredients.
3. Use amount (open and closed) Hazard classification.
4. Storage amount MSDS or equivalent.
5. Outdoor amount, both in storage and use United Nations (UN), North America (NA) or the Chemical Abstract Service (CAS) identification number.
6. Mesa Fire Code hazard classification Maximum quantity stored or used on site at one time.
7. Physical state and physical or health class Storage conditions related to the storage type, temperature and pressure.
8. NFPA 704 hazard value.
9. Department of Transportation (DOT) hazard identification number.
10. DOT hazard classification.
11. Type of storage containers
12. Units of measurement used.
13. Physical and health affects.

(4) Add the following:

2701.5.2.1 Changes to Hazardous Materials Inventory Statements. An amended hazardous materials inventory statement shall be provided to the fire official by facilities that store or handle hazardous materials within thirty (30) days of a change or addition of hazard class, or in amounts sufficient to cause an increase or decrease in the aggregate quantity that exceeds five percent (5%) for any physical or health class.
(5) Revise the following:

**3001.1 Scope.** Storage, use and handling of compressed gases in compressed gas containers, cylinders, tanks and systems shall comply with this chapter, including those gases regulated elsewhere in this code. Partially full compressed gas containers, cylinders or tanks containing residual gases shall be considered as full for the purposes of the controls required.

Exceptions:

1. Gases used as refrigerants in refrigeration systems (see Section 606).
2. Compressed natural gas (CNG) for use as a vehicular fuel shall comply with Chapter 22, NFPA 52 and the International Fuel Gas Code.

Cutting and welding gases shall also comply with Chapter 26.

Cryogenic fluids shall also comply with Chapter 32. Liquefied natural gas for use as a vehicular fuel shall also comply with NFPA 57 and NFPA 59A.

Compressed gases classified as hazardous materials shall also comply with Chapter 27 for general requirements and chapters addressing specific hazards, including Chapters 35 (Flammable Gases), 37 (Highly Toxic and Toxic Materials), 40 (Oxidizers) and 41 (Pyrophoric).

LP-gas shall also comply with Chapter 38 and the International Fuel Gas Code.

(P) CHAPTER 33 EXPLOSIVES AND FIREWORKS

**3301.1.3 Fireworks.** The possession, manufacture, storage, handling and use of fireworks are prohibited except as allowed under Mesa City Code 6-21. (5021)

(1) Add the following:

**3301.9 Abandonment.** Explosive materials shall not be abandoned.

(2) Revise the following:

**3304.2 Magazine required.** Explosives and explosive materials, and Division 1.3G fireworks shall be stored in magazines constructed, located, operated and maintained in accordance with the provisions of Section 3304 and NFPA 495 or NFPA 1124.

Exceptions:

1. Storage of fireworks at display sites in accordance with Section 3308.5 and NFPA1123 or NFPA1126.
2. Portable or mobile magazines not exceeding 120 square feet (11 m²) in area shall not be required to comply with the requirements of the International Building Code. The number of portable or mobile magazines counted as one structure shall not exceed an aggregate of two.

(3) Add the following:

**3305.9.1 Standby personnel.** When required by the Chief, standby personnel shall be provided until such time as the site is determined to be safe.
(4) Revise the following:

3306.4 Storage in Group R occupancies. The storage of small arms ammunition in Group R occupancies shall comply with Sections 3306.4.1 and 3306.4.2.

3306.4.1 Black powder and smokeless propellants. Propellants for personal use in quantities not exceeding 20 pounds (9 kg) of black powder or 20 pounds (9 kg) of smokeless powder shall be stored in original containers in occupancies limited to Group R-5 R-3. Smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) kept in a wooden box or cabinet having walls of at least 1 inch (25 mm) nominal thickness shall be allowed to be stored in occupancies limited to Group R-5 R-3. Quantities exceeding these amounts shall not be stored in any Group R occupancy.

3306.4.2 Small arms primers. No more than 10,000 small arms primers shall be stored in occupancies limited to Group R-5 R-3.

(5) Revise the following:

3306.5.1.3 Small arms primers. No more than 10,000 small arms primers shall be displayed in Group M occupancies. Black powder shall not be stored with small arms primers or percussion caps.

(Q) CHAPTER 34 FLAMMABLE AND COMBUSTIBLE LIQUIDS

(1) Revise the following:

3404.3.3.9 Idle combustible pallets. Storage of empty or idle combustible pallets inside an unprotected liquid storage area shall be limited to a maximum pile size of 2,500 square feet (232 m²) and to a maximum storage height of 6 feet (1829 mm). Storage of empty or idle combustible pallets inside a protected liquid storage area shall comply with NFPA 13 and NFPA 232 230. Pallet storage shall be separated from liquid storage by aisles that are at least 8 feet (2438 mm) wide.

(2) Add the following:

3406.5.1.19 Disabled vehicles. When a tank vehicle or tank is disabled through accident or mechanical failure and it becomes necessary to remove the cargo at that location, such cargo is allowed to be transferred to another tank vehicle or tank car using approved means.

3406.5.1.20 Time limit for unloading. Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring the liquid between tank cars and permanent storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than 24 hours while connected for transfer operations.

(R) CHAPTER 40 OXIDIZERS

(1) Revise the following:

4001.1 Scope. The storage and use of oxidizers shall be in accordance with this chapter and Chapter 27. Compressed gases shall also comply with Chapter 30. Oxidizing cryogenic fluids shall also comply with Chapter 32.
Exceptions:

1. Display and storage in Group M and storage in Group S occupancies complying with Section 2703.11.
2. Bulk oxygen systems at industrial and institutional consumer sites shall be in accordance with NFPA55.
3. Liquid oxygen stored or used in home health care in I-1, I-4 and R occupancies in accordance with Section 4006.

(2) Add the following:

4002.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

LIQUID OXYGEN HOME CARE CONTAINER. A container used for liquid oxygen not exceeding 15.8 gallons (60 liters) specifically designed for use as a medical device as defined by 21 USC Chapter 9, the United States Food, Drug and Cosmetic Act that is intended to deliver gaseous oxygen for therapeutic use in a home environment.

LIQUID OXYGEN AMBULATORY CONTAINER. A container used for liquid oxygen not exceeding 0.396 gallons (1.5 liters) specifically designed for use as a medical device as defined by 21 USC Chapter 9, the United States Food, Drug and Cosmetic Act that is intended for portable therapeutic use and to be filled from its companion base unit (a liquid oxygen home care container).

OXIDIZING CRYOGENIC FLUID. An oxidizing gas in the cryogenic state.

SECTION 4006 LIQUID OXYGEN IN HOME HEALTH CARE

4006.1 General. The storage and use of liquid oxygen (LOX) in home health care in I-1, I-4 and R occupancies shall comply with Sections 4006.2 through 4006.7, or shall be stored and used in accordance with Chapter 27.

4006.2 Information and instructions to be provided. The seller of liquid oxygen shall provide the user with information in written form that includes, but is not limited to, the following:

1. Manufacturer’s instructions and labeling for safe storage and use of the containers.
2. Locating containers away from ignition sources, exits, electrical hazards and high temperature devices in accordance with Section 4006.3.3.
3. Restraint of containers to prevent falling in accordance with Section 4006.3.4.
4. Requirements for handling containers in accordance with Section 4006.3.5.
5. Safeguards for refilling containers in accordance with Section 4006.3.6.
6. Signage requirements in accordance with Section 4006.6.

4006.3 Liquid oxygen home care containers. Containers of liquid oxygen in home health care shall be in accordance with Section 4006.3.1 through 4006.3.6.
4006.3.1 Maximum individual container capacity. Liquid oxygen home care containers having a maximum individual capacity not exceeding 15.8 gal (60 liters) and liquid oxygen ambulatory containers are allowed in Groups I-1, I-4, and R occupancies. Such containers shall be stored, used and filled in accordance with Sections 4006, 3203.1 and 3203.2.

4006.3.2 Manufacturer’s instructions and labeling. Containers shall be stored, used and operated in accordance with the manufacturer’s instructions and labeling.

4006.3.3 Locating containers. Containers shall not be located in areas:

1. Where they can be overturned due to operation of a door,
2. Where they are in the direct path of egress,
3. Subject to falling objects,
4. Where they may become part of an electrical circuit, or
5. Where open flames and high temperature devices can cause a hazard.

4006.3.4 Restraining containers. Liquid oxygen home care containers shall be restrained while in storage or use to prevent falling caused by contact, vibration or seismic activity. Containers shall be restrained by one of the following methods:

1. Restraining containers to a fixed object with one or more restraints.
2. Restraining containers within a framework, stand or assembly designed to secure the container.
3. Restraining containers by locating a container against two points of contact like the walls of a corner of a room or a wall and a secure furnishing or object like a desk.

4006.3.5 Container handling. Containers shall be handled by use of a cart or hand truck designed for such use.

Exceptions:

1. Liquid oxygen home care containers equipped with a roller base.
2. Liquid oxygen ambulatory containers are allowed to be hand carried.

4006.3.6 Filling of containers. The filling of containers shall be in accordance with Sections 4006.3.6.1 through 4006.3.6.3.

4006.3.6.1 Filling location. Liquid oxygen home care containers shall be filled outdoors.

Exception: Liquid oxygen ambulatory containers are allowed to be filled indoors if the supply container is specifically designed for filling such containers and written instructions are provided by the container manufacturer.

4006.3.6.2 Incompatible surfaces. A liquid oxygen compatible drip pan shall be provided under home care container fill and vent connections during the filling process in order to protect against liquid oxygen spillage from coming into contact with combustible surfaces, including asphalt.
4006.3.6.3 Open flames and high temperature devices. The use of open flames and high temperature devices shall be in accordance with Section 2703.7.2.

4006.4 Maximum aggregate quantity. The maximum aggregate quantity of liquid oxygen allowed in storage and in use in each dwelling unit shall be 31.6 gal (120 L).

Exceptions:

1. The maximum aggregate quantity of liquid oxygen allowed in Group I-4 occupancies shall be limited by the maximum allowable quantity set forth in Table 2703.1.1(1).

2. Where individual sleeping rooms are separated from the remainder of the dwelling unit by fire barriers and horizontal assemblies having a minimum fire-resistance rating of 1 hour in accordance with the International Building Code, the maximum aggregate quantity per dwelling unit can be increased to allow a maximum of 31.6 gal (120 L) of liquid oxygen per sleeping room.

4006.5 Smoking prohibited. Smoking shall be prohibited in rooms or areas where liquid oxygen is in use.

4006.6 Signs. Warning signs for occupancies using home health care liquid oxygen shall be in accordance with Section 4006.6.

4006.6.1 No smoking sign. A sign stating “OXYGEN NO SMOKING” shall be posted in each room or area where the liquid oxygen home care container(s) is stored or used or where liquid oxygen ambulatory containers are filled.

4006.6.2 Premises signage. When required by the fire code official, each dwelling unit or sleeping unit shall have an approved sign indicating that the unit contains liquid oxygen home care container(s).

4006.7 Fire department notification. When required by the fire code official, the liquid oxygen seller shall notify the fire department of the locations of liquid oxygen home care containers.

(S) CHAPTER 45 REFERENCED STANDARDS

(1) Revised the following NFPA Standards:

10—07 §2 Portable Fire Extinguishers

11—05 §2 Low Medium- and High-Expansion Foam

13—07 §2 Installation of Sprinkler Systems

13D—07 §2 Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes

13R—07 §2 Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

14—07 §3 Installation of Standpipe, Private Hydrants and Hose Systems

15—07 §4 Water Spray Fixed Systems for Fire Protection

20—07 §3 Installation of Stationary Pumps for Fire Protection

24—07 §2 Installation of Private Fire Service Mains and their Appurtenances
(2) Add the following NFPA Standards:

232—00 Standard for the Protection of Records

409—04 Standard on Aircraft Hangars

484—06 Standard for Combustible Metals, Metal Powders, and Metal Dusts

(T) CHAPTER 46 AUTOMOBILE WRECKING YARDS

(1) Add the following:

CHAPTER 46 – AUTOMOBILE WRECKING YARDS

SECTION 4601 GENERAL

4601.1 General. Automobile wrecking yards shall be in accordance with this chapter.

4601.2 Fire department access roads. Fire Department access roads for facilities and piles shall be in accordance with Section 503.
4601.3 **Fire extinguishers.** Fire extinguishers shall be placed and sized in accordance with Section 906.

4601.4 **Welding and cutting.** Welding and cutting operations shall be in accordance with Chapter 26.

4601.5 **Tire Storage.** Tire storage shall be in accordance with Chapter 25.

4601.6 **Burning operations.** The burning of salvage vehicles and salvage or waste materials shall be prohibited.

**SECTION 4602 DEFINITIONS**

4602.1 **Definitions.** The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

**AUTOMOBILE WRECKING YARD.** An area that stores salvage vehicles.

**MOTOR VEHICLE FLUIDS.** Liquids which are flammable, combustible or hazardous materials, such as crankcase fluids, fuel, brake fluids, transmission fluids, radiator fluids and gear oil. This definition does not include liquids which are permanently sealed, such as hydraulic fluid within shock absorbers.

**SALVAGE VEHICLE.** A vehicle which is dismantled for parts or awaiting destruction.

**SECTION 4603 MOTOR VEHICLE FLUIDS AND HAZARDOUS MATERIALS**

4603.1 **General.** The storage, use, and handling of motor vehicle fluids and hazardous materials, such as those used to operate air bags and electrical systems, shall be in accordance with Section 4603 and Chapters 27 and 34.

4603.2 **Motor vehicle fluids.** Motor vehicle fluids shall be drained from salvage vehicles when such fluids are leaking. Storage and handling of motor vehicle fluids shall be done in an approved manner. Flammable and combustible liquids shall be stored and handled in accordance with Chapter 34.

4603.3 **Mitigation for vehicle fluid leaks.** Supplies or equipment capable of mitigating leaks from fuel tanks, crankcases, brake systems, and transmissions shall be kept available on site. Single-use plugging, diking, and absorbent materials shall be disposed of as hazardous waste and removed from the site in a manner approved by federal, state, and local requirements.

4603.4 **Air bag systems.** Removed air bag systems shall be handled and stored in accordance with Chapter 27.

4603.5 **Lead-acid batteries.** Lead-acid batteries shall be removed from salvage vehicles when such batteries are leaking. Lead-acid batteries that have been removed from vehicles shall be stored in an approved manner.

(U) **CHAPTER 47 EXCAVATIONS AND CONFINED SPACES**

(1) Add the following:

**CHAPTER 47—EXCAVATIONS AND CONFINED SPACES**

4701.1 **General.** The provisions of this chapter shall apply to any man-made cut, cavity, trench or depression in an earth surface formed by earth removal and identify procedures to protect employees from the hazards of entry into confined spaces.
Section 4702 Definitions

4702.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

CONFINED SPACE. Is a space that:

1. Is large enough and so configured that an employee can bodily enter and perform assigned work; and

2. Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults and pits are spaces that may have limited means of entry); and

3. Is not designed for continuous employee occupancy.

EXCAVATION. Any man-made cut, cavity, trench or depression in an earth surface, formed by earth removal.

TRENCH. A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of the trench (measured at the bottom) is not greater than 15 feet. If forms or other structures are installed or constructed in an excavation so as to reduce the dimension measured from the forms or structure to the side of the excavation to 15 feet or less, the excavation is a trench.

4703.1 Excavations and trenches. Excavations and trenches shall be in accordance with the 29 CFR, Parts 1926.650-652, Subpart P.

4704.1 Confined spaces. Confined spaces shall be in accordance with the most current edition of the 29 CFR, Part 1910.146. Other recognized standards that must be adhered to include 40 CFR, Parts 280 and 281.

4705.1 Unsafe conditions. When in the opinion of the chief, an unsafe condition exists, excavation and confined space operations shall cease until such time as adequate means have been taken to provide for the safety of persons working in or around the excavation or confined space. Failure to do so may result in citations and fines.

(V) APPENDIX B FIRE-FLOW REQUIREMENTS FOR BUILDINGS

(1) Revise the following:

B105.1 One- and two-family dwellings. The minimum fire-flow and flow duration requirements for one- and two-family dwellings having a fire-flow calculation area which does not exceed 3,600 square feet (344.5 m²) shall be 1,000 gallons per minute (3785.4L/min) for a duration of two hours. Fire-flow and flow duration for dwellings having a fire-flow calculation area in excess of 3,600 square feet (344.5 m²) shall not be less than that specified in Table B105.1.

Exception: A reduction in required fire flow of 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system.

B105.2 Buildings other than one- and two-family dwellings. The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table B105.1.

Exception: A reduction in required fire-flow of 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2. The resulting fire-flow shall not be less than 1,500 gallons per minute (5678 L/min) for the prescribed duration as specified in Table B105.1. (5283)
(2) Revise the following:

Table B105.1

Footnotes:

a. The minimum required fire flow shall be allowed to be reduced by 25 percent for Group R3/R5 occupancies. (5283)

b. Types of construction are based on the Mesa Building Code. (5283)

c. Measured at 20 psi.

(W) APPENDIX C FIRE HYDRANT LOCATIONS AND DISTRIBUTION

(1) Revise the following:

Table C105.1

Footnotes:

a. Reduce by 100 feet for dead-end streets or roads.

b. Where streets are provided with median dividers which can be crossed by fire fighters pulling hose lines, or where arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet on each side of the street and be arranged on an alternating basis up to a fire-flow requirement of 7,000 gallons per minute and 400 feet for higher fire-flow requirements.

c. Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 500 to 1,000 feet to provide for transportation hazards.

d. Reduce by 50 feet for dead-end streets or roads.

e. One hydrant for each 1,000 gallons per minute or fraction thereof.

(X) APPENDIX CHAPTER H FIRE SPRINKLER PLAN SUBMISSION REQUIREMENTS

(1) Add the following:

APPENDIX CHAPTER H FIRE SPRINKLER PLAN SUBMISSION REQUIREMENTS

(Y) APPENDIX CHAPTER I FIRE ALARM PLAN SUBMISSION REQUIREMENTS

(1) Add the following:

APPENDIX CHAPTER I FIRE ALARM PLAN SUBMISSION REQUIREMENTS
7-2-3 DIGITAL/ELECTRONIC DRAWING FILE SUBMISSIONS (4552)

(A) **General.** Projects requiring a construction permit from Building Safety Division, including projects performed under annual facilities permits shall submit a digital/electronic copy of the permit drawings in accordance with the required format. A digital/electronic copy of the drawing shall not be required for the following:

1. R3 occupancies. (4552)
2. R4 occupancies. (4552)
3. Single family residences. (4552)
4. Other buildings or structures accessory to and located on the same lot with one and two family dwellings. (4552)
5. Projects not required to submit drawings to obtain a permit. (Refer to Title 4, Chapter 1, Mesa Administrative Code) (4552)

The digital/electronic copy of the permit drawings shall be submitted to the Fire Department through the Building Safety Division for approval by the Fire Department's Technical Services Section prior to the issuance of the certificate of occupancy/completion by the Building Safety Director. (4552)

(B) **Required Format.** The digital/electronic files, required under this section, shall be submitted on cd/dvd-rom in one of the following formats: (dwg), (dxf), or (dgn). If submitted files are embedded with external references ("xref's"), such (xref) drawings shall be included on the submitted cd/dvd-rom. Cryptic naming for layers/files shall include a "definition key." All digital/electronic files shall be drawn in "feet" at a 1:1 scale. (4552)

1. **Required Information.** At a minimum, each file shall contain the following information:

   (a) **Floor Plans:**
   1. One plan for each building floor. (4552)
   2. All exterior and interior walls. (4552)
   3. All door locations (ingress/egress) throughout the building, including roll up doors and roof hatch/doors. (4552)
   4. Stairs and elevator locations. (4552)
   5. Room/suite's names and/or numbers. (4552)
   6. Utility shutoff locations (water, electric and gas). (4552)
   7. Special hazards and high-piled stock/racks, if any. (4552)
   8. Fire Department items shall include, but are not limited to, standpipes, fire sprinkler risers, alarm panels, fire department connections, and Knox boxes. (4552)

   (b) **Site Plan:**
   Including parking lot, building numbers, parking garages, fire lanes and hydrants. (4552)

   (c) **Roof Plan:**
   Layout and access (ladder/hatch locations). (4552)

2. **Not Required.** The drawings are not required to contain layers listing furnishings, floor coverings, ceiling styles/grids, plumbing fixtures, electrical (lights, switches, outlets), wall coverings, or landscape information. (4552)
CHAPTER 3

FIRE CALLS OUTSIDE CITY LIMITS

SECTION:

7-3-1: FIRE CALLS OUTSIDE CITY LIMITS

The Fire Chief of the City is hereby authorized and directed, at his discretion, to respond to fire calls outside the City limits with such equipment and men, either regular firemen or volunteer, as may be necessary or reasonable under the circumstances. (220)

CHAPTER 4

FIRE INVESTIGATORS

SECTION:

7-4-1: DUTIES; POWERS; LIMITATIONS

(A) The City Manager may designate certain members of the Mesa Fire Department as fire investigators. A fire investigator is authorized to investigate, detect, and, where appropriate, cite persons, companies or corporations who have violated or are suspected of violating any provision of Title 13, Chapter 17 of the Arizona Revised Statutes as amended or any provision of the Mesa Fire Code as adopted and amended by the City. (2589, 3042, 4478)

(B) While engaged in fire investigations and related fire code enforcement duties in this State, members of the Fire Department designated and appointed as fire investigators pursuant to the provisions of Subsection (A) possess and may exercise law enforcement powers of peace officers of this State. (2589, 3042)

(C) This Section does not grant any powers of peace officers of this State to fire investigators other than those necessary for the investigation, detection, and citation authority under Subsection (A). (2589, 3042)

(D) Any individual designated as a fire investigator shall have law enforcement training under the provisions of Arizona Revised Statutes Section 41-1822. (2589, 3042)
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CHAPTER 5
COST RECOVERY (5239, 5357)

SECTION:

7-5-1: PURPOSE (5239, 5357)

The purpose of this Chapter is to allow the City of Mesa, by and through its Fire and Medical Department to recover costs associated with the provision of medical services, including transport services to and between health care facilities. (5239, 5357)

7-5-2: DEFINITIONS (5239, 5357)

In this Chapter, the following words and phrases shall have the meanings stated in this section unless the context otherwise requires:

(A) Billable Costs means the reasonable costs incurred in providing medical services including, but not limited to, labor, equipment usage, disposable supplies, medical supplies, medications, oxygen-related costs, mileage, fuel, and any other costs not prohibited by state or federal law. (5239, 5357)

(B) Medical Services means services provided when responding to an emergency medical situation or a 911 call for on-site emergent or low-acuity medical care; initial care; follow-up care; and/or preliminary treatment procedures by emergency medical treatment providers, including, but not limited to, emergency medical technicians, paramedics, licensed nurses, nurse practitioners, physician assistants, and behavioral health crisis counselors; and/or transport services to and between health care facilities. (5357)

(C) Third Party Payer means an insurance carrier or other coverage provider, including a private insurance carrier, Medicare or Medicaid. (5239, 5357)

7-5-3: BILLABLE COSTS AND RATES (5239, 5357)

(A) The Mesa Fire and Medical Department is authorized to bill individuals and third party payers for all reasonable billable costs incurred in or related to the provision of medical services. (5239, 5357)

(B) At the time service is provided or as soon as practicable thereafter, the Mesa Fire and Medical Department shall obtain all pertinent insurance and payment information from the individual to whom service is provided, or from the individual’s family member, agent, or other representative, to facilitate billing for such services. (5239, 5357)

(C) The Mesa Fire and Medical Department may adopt billing rates set by a state agency or a state or federal insurance program, as applicable, set billing rates through contracts with third party payers, or establish reasonable rates to recover billable costs, so long as such rates do not violate state or federal laws or regulations. Such rates shall be set forth in a Schedule of Fees and Charges and adopted by a resolution of the City Council. (5239, 5357)
7-5-4:  PROCEDURE FOR BILLING

(A) The City of Mesa, through its Fire and Medical Department, is authorized to enter into a contract with a third party billing agency for performance of the billing authorized under this Chapter; provided, however, that the following standards for such third party billing contracts are met: (5239)

1. All third party billing services are to be provided at an amount consistent with fair market value for services rendered. The City may contract for such services on a percentage of collections basis or other manner consistent with the third party billing agency’s practice. (5239)

2. The third party billing agency has in place a compliance program conforming to standards set forth in the Office of Inspector General’s Compliance Program Guidance for Third Party Medical Billing Companies, 63 Federal Register 70138, as amended. (5239)

3. Funds payable to the City of Mesa by third party payers and/or carriers are not negotiated by billing agencies but are instead deposited directly into a designated City of Mesa account, through lock box or similar arrangement. (5239)

4. Neither the billing agency nor any of its employees are subject to exclusion from any state or federal health care program. (5239)

5. The billing agency is bonded and/or insured in amounts satisfactory to the City of Mesa. (5239)

(B) Nothing in this Section shall prohibit the City of Mesa, through its Fire and Medical Department, from performing the billing services set forth herein in lieu of contracting with a third party billing agency. (5239)
CHAPTER 1

BACK FLOW PROTECTION

SECTION:

8-1-1: PUBLIC WATER SUPPLY PROTECTION
8-1-2: APPROVAL
8-1-3: INSTALLATION
8-1-4: MAINTENANCE, TESTING, AND RECORDS
8-1-5: APPROVED BACK FLOW PREVENTIVE DEVICES
8-1-6: PREMISES REQUIRING APPROVED BACK FLOW PREVENTIVE DEVICES
8-1-7: FIRE SYSTEMS
8-1-8: TERMINATION OF WATER SERVICE
8-1-9: DEPARTMENT MODIFICATION
8-1-10: INFORMATION REQUESTS
8-1-11: STANDARDS TO BE MET
8-1-12: EXISTING CUSTOMERS
8-1-13: LATE FEE, CIVIL SANCTIONS
8-1-14: HABITUAL OFFENDER

8-1-1: PUBLIC WATER SUPPLY PROTECTION:

The City Water Resources Department, hereinafter called the "Department," is responsible for protecting the quality of the public water supply. No water service connection to premises of a type specified in Section 8-1-6 shall be installed or maintained unless the public water supply is protected as required by this Chapter. This article shall be construed and applied consistent with the requirements of AAC R18-4-215. (1823,2491,5336/Reso. 10804)

8-1-2: APPROVAL:

(A) Each back flow preventive device required hereunder shall be approved by the Department prior to installation and shall be installed by and at the expense of the customer. (1823)

(B) The Department shall approve back flow preventive devices when such devices have received approval by the Foundation for Cross Connection Control Research of the University of Southern California and the manufacturer has a local parts and service center. (1823)

8-1-3: INSTALLATION:

(A) Devices shall be installed at the service connection in an accessible location approved by the Department. A reduced-pressure principle back flow preventive device shall be installed above ground. Double-check valve devices may be installed below the ground in a vault if approved in writing by the Department. Approval is on a case-by-case basis. Approval shall be obtained prior to issuance of a building/engineering permit. (1823)

(B) Back flow preventive devices shall have at least the same cross sectional area as the water meter. In those instances where it is determined that a continuous water supply is necessary, two (2) sets of back flow preventive devices shall be installed in parallel. Where parallel devices are required, the sum of the cross sectional areas of the devices shall be at least equivalent to the cross sectional area of the meter. (1823)

(C) No bypass shall be installed around back flow preventive devices. (1823)
8-1-4: MAINTENANCE, TESTING, AND RECORDS:

(A) The customer shall test and service such devices at least once each year, shall maintain them in satisfactory operating condition, and shall overhaul, repair, or replace such devices if they are found to be defective within such yearly period. (1823,5336/Reso. 10804)

(B) Records of such tests, service, repairs, and overhauls shall be kept by the customer on forms approved by the Department. A copy of such records shall be sent to the Department within ten business days after completion of the testing. If any overhaul, repair, or replacement is performed, a certified tester must retest the assembly immediately and submit the additional test results within ten days. Failure to timely submit test records will result in assessment of the Backflow Compliance Late Fee and subject the customer to civil sanction pursuant to Section 8-1-13. (1823,5336/Reso. 10804)

(C) Tests shall be conducted and reported in a manner prescribed by, and/or by persons certified or approved by, the Department. (1823,5336/Reso. 10804)

(D) Water meters shall be owned, maintained, and read by the Department. (1823,5336/Reso. 10804)

8-1-5: APPROVED BACK FLOW PREVENTIVE DEVICES:
As designated in Section 8-1-6, the standard installation at each service connection to premises or systems requiring an approved back flow preventive device shall be one of the following types: (1823)

(A) Approved "Reduced Pressure Principle" back flow device (hereinafter "RP"), which shall mean a device containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent 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. (1823)

(B) Approved "Double Check Valve" assembly back flow preventive device (hereinafter "DC"), which shall mean an assembly composed of two (2) single, independently acting, approved check valves, including tightly closing shutoff valves located at each end of the assembly and fitted with properly located test cocks. (1823)

(C) Approved "Double Check Detector" assembly, which shall mean a mainline double check valve assembly as defined in Section 8-1-5(B) with a bypass consisting of an approved double check valve assembly, City-approved meter, and shutoff valves. This assembly is used on fire systems to protect against back flow and detect unauthorized water consumption. (1823)

(D) In certain cases an "Air-Gap Separation" may be used in lieu of an RP. Air-gap separation shall mean a physical separation between the free flowing discharge of a potable water supply and an open or nonpressure-receiving vessel. The separation shall be at least double the diameter of the supply pipe measured directly above the rim of the vessel. Requests for an air-gap separation will be considered on a case-by-case basis, and approval by the Department shall be in writing. (1823)

(E) Approved "Detector Check Assembly," which shall mean a M.A.G.-approved check valve and Department-approved bypass meter. All requirements of Section 8-1-4 shall pertain to this assembly. (1823)
8-1-6: **PREMISES REQUIRING APPROVED BACK FLOW PREVENTIVE DEVICES:**

An approved back flow preventive device of the type specified in this Subsection shall be the standard installation of each service connection (whether from a fire hydrant or temporary, regular, or other water service connection) to the following type of premises or systems: (1823)

(A) Aircraft and missile plants - RP. (1823)

(B) Automotive plants - RP. (1823)

(C) Auxiliary water systems (interconnected) - RP (does not include Maricopa County Health Department approved municipal and private water systems). (1823)

(D) Auxiliary water systems (not interconnected) - DC (does not include Maricopa County Health Department-approved municipal and private water systems). (1823)

(E) Beverage bottling plants - DC. (1823)

(F) Breweries - RP. (1823)

(G) Buildings greater than three (3) stories or greater than thirty-four feet (34') in height from curb level - DC. (1823)

(H) Buildings with house pumps and/or potable water storage tank - DC. (1823)

(I) Buildings with sewage ejectors (inadequate on-site protection) - RP. (1823)

(J) Buildings with sewage ejectors (adequate on-site protection) - DC. (1823)

(K) Canneries, packing houses, and reduction plants - RP. (1823)

(L) Car wash with water reclamation system - RP. (1823)

(M) Centralized heating and air conditioning plants - RP. (1823)

(N) Chemical plants - RP. (1823)

(O) Chemically treated potable (or nonpotable) water systems - RP. (1823)

(P) Civil works - RP. (1823)

(Q) Commercial laundries - DC. (1823)

(R) Dairies and cold storage plants - DC. (1823)

(S) Dye works - RP. (1823)

(T) Film processing laboratories - RP. (1823)
(U) Food processing plants - DC. (1823)

(V) High schools and colleges - DC. (1823)

(W) Holding tank disposal stations - RP. (1823)

(X) Hospitals (major complexes) and mortuaries - RP. (1823)

(Y) Medical and dental buildings, sanitariums, and rest and convalescent homes - DC. (1823)

(Z) Irrigations systems (premises having separate systems - such as parks, playgrounds, cemeteries, golf courses, schools, estates, ranches, etc.) - RP. (1823)

(AA) Laboratories using toxic materials - RP. (1823)

(BB) Manufacturing, processing, and fabricating plants using toxic materials - RP. (1823)

(CC) Manufacturing, processing, and fabricating plants using nontoxic materials - RP. (1823)

/DD Motion picture studios - RP. (1823)

(EE) Oil and gas production facilities - RP. (1823)

(FF) Paper and paper production plants - RP. (1823)

(GG) Plating plants - RP. (1823)

(HH) Radioactive materials processing facilities - RP. (1823)

(II) Restricted, classified, or other closed facilities - RP. (1823)

(JJ) Rubber plants - RP. (1823)

(KK) Sand and gravel plants - RP. (1823)

(LL) Sewage and storm drainage facilities - RP. (1823)

(MM) Any premises where a cross connection is maintained - RP. (1823)

(NN) Water trucks, hydraulic sewer cleaning equipment - RP or Air-Gap. (1823)

(OO) Any premises where water supplied by the City is subject to deterioration in sanitary quality and its entry into the public water system is permitted. (1823)
8-1-7: FIRE SYSTEMS:
Fire systems shall have the following devices: (1823)

(A) Fire Systems - DC. If the potential for unauthorized water usage exists, a double check detector assembly will be installed in place of a DC. (1823)

(B) Fire systems with pump and/or storage tank - RP. (1823)

(C) Fire Systems With Auxiliary Supply - RP. When the potential for unauthorized water usage exists in the systems requiring an RP, the customer may also be required to install a detector check assembly in addition to an RP (M.A.G. Detail 346). (1823)

8-1-8: TERMINATION OF WATER SERVICE:

(A) Service of water to any premises may be terminated by the Department if it is found that a back flow preventive device is not installed as required, has been removed or bypassed, has not been properly maintained or is malfunctioning, has not been tested annually, test records have not been provided to the Department, or if unprotected cross connections exist on the premises. (1823, 5336/Reso. 10804)

(B) If a violation of Section A presents an imminent hazard to the health and safety of the water supply, the City may issue an Immediate Notice of Termination and act immediately to terminate service, and may also take such other actions as are necessary to abate and correct the conditions or defects and violations described in the Notice. The Department will also provide written notice to the person of the violation in the manner set forth in 8-1-14. Thereafter, services will not be restored until such conditions or defects are corrected and all penalties and other fees and charges are paid, or a hearing in accordance with Title 1, Chapter 27 results in a final finding of no violation. (5336/Reso. 10804)

8-1-9: DEPARTMENT MODIFICATION:
In those instances where conditions warrant, the Department may modify the standard installation herein indicated as appropriate to provide a degree of protection commensurate with the degree of hazard. (1823)

8-1-10: INFORMATION REQUESTS:
Upon request, the Department will provide interested parties with copies of rules and regulations for the testing and maintenance of devices and such other advice, information, illustrative sketches, drawings, and data as may be necessary to familiarize the customers, engineers, architects, and others with Department requirements. (1823)

8-1-11: STANDARDS TO BE MET:
If the Department determines that a customer’s back flow preventive device does not meet current standards, the customer shall upgrade his device so that it will meet current standards. (1823)

8-1-12: EXISTING CUSTOMERS:
Customers that have water service prior to the effective date of this Chapter are subject to all requirements imposed by this Chapter if the Department determines the degree of hazard requires a device be installed. (1823)
8-1-13: **LATE FEE, CIVIL SANCTIONS**

(A) A Backflow Compliance Late Fee will be assessed against each connection when the customer fails to timely meet the requirements imposed by this Article 1 at Section 8-1-4. The Backflow Compliance Late Fee shall be as set forth in the schedule of Utility Service Fees and shall be in addition to all other applicable rates, fees and charges. (5336/Reso. 10804)

(B) The Department Director and inspectors within the Department, or such other persons as the City Manager may designate, are authorized to commence a civil code violation action under this Chapter as provided in Title 1, Chapter 27 of this Mesa City Code. (5336/Reso. 10804)

(C) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5336/Reso. 10804)

(D) In addition to the Backflow Compliance Late Fee established above, a civil action for violations of this Chapter may be commenced by issuance of a complaint in the manner set forth in Section 1-27-2. The complaint shall direct the person to appear at the time and place stated before the Mesa City Court or a Hearing Officer appointed as provided in Section 1-27-8. The complaint shall be served and administered in accordance with Sections 1-27-3 and 1-27-7. (5336/Reso. 10804)

(E) All hearings before the Mesa City Court or a Civil Hearing Officer shall be in accordance with Section 1-27-7 and Title 1, Chapter 27 generally. Hearings shall be informal, except that testimony shall be given under oath or affirmation. The technical rules of evidence shall not apply, except for statutory provisions related to privileged communications. The City shall have the burden of proving all violations charged by a preponderance of the evidence. No prehearing discovery shall be permitted except under extraordinary circumstances as determined by the Court or Civil Hearing Officer. (5336/Reso. 10804)

(F) Upon an admission of the allegations of the complaint or a finding of violation in favor of the City by the Mesa City Court or Civil Hearing Officer, the Court or Hearing Officer shall enter a finding of responsibility and judgment against the person for civil sanctions in an amount not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198) (5336/Reso. 10804)

(G) An appeal from a final judgment of the Court of Civil Hearing Officer may be taken in accordance with Title 1, Chapter 27 of this Mesa City Code and pursuant to the rules of procedure for special actions of the Arizona Supreme Court. (5336/Reso. 10804)

8-1-14: **HABITUAL OFFENDER:**

An person who violates a provision in this Chapter after previously having been found responsible for committing three (3) or more civil violations, whether by admission, payment of a fine, default, or judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. (5336/Reso. 10804)
CHAPTER 2
ENIRONMENTAL PROTECTION

ARTICLE I
PARTICULATE POLLUTION SOURCES

SECTION:

8-2-1: PURPOSE AND APPLICABILITY
8-2-2: DEFINITIONS
8-2-3: PERMITS AND DUST CONTROL PLAN REQUIRED FOR DUST GENERATING OPERATIONS (5061)
8-2-4: COMPLIANCE LIMITS
8-2-5: REQUIRED CONTROL MEASURES
8-2-6: POSTING, RECORD KEEPING, AND RECORDS RETENTION
8-2-7: AUTHORITY TO INSPECT (5061)
8-2-8: COMMENCEMENT OF AN ACTION (5061)
8-2-9: REMEDIES NOT EXCLUSIVE (5061)
8-2-10: DEFENDANTS AND RESPONSIBLE PARTIES (5061)
8-2-11: CIVIL VIOLATIONS AND CITATION (5061)
8-2-12: CIVIL PENALTIES (5061)
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8-2-14: HABITUAL OFFENDER (5061)
8-2-15: FAILURE TO PROVIDE EVIDENCE OF IDENTITY (5061)
8-2-16: ABATEMENT (5061)
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8-2-18: RECORDING AN ABATEMENT VIOLATION (5061)
8-2-19: EMERGENCY ABATEMENT (5061)
8-2-20: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE (5061)

8-2-1: PURPOSE AND APPLICABILITY:
To limit the amount of particulate matter (PM$_{10}$ or less) entrained into the ambient air from any property, operation, or activity as a result of the impact of human activities by requiring measures to prevent, reduce, or mitigate particulate matter emissions. These requirements shall apply to any activity, equipment, operation, and/or man-made or man-caused condition or practice that is capable of generating fugitive dust. (3465)

8-2-2: DEFINITIONS:
For the purpose of this Article the following definitions shall apply: (3465)

BULK MATERIAL: Any organic or inorganic material that is capable of producing fugitive dust, including earth, rock, silt, sediment, sand, gravel, soil, fill, aggregate, dirt, mud, demolition debris, cotton trash, ABC, cinders, pumice, sawdust, feeds, grains, fertilizers, and dry cement. (3465)

CITY MANAGER: The City Manager appointed in accordance with Article III of the City of Mesa City Charter. (5061)
CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5061)

CONTROL MEASURE: A technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension, or airborne transport of fugitive dust. (3465)

DISTURBED SURFACE AREA: A portion of the earth’s surface or material placed thereupon which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition to an extent that it increases the potential for the emission of fugitive dust. Disturbed surface areas include shoulders of paved roads; unpaved roads; haul roads; access points where unpaved traffic surfaces join paved roads; construction and demolition sites; unpaved parking, storage, and staging areas; bulk material stockpiles; wind and water erodible soils; vacant parcels; urban or suburban open areas, whether public or private lands. (3465)

DUST: Particulate matter which is capable of temporary suspension in air excluding that material emitted directly into the atmosphere in the exhaust of motor vehicles and other internal combustion engines. (3465)

DUST CONTROL PLAN: A written report that is required to be prepared by Maricopa County Air Pollution Control Rule 310 that describes all control measures to be implemented at a work site or in transit to and from a work site for any dust-generating operation. (3465)

DUST-GENERATING OPERATION: Any activity capable of generating fugitive dust, including, but not limited to, land clearing, earth moving, weed abatement, farming operations, excavating, construction, demolition, material handling, storage and transporting, vehicle use and movement, or the operation of any outdoor equipment, facilities, or unpaved parking or staging areas. (3465)

EARTH-MOVING OPERATION: The use of any equipment in a dust-generating operation. (3465)

FREEBOARD: The measured vertical distance taken where the bulk material touches the vertical sides of an unroofed enclosure or truck bed. (3465)

FUGITIVE DUST: Dust which is not collected by a capture system and is suspended in the ambient air. (3465)

GRAVEL PAD: A layer of at least one inch (1") or larger diameter washed gravel, rock, or crushed rock maintained at the point of intersection of a public access roadway and a work site entrance to dislodge mud, dirt, or debris from the tires of motor vehicles or haul trucks prior to leaving the site. (3465)

GRIZZLY: A mechanical device to dislodge mud, dirt, or debris from the tires and undercarriage of motor vehicles and haul trucks prior to leaving the work site. (3465)

HAZARD: A condition that presents a risk to the public health or the environment. (3465, 5061)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing harm to the public health or the environment. (3465, 5061)

HAUL ROAD: Any on-site unpaved road used by commercial, industrial, institutional, or governmental traffic. (3465)
**HAUL TRUCK:** Any fully or partially open-bodied, self-propelled vehicle including any nonmotorized attachments, such as trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle. (3465)

**LANDSCAPE DEBRIS:** Debris generated or accumulated as a result of or moved in the course of landscape operations. (4820)

**MOTOR VEHICLE:** Every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (3465)

**NOTICE TO ABATE:** A notice issued to a responsible party concerning a violation of this Chapter of the Mesa City Code. (5061)

**OFF-ROAD VEHICLE:** Any self-propelled conveyance which includes off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motor buggies. (3465)

**OPACITY:** Entrained particulate pollution that results in an increased optical density. (3465)

**PARTICULATE MATTER:** Any solid material which has a nominal aerodynamic diameter smaller than one hundred (100) microns (micrometers), and which exists in a finely divided form. (3465)

**PERSON:** Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, state, municipality, Indian tribe, political subdivision of the state, federal government agency, or any other legal entity, including their legal representatives, agents, or assigns. (3465)

**PM$_{10}$:** Particulate matter with an aerodynamic diameter smaller than or equal to ten (10) microns (micrometers) as measured by the applicable state and federal reference test methods. (3465)

**PUBLIC STREET:** A road, highway or thoroughfare that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicle travel. (4820)

**RESPONSIBLE PARTY:** A person who knows or has reason to know of the existence of any violation of this Chapter on that person’s property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5061)

**STABILIZED SURFACE:** A portion of the earth’s surface or material placed thereupon with a visible crusted surface that has been made resistant to the formation of windblown dust pursuant to this Article. (3465)

**TRACK-OUT:** Any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, or equipment (including tires) and that has fallen onto a public access roadway. (3465)

**TRACK-OUT CONTROL DEVICE:** A gravel pad, grizzly, wheel wash system, or a paved or otherwise stabilized area located at the point of intersection of an unpaved area and a paved roadway. (3465)

**UNPAVED ROAD:** Any road, equipment path, or driveway that is not covered by asphalt, asphaltic concrete, concrete pavement. (3465)
URBAN OR SUBURBAN OPEN AREA: An unsubdivided or undeveloped tract of land adjoining a residential, industrial, or commercial area. (3465)

VACANT PARCEL: A subdivided residential, industrial, institutional, governmental, or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature. (3465)

WINDBLOWN DUST: Visible emissions from any disturbed surface area which are generated by wind action alone. (3465)

WORK SITE: The real property upon which dust-generating operations occur. (3465)

8-2-3: PERMITS AND DUST CONTROL PLAN REQUIRED FOR DUST GENERATING OPERATIONS: (5061)

(A) No person shall commence any earth-moving operation or dust-generating operation that will disturb 0.1 contiguous acre or greater without meeting the requirements of, obtaining, and submitting to the City Manager or designee any and all dust control permits and permits to operate required by Rule 200 of the Maricopa County Air Pollution Control Regulations. A properly executed Maricopa County dust control permit including the dust control plan shall be submitted to the City Manager or designee. The City of Mesa will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until an approved dust control permit with dust control plan have been submitted to the City. (3465, 4254, 5061)

(B) Provisions of Subsection (A) of this Section shall not apply to the following: (3465)

1. During emergency, life-threatening situations or in conjunction with any officially declared disaster or state of emergency. (3465)

2. To operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water, and sewerage during service outages and emergency disruptions. (3465)

3. To nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)

4. To vehicle test and development facilities and operations if both of the following conditions apply: (3465)

   (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and
   (3465)

   (b) Such testing is not feasible within enclosed facilities. (3465)
8-2-4: **COMPLIANCE LIMITS:**

(A) No person shall cause, suffer, allow, or engage in any dust-generating operation which causes fugitive dust emissions to exceed twenty percent (20%) opacity. (3465)

1. Opacity shall be determined by observations for visible emissions of stationary sources of fugitive dust and shall be conducted in accordance with techniques specified in Reference Method 9 adopted by the United States Environmental Protection Agency or by an equivalent method approved by the City of Mesa. (3465)

2. Opacity observations for intermittent sources of fugitive dust shall be conducted in accordance with this Section and shall not exceed twenty percent (20%) opacity for three (3) minutes within a thirty- (30-) minute period. (3465)

(B) No person shall allow any machinery or vehicles to exit from a construction or development site or from a special event site disturbed surface area and thereby cause to be deposited upon a street any accumulation of soil. (3465)

1. In addition, all work sites five (5) acres or larger must have a suitable track-out control device installed at all entrances to a public access roadway. (3465)

2. When spillage or track-out occurs onto any public access roadway, such deposits shall be cleaned up implementing control measures so as to prevent or minimize fugitive dust. Cleanup shall occur at the following frequency: (3465)

   (a) When deposits extend a cumulative distance of fifty (50) linear feet or greater onto any public access roadway, such deposits shall be cleaned up immediately. (3465)

   (b) All other deposits onto a public access roadway shall be cleaned up within two (2) hours of their occurrence. (3465)

   (c) Deposition onto roadways temporarily restricted from public access shall be cleaned up prior to resuming public access. (3465)

(C) No person shall cause, suffer, or allow the deposition of bulk materials onto any paved roadway, paved parking, or paved staging area from adjacent real property, whether by natural or man-caused forces of erosion. In the event that such deposits originating from the real property occur, the property owner, operator, or designated agent thereof shall undertake all of the following actions: (3465)

1. Remove any and all deposits utilizing the appropriate control measures within twenty-four (24) hours of the deposit’s occurrence or prior to the resumption of traffic on pavement where the pavement area has been closed to traffic. City operations to clean streets after storm events when no party responsible for the deposits can be located are exempt from this requirement. (3465)

2. Dispose of the bulk materials resulting from the removal of these deposits in such a manner so as not to cause or become another source of fugitive dust. (3465)
(D) No person shall cause, suffer, or allow an unpaved or unstabilized vacant parcel or an urban or suburban open area to be driven over or used by motor vehicles or off-road vehicles without first implementing control measures to effectively prevent or minimize fugitive dust. (3465, 4820)

(E) No person shall operate, maintain, use, or allow the use of any unpaved area for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at any developments, other than residential buildings with four (4) or fewer units, without first implementing one or more of the following dustproof paving methods: (4820, 5061)

1. Asphaltic concrete
2. Cement concrete
3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
4. A stabilization method approved by the City Manager or Designee. (4820)

(F) No person shall operate, maintain, use, or allow the use of any unpaved area greater than three thousand (3,000) square feet, at residential buildings with four (4) or fewer units, for the ingress and egress, parking, storage, servicing, or dispatching of motor vehicles at developments, without first implementing one or more of the following dustproof paving methods: (5061)

1. Asphaltic concrete
2. Cement concrete
3. Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate
4. A stabilization method approved by the City Manager or Designee. (4820)

(G) No person shall cause or allow any vacant parcel to remain unoccupied, unused, vacant, or undeveloped for more than fifteen (15) days without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(H) No person shall remove vegetation from any vacant parcel by blading, disking, plowing under, or any other means that disturbs 0.10 acres or more of soil surface without first obtaining a dust control permit with its applicable dust control plan from Maricopa County. Any person engaged in weed abatement activity shall implement control measures to effectively prevent or minimize fugitive dust. This Subsection shall not apply to City operations to create firebreaks by order of the Fire Department. (3465, 5061)

(I) No person shall disturb or remove soil, natural ground cover, or vegetation from any real property area without first implementing control measures to effectively prevent or minimize fugitive dust for the entire duration of the project including after-work hours, weekends, and holidays. (3465)
(J) Within four (4) months of the termination of activities on the property described in Subsection (A) of this Section, the owner or operator of such property shall implement permanent control measures to achieve a stabilized surface. (3465)

(K) No person shall cause, suffer, or allow the operation, use, or maintenance of any permanent haul road of more than fifty feet (50') in length at any work site unless the person implements control measures which effectively prevent or minimize fugitive dust. (3465)

(L) No person shall operate, maintain, use, or allow the use of any commercial feedlot or commercial livestock area for purposes of farming, feeding, or displaying animals, or engage in other activity such as racing and exercising, without first implementing control measures to effectively prevent or minimize fugitive dust as specified in Sections 8-2-4-(A), (B), and (C) of this Article. (3465)

(M) No person shall cause, suffer, allow, or engage in the handling of bulk materials including stacking, loading, unloading, conveying, and reclaiming, without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(N) No person shall cause, suffer, allow, or engage in the transportation of bulk materials unless in compliance with applicable requirements of this Section and without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(O) No person shall cause, suffer, allow, or engage in the use or operation of any haul truck within the boundaries of a work site or on a public access roadway in such manner as to cause the emission of fugitive dust from its cargo space. The following requirements shall apply to the use and operation of any haul truck: (3465)

1. The cargo compartment of a haul truck shall be constructed and maintained so that no spillage or loss of bulk materials can occur from holes or other openings in the cargo compartment’s floor, sides, or tailgate. (3465)

2. Any haul truck shall be cleaned or kept covered once emptied or between cargoes when the residual particulate matter remaining in the cargo space is capable of becoming fugitive dust. (3465)

3. All haul trucks shall be properly loaded so that the freeboard is not less than three inches (3”) and shall be effectively covered with a tarp or other suitable enclosure; and (3465)

4. All haul trucks and motor vehicles shall pass over or through a track-out control device so as to effectively remove particulate matter from the exterior surfaces. (3465)

(P) No person shall cause, suffer, allow, or engage in the use, repair, construction, reconstruction, or improvement of any road, roadway, street, highway, or alley without first implementing control measures to effectively prevent or minimize fugitive dust. (3465)

(Q) No person shall at any time blow landscape debris into any public roadway. (4820)
(R) The provisions of this Section shall not apply to the following: (3465)

1. When the average wind speed is greater than twenty-five (25) miles per hour, provided that all dust-control measures including contingency measures contained in the approved dust control plan are implemented. The average wind speed determination shall be based on a sixty- (60-) minute average from the nearest Maricopa County Air Quality Department monitoring station or as approved by the City of Mesa by a wind instrument located at the site being checked. (3465, 5061)

2. Nonroutine or emergency maintenance of flood control channels and water retention basins. (3465)

3. Vehicle test and development facilities and operations if both of the following conditions apply: (3465)

   (a) Dust is required to test and validate design integrity, product quality, or commercial acceptance; and (3465)

   (b) Such testing is not feasible within enclosed facilities. (3465)

8-2-5: REQUIRED CONTROL MEASURES:

   (A) No person shall conduct any dust-generating operations without implementing control measures to effectively control or minimize fugitive dust. (3465)

   (B) Persons subject to Subsection A of this Section shall select and effectively and appropriately implement control measures either individually or in combination in a manner that will control fugitive dust emissions to a level that shall not exceed the compliance limits prescribed in Section 8-2-4. If selected measures are not effective in preventing unacceptable emissions of fugitive dust, additional measures shall be implemented until compliance with Subsection A of this Section is achieved. (3465)

8-2-6: POSTING, RECORD KEEPING, AND RECORDS RETENTION:

   (A) A copy of the Maricopa County dust control permit and/or permit to operate as well as the approved dust control plan required by Section 8-2-3 must be kept readily available on site at all times. (3465, 5061)

   (B) Any person subject to the requirements of Section 8-2-3 shall keep a daily written log recording the actual application or implementation of the control measures delineated in the approved dust control plan. This log and supporting documentation shall be kept on site and made available for review on request. (3465)

8-2-7: AUTHORITY TO INSPECT: (5061)

   (A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. (5061)

   (B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5061)
8-2-8: COMMENCEMENT OF AN ACTION: (5061)

(A) The City Manager or designee is authorized to commence an enforcement action under this Chapter by issuing a Notice of Abatement under this Chapter or a citation for civil sanctions under this Chapter, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter. (5061)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (3465, 5061)

8-2-9: REMEDIES NOT EXCLUSIVE: (5061)
Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (3465, 5061)

8-2-10: DEFENDANTS AND RESPONSIBLE PARTIES: (5061)
Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter, is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (3465, 4074, 5061)

8-2-11: CIVIL VIOLATIONS AND CITATION: (5061)

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5061)

(B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code Section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-2-12 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5061)
The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, through an attorney or by e-mail with the clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. (5061)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by e-mail and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-2-12; or, (5061)

2. If the responsible party appears in person, through an attorney or by e-mail and denies the allegations contained in the citation, the clerk of the Civil Hearing Officer shall set the matter for hearing. (5061)

(D) If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5061)

(E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. (5061)

(F) Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the Court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5061)

8-2-12: CIVIL PENALTIES: (5061)

(A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5061)
(B) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-2-12(A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing:

1. Written and notarized confirmation from the City inspector that the violation has been successfully abated, and
2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation.

If either item has not been received by the Civil Hearing Officer 7 calendar days before, then the compliance hearing shall take place as previously scheduled.

(C) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal.

(D) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense.

8-2-13: (RESERVED)

8-2-14: HABITUAL OFFENDER:

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a Class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor.
(B) Upon conviction of a violation of this Section, the court may impose a sentence authorized by the laws of the State of Arizona for a Class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all Sections of this Chapter within 90 days of sentencing. (3465, 5061)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (3465, 5061)

8-2-15: FAILURE TO PROVIDE EVIDENCE OF IDENTITY: (5061)
A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (3465, 5061)

8-2-16: ABATEMENT: (5061)

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a notice to abate any violation of this Chapter. (5061)

(B) The notice to abate shall set forth the following information: (5061)

1. The responsible party has 30 calendar days from service of the notice to abate or correct the violation. (5061)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map and parcel number. (5061)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5061)

4. Reinspection date and time. (5061)

5. Name, business address, and business phone number of the City inspector who issued the notice to abate. (5061)

6. A warning stating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the responsible party for the cost of such abatement, and record a lien on the property for the assessment. (5061)

7. Hearing procedures. (5061)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5061)
(C) If the responsible party or other person served a notice to abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served pursuant to the Arizona Rules of Civil Procedure. That statement shall further set forth the following: (5061)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5061)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay. (5061)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5061)

4. Appeal procedures. (5061)

(D) The notice to abate and the statement of abatement costs shall be served to the responsible party pursuant to the Arizona Rules of Civil Procedure. (5061)

8-2-17: REQUEST FOR ABATEMENT HEARING: (5061)

The responsible party receiving a notice to abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development and Sustainability Department within 15 calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development and Sustainability Department, then the notice of abatement or statement of costs is final and binding. (5061)

8-2-18: RECORDING AN ABATEMENT VIOLATION: (5061)

The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (5061)
8-2-19:  EMERGENCY ABATEMENT: (5061)

(A) If a situation presents an imminent hazard to life or public safety, the City may issue a notice to abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City’s right under this Section to correct or abate the emergency itself. (5061)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-2-16(C). The responsible party may appeal the City’s emergency abatement action under this Section or the City’s statement of costs for an emergency abatement in the same manner as provided for in Section 8-2-17. (5061)

8-2-20:  SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE: (5061)

Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Sections 8-2-3, 8-2-4 or 8-2-5 of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (3465, 5061)
CHAPTER 3
SOLID WASTE (3198)

ARTICLE I
GENERAL PROVISIONS

SECTION:
8-3-1: RESPONSIBILITY
8-3-2: DEFINITIONS
8-3-3: COLLECTION AGENCY
8-3-4: PREPARATION OF SOLID WASTE
8-3-5: CONTAINER PLACEMENT AND LOCATION FOR PICKUP
8-3-6: CLEANUP AND BURNING MATERIAL
8-3-7: UNATTENDED CONTAINERS (2568)
8-3-8: INDISCRIMINATE DUMPING
8-3-9: CHARGES FOR SOLID WASTE SERVICE
8-3-10: SCAVENGING

8-3-1: RESPONSIBILITY:
It shall be the responsibility of every person, owner, tenant, or occupant of all premises within the City limits, hereinafter referred to as the customer, to properly control and dispose of all solid waste produced or occurring in or upon any and all premises owned, leased, or occupied by or for them in the manner provided herein. It shall be the duty of the municipal staff to provide for and enforce the provisions herein. (764,1969,3813)

8-3-2: DEFINITIONS:
"Solid waste" is defined as garbage, trash, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or pollution control facility and other discarded material, including solid, contained liquid, semisolid, or contained gaseous material but not including domestic sewage or dangerous hazardous wastes. Use of the term "refuse" or "garbage" in definitions and policy is synonymous with "solid waste." The subcategories of solid waste are as follows: (1969,3813)

APPLIANCES AND SMALL HOUSEHOLD EQUIPMENT: Examples of appliances include, but are not limited to, washers, dryers, refrigerators, and freezers. Examples of small household equipment include, but are not limited to, a generator, lawn mower, and wet/dry shop vacuum. Appliances and small household equipment shall be considered solid waste if they are not in use, are in a state of disrepair, and are not properly stored, thereby causing an unsightly or hazardous condition to exist. (1969,3813)

BULKY REFUSE: All large trimmings from trees and shrubbery, rugs, furniture, major appliances, mattresses, and other materials which are inappropriate or too large to be deposited into containers. (1969,3813)

BUSINESS OR COMMERCIAL ESTABLISHMENT: A structure or premises used for retail, wholesale, warehouse, store, factory, production, processing, manufacturing, restaurant, construction, service, hospitals, governmental entities, public authorities (schools), apartments (5 or more units) for rent or lease that are subject to Title 33, Chapter 10 of the Arizona Revised Statutes, or office uses. (2374,2931,3813,5305)
CONSTRUCTION AND DEMOLITION DEBRIS: Any solid waste resulting from a construction demolition project which would include lumber, scraps, shingles, plaster, brick, or concrete. This list is not inclusive but provides examples of typical construction debris. (1969,3813)

CONTAINER: Shall include sixty- (60-), ninety- (90-), three hundred- (300-), and four hundred forty- (440-) gallon plastic barrels; two- (2-), three- (3-), four- (4-), six- (6-), and eight- (8-) cubic-yard metal bins; twenty- (20-), thirty (30-), and forty (40-) cubic-yard roll-off containers (approximate sizes); and compactors. (3813)

DANGEROUS OR HAZARDOUS WASTE: Any solid waste that can cause damage or injury to property or persons and is dangerous or hazardous by reason of its pathological, explosive, flammable, reactive, radiological, or toxic nature, including, but not limited to, all wastes defined by the provisions of A.A.C. Title 18, Chapter 8, Article 2. (494,1969,3813)

GARBAGE: All nonhazardous putrescible wastes, excepting sewage and body wastes, and the wrappings and containers resulting from the storage, preparation, serving, and otherwise using of foods in or upon all premises. (1969,3813)

GREEN WASTE: Lawn and shrubbery clippings, leaves, weeds, and all large trimmings from trees and shrubbery. (3813)

RECYCLABLE MATERIALS: Any solid waste consisting of post-consumer materials which may be collected, separated, cleansed, treated, or reconstituted and returned to the economic stream in the form of raw materials or products. (3198)

RESIDENCE: Any structure or premises used as a domicile, dwelling, or habitation, including single-family dwellings, duplexes, tri-plexes, quad-plexes, patio homes, mobile home parks, trailer courts, boarding houses, assisted living facilities, condominiums, townhouses, or any complex of the foregoing, and apartments (4 units or less). (2374,3813,5305)

SHARPS: Objects such as syringes, needles, and lancets that are used for insulin intake, blood samples, and for other medical purposes. (3813)

8-3-3: COLLECTION AGENCY: Solid waste shall only be collected by the City or by private haulers (business establishments only) that have obtained a permit, license, franchise, or contract from the City authorizing private collection. Solid waste deposited for collection shall become the property of the City, or authorized private hauler when approved by the City, upon collection. No person shall remove any or all such solid waste so collected. Pursuant to Section 8-3-9 of this Article, the City retains the ability to recover solid waste and recycling program costs. The City may provide collection services outside its borders in an unincorporated territory that is within three (3) miles of its border and within its municipal planning area. (764,1969,2290,3813)

8-3-4: PREPARATION OF SOLID WASTE: All solid waste shall be prepared for collection or disposed of as follows: (1776,1969)
(A) Solid Waste. The City shall furnish containers to commercial and residential customers, for the accumulation, storage, and collection of all solid waste. Customers will make every effort to keep such containers in good repair and in a sanitary condition. Containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition will be replaced by the City and may be subject to the appropriate solid waste fees. All refuse must be bagged and tied, and placed in a container to be acceptable for collection to prevent the attraction of any flies or vectors. The City reserves the right to remove containers due to violations of this Chapter that result in endangerment to public health. (1969,3813)

(B) Bulky Refuse. Bulky refuse and furniture shall be placed at the front curb, unless otherwise designated by the Solid Waste Division, tied in bundles or placed in boxes by the customer. Boxes and bundles shall not exceed four (4) square feet by four (4) square feet deep in measurement and not to exceed sixty (60) pounds in weight. Customers wishing to retain disposal boxes should mark the box "SAVE" in a readily visible manner. If the loads are not bundled or contained, the City will assess appropriate collection fees and disposal fees for program cost recovery. The Development Services Manager or designee may provide bulk item service to any residential or commercial customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health or safety hazard exists in a public right-of-way. (1969,3198,3766,3813)

(C) Green Waste. Green waste cut for disposal shall be bundled by the customer. Bundles must be tied securely by heavy twine or rope, with each bundle not to exceed four (4) square feet by four (4) square feet deep and not to exceed a weight of sixty (60) pounds. When bundles do not meet these requirements, charges for whatever method is necessary to collect the brush will be assessed to the property owner. Brush trimmed by contractors must be removed by the contractors. Brush may be placed in regular refuse containers but must readily fall out when emptied and shall not extend twelve inches (12") over the top edge of the container or be compacted or wedged in a manner which would impede collection. Upon notification by the Solid Waste Division, residents have ten (10) days to remove brush that does not conform to the requirements of this Subsection. Should the resident fail to comply, the City will remove the brush and charge the customer. (1969,3198,3813)

(D) Appliances and Small Household Equipment. The City will collect discarded appliances from dwelling premises, subject to the appropriate solid waste fees, that two (2) persons can readily lift into a collection vehicle. The customer shall remove or cause to be removed all other appliances, vehicles, or equipment classified as solid waste from their premises or the public right-of-way. Doors shall be removed from appliances or secured in such a way no one can enter. (1969,3198,3813)

(E) Dangerous and Hazardous Waste. The placement of dangerous and hazardous waste in solid waste containers is prohibited. No one shall collect, cause to be collected, place, or cause to be placed any dangerous or hazardous waste or similar materials from or in any container or from or upon any public or private property except as specifically permitted by the Arizona Department of Environmental Quality or the Federal Environmental Protection Agency. Oil shall be placed in a separate container, not inside refuse containers, and disposed of according to law. Sharps shall be placed inside puncture-resistant containers and disposed of according to law. (1969,3813)
(F) Cactus. All cacti shall be placed in separate sealed cardboard boxes apart from other refuse. A cardboard box containing cactus shall be sealed and in condition to sustain the weight of the cactus when lifted. Failure to properly contain cactus will result in denial of service for collection. (1969,3813)

(G) Soil and Concrete. Waste soil, concrete, masonry blocks, sod, and rocks shall be disposed of by the owner, tenant, or occupant of the premises and not placed in City bins or barrels. Specific City roll-off service is available for this type of material. (1969,3813)

(H) Unsanitary, Offensive, and Animal Waste. Dead animals, excrement (pet waste only), and offal are the responsibility of the owner, tenant, or occupant of the premises and must be disposed of in a sanitary manner as follows. Collection by the Solid Waste Division of small domesticated (no farm animals) dead animals (weighing less than twenty-five (25) pounds), excrement (pet waste only), or offal will be made only if placed in a heavy-gauge plastic bag that will sustain the weight of the contents when lifted and will not be offensive to collection personnel or harmful to collection equipment. Dead animals (weighing less than one hundred fifty [150] pounds) will be removed by a contractor for City Animal Control upon request. (1969,3198,3813)

(I) Ownership of Solid Waste. Solid waste will remain the property and responsibility of the homeowner or City customer until collected by the City, wherein it becomes the property of the City. (1969,3198,3813)

(J) Abatement of Health Hazard. In addition to the other remedies provided for in this Section, if the Development Services Manager or designee determines that a customer's solid waste is creating a health hazard, the City may collect the customer's containers, subject to the appropriate solid waste fees, as often as necessary in an attempt to abate the health hazard. (3198,3766,3813)

8-3-5: CONTAINER PLACEMENT AND LOCATION FOR PICKUP:

(A) All solid waste containers prepared for the City collection service shall be placed at the front curb, unless otherwise designated by the Solid Waste Division, in an easily accessible manner. The containers shall be set out after six (6:00) P.M. of the day preceding regular collection and no later than six (6:00) A.M. of the designated regular collection day. The containers shall be removed to no less than six feet (6') from the curb by six (6:00) A.M. of the day after collection. If a violation of this Subsection necessitates the City pullback of a container from the front curb, the City shall assess the charges for such pullback to the property owner. This Subsection shall not apply to containers that the City has placed permanently at the front curb. All containers and piles of refuse shall be so located as to not block the alley, sidewalk, mailbox, driveway, or gutter or otherwise be a hazard to pedestrian or vehicular traffic. (1969,3198,3813)

8-3-6: CLEANUP AND BURNING MATERIAL:

The customer shall keep clean the area where the container is set out for pickup and also where a City container is stored. The customer shall keep solid waste from scattering from the pickup point to other premises and the public right-of-way. (1969,3813)

Hot coals or ashes shall not be placed in containers. (1969)
8-3-7: **UNATTENDED CONTAINERS: (2568)**

No person shall place, display, or maintain any unattended container for soliciting deposit of recyclable materials or donated items in any exterior location within the City limits, except in conformance with all of the following provisions: (2143)

(A) Such unattended containers may be located only within the parking lot of private property lawfully zoned, developed, and used for commercial or industrial purposes or at schools, churches, or charitable organizations which have similar parking facilities. (2143)

(B) Such unattended containers may be located only with the permission of the property owner, his agent, or the person in possession of the property, and the container owner’s name and current telephone number shall be displayed thereon in a conspicuous location that is large enough to read. (2143,3813)

(C) The owner of such unattended container and the property owner shall jointly or severally maintain all exterior areas within twenty-five feet (25’) of the container free from litter. (2143)

8-3-8: **INDISCRIMINATE DUMPING: (2568)**

It shall be the responsibility of the owner, tenant, or occupant of all premises in the City limits to be sure that solid waste is properly placed for collection. No person, without permission from any of the above, may dump into commercial dumpsters or residential containers. (1969)

No person may dump any unauthorized items in any alleys, streets, vacant lots, or premises. (1969,3813)

8-3-9: **CHARGES FOR SOLID WASTE SERVICE: (2568)**

The City Council shall by resolution set such rates for solid waste service and disposal as are necessary to produce adequate revenue to cover the cost of services rendered. If the City is required to remove solid waste or dangerous or hazardous waste that does not meet the requirements of this Chapter, the Development Services Manager or designee may assess charges for such removal to the property owner involved. (1969,3198,3766,3813)

8-3-10: **SCAVENGING: (3198)**

(A) No person, unless authorized by the owner of the solid waste, may remove, collect, or disturb solid waste in a container that is set out for collection for the purposes of recycling or disposal by the City, its agents, or a permittee. (3198,3813)

(B) No person, unless authorized by the City, may remove, collect, or disturb recyclable materials deposited for collection at any of the City's designated recycling drop-off and collection centers. (3198)

(C) City employees acting within the scope of their employment are not subject to the prohibitions described in this Section. (3198)
ARTICLE II

PERMITS FOR COMMERCIAL OR INDUSTRIAL SOLID WASTE MANAGEMENT SERVICES AND RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL RECYCLING SERVICES

SECTION:

8-3-11: DEFINITIONS
8-3-12: PERMIT REQUIRED FOR REFUSE SERVICE; EXEMPTIONS
8-3-13: INTEREST IN MULTIPLE PERMITS PROHIBITED
8-3-14: PERMIT APPLICATION
8-3-15: PERMIT REQUIREMENT FOR ANNEXED AREAS
8-3-16: EVALUATION AND DISPOSITION OF PERMIT APPLICATIONS; TERMS AND CONDITIONS
8-3-17: RENEWAL OF PERMITS
8-3-18: TRANSFER OF PERMITS PROHIBITED
8-3-19: INSURANCE
8-3-20: REVOCATION OF PERMIT
8-3-21: APPEAL FROM DENIAL OR REVOCATION; PROCEDURE AND NOTICE
8-3-22: DANGEROUS OR HAZARDOUS WASTE (3813)
8-3-23: VIOLATIONS (REPEALED BY 3198)
8-3-24: (RESERVED)
8-3-25: (RESERVED)
8-3-26: (RESERVED)
8-3-27: (RESERVED)

8-3-11: DEFINITIONS: (2568)

In this Article, unless the context otherwise requires: (2374)

BUSINESS OR COMMERCIAL ESTABLISHMENT: A structure or premises used for retail, wholesale, warehouse, store, factory, production, processing, manufacturing, restaurant, construction, service, hospitals, governmental entities, public authorities (schools), apartments (5 or more units) for rent or lease that are subject to Title 33, Chapter 10 of the Arizona Revised Statutes, or office uses. (2374,2931,5305)

COMMERCIAL OR INDUSTRIAL REFUSE: Any refuse generated by a business establishment. (2374)

COMMERCIAL OR INDUSTRIAL SOLID WASTE MANAGEMENT SERVICES: The collection, storage, processing, transportation, treatment, reclamation, or disposal of commercial or industrial refuse. (2374,2761)
CONTAINER: Shall include sixty- (60-), ninety- (90-), three hundred- (300-), and four hundred forty- (440-) gallon plastic barrels; two- (2-), three- (3-), four- (4-), six- (6-), and eight- (8-) cubic-yard metal bins; twenty- (20-), thirty (30-), and forty (40-) cubic-yard roll-off containers (approximate sizes); and compactors and other containers approved by the City. (3813)

DANGEROUS OR HAZARDOUS WASTE: Any solid waste that can cause damage or injury to property or persons and is hazardous by reason of its pathological, explosive, flammable, radiological, or toxic nature, including, but not limited to, all wastes defined by the provisions of A.A.C. Title 18, Chapter 8, Article 2. (2374,3813)

DEVELOPMENT SERVICES MANAGER: The Manager of the Development Services Department or his/her representative. (2374,3766,3813)

DISPOSAL: The physical transfer of refuse for purposes of recovery, other processing, or for placement at a site approved by the Arizona Department of Environmental Quality or other agency having jurisdiction. (2374)

PERMITTEE: A person who engages in, owns, or operates a service to collect, transport, dispose, or recycle commercial or industrial refuse generated within the City and has obtained a valid permit pursuant to the provisions of this Article. (3813)

PERSON: A corporation, company, partnership, firm, association, or society, as well as a natural person. (2374)

RECYCLE: Any manual or mechanical process which involves the collection or transportation of one (1) or more of the various components of recoverable refuse which have been or will be separated, concentrated, or sold. (2374)

RESIDENCE: Any structure or premises used as a domicile, dwelling, or habitation, including single-family dwellings, duplexes, tri-plexes, quad-plexes, patio homes, mobile home parks, trailer courts, rooming houses, boardinghouses, assisted living facilities, condominiums, townhouses, or any complex of the foregoing, and apartments (4 units or less). (2374,3813,5305)

RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL SOLID WASTE RECYCLING SERVICES: The recycling of any residential, commercial, or industrial refuse. (2761)

RESIDENTIAL REFUSE: Any refuse generated by a residence. (2761)

8-3-12: PERMIT REQUIRED FOR REFUSE SERVICE; EXEMPTIONS: (2568)

(A) Except as otherwise provided in this Section, no person shall engage in, operate as, or represent himself to the public as one who collects, transports, disposes, or recycles residential, commercial, or industrial refuse generated within the City unless that person has obtained a valid permit pursuant to the provisions of this Article. (2374,2761)
(B) Any community, charitable, philanthropic, or similar organization may collect, transport, dispose of, or recycle residential, commercial, or industrial refuse without a permit upon approval of the Development Services Manager provided that no part of the earnings or receipts from such activities inure to the benefit of any private shareholder, individual, or corporation and provided that the organization was not established to circumvent the requirements of this Article. (2374,2761,3766,3813)

(C) Governmental agencies engaged in the collection, transportation, disposal, or recycling of residential, commercial, or industrial refuse within the City shall be exempt from the provisions of this Article. If, however, a private refuse collector that has a contract with a governmental entity also collects private commercial or industrial refuse or recycles residential, commercial, or industrial refuse within the City limits, such private commercial enterprise is required to make application for a permit to operate within the City limits and to comply with all other provisions of this Article. (2374,2761)

(D) This Section shall not be construed to prevent individual property owners from hauling their own refuse from their own premises to a legal point of disposal or recycling. (2374,2761)

(E) All persons who primarily collect and dispose of or recycle scrap metal, scrap plastic, waste motor oil, human excreta, animal excreta or remains, yard wastes, medical wastes, infectious wastes, hazardous wastes, toxic wastes, residual construction debris, or any other similar category of solid waste that either requires a special state, county, or federal permit to handle or constitutes a limited category of waste that the private hauler specializes in collecting shall be exempt from the permit provisions of this Article. (2374,2761)

8-3-13: INTEREST IN MULTIPLE PERMITS PROHIBITED: (2568)
No person shall have an interest in more than one (1) permit issued pursuant to the provisions of this Article. For the purposes of this Section, the word "interest" includes ownership or control of five percent (5%) or more of any joint venture, partnership, or limited partnership or of the outstanding shares of a corporation. (2374)

8-3-14: PERMIT APPLICATION: (2568)

(A) Every applicant for a permit under this Article or for renewal thereof shall file an application with the City Development Services Manager on the form provided by that officer and shall provide the following information and declarations: (2374,3766,3813)

1. The name, local address, permanent home and business address, and local telephone number(s) of the individual applying and of the organization or persons on whose behalf the application is made. (2374)

2. If the organization on whose behalf the application is made is a joint venture, partnership, or limited partnership, the names, local and permanent street addresses, and local telephone numbers of all partners and their percentage of participation. If the organization is a corporation, the names, local and permanent street addresses, and local telephone numbers of all officers and the names, local and permanent street addresses, and telephone numbers of all shareholders owning an interest of five percent (5%) or more of the outstanding shares and their percentage of participation. (2374)
3. The names, local and permanent street addresses, and local telephone numbers of all officers of the organization on whose behalf the application is made. (2374)

4. Facts demonstrating that the applicant has arranged for the disposal or recycling of all residential, commercial, or industrial refuse collected and the location of such disposal or recycling site. (2374,2761)

5. A description of all vehicles and equipment that the applicant owns or has under his control that will be used for the collection, transportation, disposal, or recycling of residential, commercial, or industrial refuse; the address(es) where all such vehicles will be kept and the land use classification under the Mesa Zoning Code of such location(s); a declaration that the applicant has sufficient equipment in good mechanical condition to adequately conduct the business of commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services if granted a permit; and facts demonstrating that said vehicles and equipment conform to all applicable provisions of A.R.S. Title 28 as amended. (2374,2761)

6. A plan for the recycling of the residential, commercial, or industrial refuse that indicates, at a minimum: (2374,2761)
   (a) How such refuse shall be sorted and separated for recycling purposes and who shall do the sorting and separating; (2374)
   (b) How such refuse shall be collected and transported for recycling purposes; (2374)
   (c) Where such refuse shall be disposed of and processed for recycling purposes and who shall do the processing; (2374)
   (d) Whether the applicant proposes to offer any incentives to encourage recycling and if so, the nature of such incentives; (2374,2761)
   (e) Any other information demonstrating what the applicant will do to promote the availability of commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and to stimulate competition in rendering such services. (2374,2761)

7. Other information and identification as the Development Services Manager may require in order to discover the truth of the matters set forth in the application or to determine whether a permit should be granted. This may include submission to fingerprinting and photographing by the Mesa Police Department for the purpose of a police investigation in cases where there is reason to doubt the truthfulness of the application or reason to require further information regarding the qualifications and capabilities of the applicant. (2374,3766,3813)

8. Other information as the Development Services Manager may require which demonstrates that the applicant is able to render efficient and effective commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and that the public health, safety, and welfare would be served by the granting of the permit to the applicant. (2374,2761,3766,3813)
9. Whether the applicant has ever had any application for a like permit denied, revoked, suspended, or canceled by any public entity and the reason given therefor. (2374)

10. Proof that the applicant has obtained all insurance as required by State law. (2800)

11. The applicant shall provide the City with an emergency notification number (twenty-four-hour availability). In the event of an emergency, the Police or Fire Department may need to contact a representative of the company. (3813)

(B) Every permittee, as a condition to retention of such status, shall immediately file with the Development Services Manager any changes in the information and declarations furnished under Subsection (A), as such occur from time to time. (2374, 3766, 3813)

(C) A nonrefundable application fee shall be paid to the City with each initial and each renewal application for purposes of paying for the cost of processing such application and ensuring compliance with the permit. The application fee shall be calculated by adding a two hundred dollar ($200.00) base charge plus two hundred dollars ($200.00) for each vehicle to be used under the permit. If, however, new information which requires an investigation is submitted to or discovered by the Development Services Manager upon application for renewal of a permit or at any other time, an investigation fee sufficient to cover the City’s investigative costs shall be required upon completion of such investigation. (2374.3454, 3766, 3813)

8-3-15: PERMIT REQUIREMENT FOR ANNEXED AREAS: (2568, 2800)

With respect to any person providing commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services in any area at the time of its annexation by the City, all such persons shall be subject to the requirements of this Article. Within thirty (30) days of the effective date of annexation, persons engaging in commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services in the annexed area who wish to continue operating after annexation shall apply to the Development Services Manager for a permit pursuant to Section 8-3-14. (2374, 2761, 2800, 3766, 3813)

8-3-16: EVALUATION AND DISPOSITION OF PERMIT APPLICATIONS; TERMS AND CONDITIONS: (2568, 2800)

(A) The Development Services Manager shall issue or reissue a permit only after the applicant/permittee demonstrates that it is capable and qualified to render reliable commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services and that the public health, safety, and welfare will be substantially served by the issuance or reissuance of the permit. (2374, 2761, 3766, 3813)

(B) In making the determination required above, the Development Services Manager may consider, among other things, the application, all pertinent information, and whether: (2374, 3766, 3813)

1. The applicant/permittee has been convicted of a felony within five (5) years prior to application. (2374)
2. The applicant/permittee has had a civil judgment entered against him within five (5) years of the date of the application in a case involving allegations of misrepresentation, fraud, dishonesty, or price-fixing where the subject matter involved the rendering of refuse collection, transportation, or recycling services. (2374)

3. The applicant/permittee has violated or failed to comply with this Article or any sanitation law of this state or any other state. (2374)

4. The applicant/permittee has been delinquent for more than forty-five (45) days in the payment of taxes or fees to the City or to any unit of government having jurisdiction. (2374)

5. The applicant/permittee has filed with the City or any other city any document which contains information which is false or misleading. (2374)

6. The applicant/permittee is unable to pay debts as they fall due in the regular course of business or is otherwise in such financial condition that he cannot continue in business with safety to his customers or the public. (2374)

(C) In case of a partnership, corporation, or any other group or association, it is sufficient cause for denial or revocation of a permit if any member of such persons or officer or director thereof has performed an act or failed to perform an act which would be cause for denying or revoking a permit of an individual agent for such person. (2374)

(D) Permits issued under this Article shall have a term of twelve (12) months from the date of issuance. The permit shall authorize commercial or industrial solid waste management or residential, commercial, or industrial solid waste recycling services Citywide subject to the permittee’s compliance with the permit, all requirements of this Chapter, and all requirements of county, state, and federal law. (2374,2761)

(E) All permittees shall furnish their customers with containers consistent with the permit issued under this Article and necessary and appropriate to maintain a clean and sanitary condition on the customers' premises. Such containers shall display conspicuously the business name of the permittee and telephone number and shall be located so as: (2374,2761,2800,3813)

1. Not to interfere with vehicular or pedestrian traffic; (2761)

2. Not to interfere with City-owned containers; and (2761,3813)

3. To conform with all requirements of law. (2374,2761)

(F) Permittees shall not remove refuse from any business establishment that is located within five hundred feet (500') of a residence between the hours of seven (7:00) P.M. and six (6:00) A.M. Failure to comply with this Section will result in a civil citation under Section 8-3-41. (2374,3813)
(G) Except as authorized for recycling purposes under this Article, no permittee shall collect, remove, salvage, transport, or dispose of any refuse or other waste of any kind produced by, kept on, or accumulated within or upon any residence, including single-family dwellings, multifamily dwelling units, duplexes, patio homes, mobile home parks, trailer courts, rooming houses, boardinghouses, apartments, condominiums, townhouses, assisted living facilities, or complexes of any of the foregoing. (2374,2761,3813)

(H) All contracts for service executed by a permittee under this Article shall contain a clause subjecting the contract to cancellation by the customer in the event the permittee’s permit is revoked by the City. (2374)

(I) In the event the City Council determines that legitimate governmental purposes would be advanced by having the City exclusively provide residential, commercial, or industrial solid waste recycling services and it is not otherwise prohibited by law, the Council may act to prohibit the issuance of permits to perform such services. The City shall not be liable to any permittee for any damages of any kind claimed to result from the actions taken pursuant to this Section. All permits issued for residential, commercial, or industrial solid waste recycling services shall bear a statement indicating that the permit shall expire at the end of twelve (12) months and that it is not automatically renewable. The permit shall indicate that the permittee understands that it will not be entitled to damages of any kind in the event that the City Council determines that such permits will not be issued in the future. All permits shall be acknowledged. (2761)

(J) All permittees engaging in recycling shall report annually to the Development Services Manager on forms provided stating the amounts and type of refuse collected for recycling during the preceding year. (2761,3766,3813)

8-3-17: RENEWAL OF PERMITS: (2568,2800)
Permits may be renewed annually by the Development Services Manager or designee upon application by a permittee and if the Development Services Manager or designee makes the findings required by Section 8-3-16 of this Article. Application for permit renewal shall be submitted by permittees not less than forty-five (45) days prior to the expiration of the current permit and shall be submitted in the same manner as prescribed in Section 8-3-14. (2374,2800,3766,3813)

8-3-18: TRANSFER OF PERMITS PROHIBITED: (2568,2800)
Permits issued under the provisions of this Article and all other rights or privileges created under this Article shall have no property value to the holder and may not be sold, transferred, or assigned. (2374)

8-3-19: INSURANCE: (2568,2800)
All permittees for residential, commercial, or industrial solid waste management or recycling services shall secure, maintain, and keep in force throughout the term of the permit insurance coverages as required by State law. (2374,2761,2800)
8-3-20: **REVOCATION OF PERMIT: (2568,2800)**

Any permittee that is found responsible for three (3) civil citations pursuant to the Mesa City Code within six (6) months may have the permit revoked for a period of twelve (12) months. Notice of proposed revocation shall be served by personally delivering or by mailing by registered mail to the permittee, with service becoming effective either immediately upon personal service or five (5) calendar days from the date of mailing. The revocation shall become effective eleven (11) calendar days after receipt unless permittee has filed a request for a hearing pursuant to Section 8-3-21 of this Article. Once a permit has been revoked, the permittee must wait twelve (12) months before reapplying for a permit with the Solid Waste Division. (2374,2761,2800,3766,3813)

8-3-21: **APPEAL FROM DENIAL OR REVOCATION; PROCEDURE AND NOTICE: (2568,2800)**

Any person whose request for a permit is denied or who has received notice of proposed revocation may, within ten (10) calendar days after receipt of notice of such denial or revocation, file in the office of the Development Services Manager a written request for a hearing before the Development Services Manager. Such request shall contain the name and address of the person, together with a brief statement as to why such denial or proposed revocation should be reversed. The decision of the Development Services Manager may be appealed by the applicant or permittee within seven (7) days after receipt thereof to the City Manager. The decision of the City Manager shall be final. (2374,3766,3813)

8-3-22: **DANGEROUS OR HAZARDOUS WASTE: (2568,2800,3813)**

No permittee shall collect, cause to be collected, place, or cause to be placed any dangerous or hazardous waste or similar materials from or in any container or from or upon any public or private property except as specifically permitted by the Arizona Department of Environmental Quality or the federal Environmental Protection Agency. (2374,3813)

8-3-23: **VIOLATIONS (REPEALED BY 3198)**

8-3-24: (RESERVED)

8-3-25: (RESERVED)

8-3-26: (RESERVED)

8-3-27: (RESERVED)
ARTICLE III

RESIDENTIAL RECYCLING PROGRAM

SECTION:

8-3-28: DEFINITIONS
8-3-29: COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS
8-3-30: RECYCLING PROGRAM NONPARTICIPANTS
8-3-31: RE-ENTRY AS A PARTICIPANT
8-3-32: APPEAL PROCESS

8-3-28: DEFINITIONS:
In addition to the other terms defined in this Chapter, the following terms shall mean: (2863)

BLUE BARREL: A blue sixty- (60-), ninety- (90-), or three hundred- (300-) gallon container (approximate sizes) to be used for collection of residential recyclable materials by the City. (2863,3198,3813)

BLACK BARREL: A black sixty- (60-), ninety- (90-), or four hundred forty- (440-) gallon container (approximate sizes) to be used for collection of nonrecyclable materials by the City. (2863,3813)

NONPARTICIPANT: A residential customer within any area of the City where the residential recycling program is in effect who is not participating in the residential recycling program, either by choice or by action of the City. (2863)

NONRECYCLABLE MATERIALS: Solid waste that the City has not deemed recyclable under Section 8-3-29 of the Mesa City Code. (2863)

RESIDENTIAL RECYCLABLE MATERIALS: Solid waste generated by a residential customer that the City deems acceptable for recycling as described in Section 8-3-29 of the Mesa City Code. (2863,3198)

RESIDENTIAL RECYCLING PROGRAM: A method of solid waste collection developed by the City to integrate recycling into the mechanized residential collection system used in the City. (2863)

8-3-29: COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS: (3198)

(A) Under the residential recycling program, the City will provide residential customers a second clearly identified blue barrel in which to place specified residential recyclable materials. (2863,3198)

(B) The following items, if clean, are residential recyclable materials. Other recyclable commodities may be added to or deleted from the program with the approval of the City's materials recycling facility vendor. (2863,3198,3813)

1. Newspaper; (2863)
2. Writing/computer paper; (2863)

3. Plastic bottles, jugs, and jars; (2863,3813)

4. Glass; (2863)

5. Corrugated cardboard; (2863)

6. Aluminum; (2863,3198)

7. Metal cans; (2863,3198,3813)

8. Chipboard; and (3198)

9. Magazines. (3198)

(C) Residential customers participating in the residential recycling program shall receive from the City once-per-week collection of residential recyclable materials placed into blue barrels and once-per-week collection of nonrecyclable materials placed into black barrels. The Development Services Manager will designate specific collection days each week, including holidays. (2863,3198,3766,3813)

(D) Residential recyclable materials placed inside a blue barrel shall not be bagged or contained and should conform to all residential recycling program guidelines consistent with this Article. (2863,3198)

(E) Residential customers participating in the residential recycling program shall bag and securely tie their garbage and place it inside a black barrel. (2863)

8-3-30: RECYCLING PROGRAM NONPARTICIPANTS:

(A) A nonparticipant shall not receive a blue barrel and shall receive once-per-week solid waste collection consistent with Article I of this Chapter. If twice-per-week collection is desired by the nonparticipant, it will be made available and an extra fee charged. The City will assess this fee on a monthly basis in addition to the regular monthly service fee, and in part, this will offset the additional collection charge associated with a second weekly pickup. (2863,3198)

(B) Residential customers not complying with this Article will be notified in writing by the City of their status as nonparticipants after a minimum of two (2) notifications have been given explaining their lack of compliance with this Article, and the blue barrel will be retrieved by the City. (2863)
1. The City may make such notification based upon a determination that a violation of this Article has occurred, including any of the following actions: (2863)

   (a) Placing anything other than residential recyclable materials into the blue barrel. (2863,3198)

   (b) Placing dangerous or hazardous waste in the blue barrel. (2863)

   (c) Depositing residential recyclable materials into the black barrel. (2863,3198)

2. The Development Services Manager or designee may deliver twice-per-week collection of residential waste (black barrel) to any residential customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health hazard exists. (2863,3198,3766,3813)

8-3-31 RE-ENTRY AS A PARTICIPANT:

(A) Residential customers determined by the City to be nonparticipants may notify the City that they desire to re-enter the residential recycling program. Such notification may occur no earlier than three (3) months after being designated by the City as a nonparticipant. The Development Services Manager or designee may waive this three- (3-) month period based upon a determination that special circumstances exist and that it would be in the best interest of the City to allow re-entry sooner. (2863,3198,3766,3813)

(B) The Development Services Manager or designee also may designate a fee to cover costs associated with distributing blue barrels and information by City personnel to residents re-entering the recycling program. (2863,3766,3813)

8-3-32: APPEAL PROCESS:

Any person who has been designated by the City as a nonparticipant may file, within ten (10) calendar days after receipt of notice from the City of such designation, in the Development Services Manager's office a written request for a hearing before the Development Services Manager or designee. Such request shall contain the name and address of the person, together with a brief statement as to why such designation should be reversed. The decision of the Development Services Manager or designee may be appealed to the City Manager by the residential customer within seven (7) days after receipt thereof. The decision of the City Manager shall be final. (2863,3198,3766,3813)
ARTICLE IV (3813)

RESIDENTIAL GREEN WASTE RECYCLING PROGRAM (3813)

SECTION:

8-3-33: DEFINITIONS
8-3-34: COLLECTION OF RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS
8-3-35: RECYCLING PROGRAM NONPARTICIPANTS
8-3-36: RE-ENTRY AS A PARTICIPANT
8-3-37: APPEAL PROCESS
8-3-38: (RESERVED)
8-3-39: (RESERVED)

8-3-33: DEFINITIONS: (3813)

In addition to the other terms defined in this Chapter, the following terms shall mean: (3813)

GREEN BARREL: A green ninety- (90-) gallon container (approximate size) to be used for collection of residential green waste materials by the City. (3813)

BLACK BARREL: A black sixty- (60-), ninety- (90-), three hundred- (300-), or four hundred forty- (440-) gallon container (approximate sizes) to be used for collection of nonrecyclable materials by the City. (3813)

NONPARTICIPANT: A residential customer within any area of the City where the residential green waste recycling program is in effect, who is not participating in the residential green waste recycling program; either by choice or by action of the City. (3813)

NONRECYCLABLE MATERIALS: Solid waste that the City has not deemed recyclable under Section 8-3-34 of the Mesa City Code. (3813)

RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS: Solid waste generated by a residential customer that the City deems acceptable for green waste recycling as described in Section 8-3-34 of the Mesa City Code. (3813)

RESIDENTIAL GREEN WASTE RECYCLING PROGRAM: Collection of acceptable green waste recyclable materials by the mechanized residential collection system used in the City. (3813)
**8-3-34: COLLECTION OF RESIDENTIAL GREEN WASTE RECYCLABLE MATERIALS: (3813)**

(A) Under the residential green waste recycling program, the City will provide residential customers, upon request, a clearly identified green barrel in which to place specified residential green waste recyclable materials. The City retains the ability to recover costs associated with this program subject to City Council approval. (3813)

(B) The following items are residential green waste recyclable materials: (3813)

1. Grass, (3813)

2. Leaves, (3813)

3. Tree branches, (3813)

4. Clippings, (3813)

5. Prunings, and (3813)

6. Cacti. (3813)

(C) In addition to the standard once-per-week collection of nonrecyclable materials in black barrels and recyclable materials in blue barrels, residential customers participating in the residential green waste recycling program shall receive once-per-week collection of residential green waste recyclable materials placed into green barrels from the City. The Development Services Manager or designee will designate specific collection days each week, including holidays. (3813)

(D) Residential green waste recyclable materials placed inside a green barrel shall not be bagged or contained and should conform to all residential green waste recycling program guidelines consistent with this Article. (3813)

(E) Residential customers participating in the residential green waste-recycling program shall bag and securely tie their garbage and place it inside a black barrel. (3813)

**8-3-35: RECYCLING PROGRAM NONPARTICIPANTS: (3813)**

(A) Residential customers not in compliance with this Article will be notified in writing by the City of their status as nonparticipants after a minimum of two (2) notifications (tags) have been issued explaining their lack of compliance with this Article, and the green barrel will be removed by the City after the written notice is mailed. (3813)

1. The City may make such notification based upon a determination that a violation of this Article has occurred, including any of the following actions: (3813)

   (a) Placing anything other than residential green waste recyclable materials into the green barrel. (3813)

   (b) Placing dangerous or hazardous waste in the green barrel. (3813)
2. The Development Services Manager or designee may deliver twice-per-week collection of residential waste (black barrels) to any residential customer, subject to the appropriate solid waste fees, if in the Development Services Manager's or designee's judgment a health hazard exists. (3813)

8-3-36: RE-ENTRY AS A PARTICIPANT: (3813)

(A) Residential customers determined by the City to be nonparticipants may notify the City that they desire to re-enter the residential green waste recycling program no earlier than three (3) months after being designated by the City as a nonparticipant. The Development Services Manager or designee may waive this three- (3-) month period based upon a determination that special circumstances exist and that it would be in the best interest of the City to allow early re-entry. (3813)

(B) The Development Services Manager or designee also may designate a fee to cover costs associated with distributing green barrels and information by City personnel to residents re-entering the recycling program. (3813)

8-3-37: APPEAL PROCESS: (3813)

Any person who has been designated by the City as a nonparticipant may file a written request for a hearing before the Development Services Manager or designee within ten (10) calendar days of receipt of nonparticipant designation. Such a request shall contain the name and address of the person, together with a brief statement as to why such designation should be reversed. The decision of the Development Services Manager or designee may be appealed to the City Manager by the residential customer within seven (7) days after receipt thereof. The decision of the City Manager shall be final. (3813)

8-3-38: (RESERVED)
8-3-39: (RESERVED)
ARTICLE V (3813)

ENFORCEMENT

SECTION:

8-3-40: COMMENCEMENT OF AN ACTION
8-3-41: CIVIL SOLID WASTE VIOLATIONS
8-3-42: HABITUAL OFFENDER
8-3-43: FAILURE TO PROVIDE EVIDENCE OF IDENTITY

8-3-40: COMMENCEMENT OF AN ACTION:

(A) The Solid Waste Management Director and the inspectors within the Solid Waste Division or such other persons as the City Manager may designate are authorized to commence an enforcement action under this Chapter, including requesting that the Mesa City Prosecutor issue a complaint for criminal prosecution.

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

8-3-41: CIVIL SOLID WASTE VIOLATIONS:

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation that is substantially in the form established or approved by the Solid Waste Management Director. The citation shall include relevant information about the violator, such as full name, residence address, driver’s license number (if any), and vehicle license number (if applicable), and shall advise the person of the violation(s) committed. The citation shall direct the person within ten (10) calendar days to pay a fine of fifty dollars ($50.00) or appear before a City employee designated by the City Manager as a Civil Hearing Officer. The citation shall be served by delivering or mailing a copy to the person, with service becoming effective either immediately upon personal service or five (5) calendar days from the date of mailing.

(B) Within ten (10) days of receipt of a citation issued under Subsection (A), a person shall either pay the civil fine or appear in person or through an attorney before a Civil Hearing Officer. At such an appearance, the person shall either admit or deny the allegations contained in the citation. If the person pays the fine, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense described in the citation. If the person appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the person in the amount of fifty dollars ($50.00). If the person appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing.
(C) All hearings before the Civil Hearing Officer shall be informal, except that testimony shall be given under oath or affirmation. The technical rules of evidence shall not apply, except for statutory provisions relating to privileged communications. The City shall have the burden of proving all violations by a preponderance of the evidence. No prehearing discovery shall be permitted except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. Upon a finding by the Civil Hearing Officer after the conclusion of the hearing that the person violated this Chapter, the Civil Hearing Officer shall enter a finding of responsibility and judgment against the person in an amount not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198)

(D) An appeal from a final judgment of the Civil Hearing Officer may be taken pursuant to the rules of procedure for special actions of the Arizona Supreme Court. (3198)

(E) If a person served with a citation fails to pay the fine or to appear on or before the time directed to appear or at the time set for hearing, the allegations shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsibility and judgment against the person in an amount not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) for each violation of this Chapter, and each day of violation continued shall be a separate offense. (3198)

(F) Any civil fine or judgment for civil sanctions issued pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the fine or judgment with the Maricopa County Recorder. Any judgment for civil fines pursuant to this Chapter may be collected as any other civil judgment. (3198)

8-3-42: HABITUAL OFFENDER:

(A) Any person who violates a provision in this Chapter after previously having been found responsible for committing three (3) or more civil violations under Section 8-3-41 within a twenty-four- (24-) month period, whether by admission, payment of a fine, default, or judgment after hearing, shall be guilty of a criminal misdemeanor. The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. For purpose of calculating the twenty-four- (24-) month period under this Subsection, the dates of the commission of the offenses shall be the determining factor. (3198)
(B) Upon conviction of a violation of this Section, the Court may impose a sentence of incarceration not to exceed six (6) months in jail or a fine not to exceed two thousand five hundred dollars ($2,500.00), exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than five hundred dollars ($500.00) for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided in this Subsection. (3198) 

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (3198) 

8-3-43: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:
A person who fails or refuses to provide evidence of the person’s identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe that the person has committed a violation of this Chapter, shall be guilty of a criminal misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (3198)
CHAPTER 4

SANITARY SEWER REGULATIONS

SECTION:

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8-4-1: DEFINITIONS:

APPROVAL AUTHORITY: The E.P.A. Regional Administrator. (2809/Reso. 6567)

BEST MANAGEMENT PRACTICES (BMP): Schedules of activities, pollution treatment practices or devices, prohibition of practices, general good housekeeping practices, pollution prevention, waste minimization, educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the amount of pollutants entering the sanitary sewer system, surface water, air, land, or groundwater. Best management practices may include a physical, chemical, structural, or managerial practice or device that can help to achieve compliance with this Chapter. (4330)
**B.O.D. (BIOCHEMICAL OXYGEN DEMAND):** 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 degrees centigrade (20°C), reported in milligrams per litre. (2809/Reso. 6567)

**BRANCH SEWER:** A sewer which receives wastewater from lateral sewers from a relatively small area. (2809/Reso. 6567)

**BUILDING CONNECTION:** The connection to the public sewer and the extension therefrom of the sewer to the property line in an alley or street or to the easement line in an easement, whichever is applicable, depending on the location of the public sewer. (2809/Reso. 6567)

**BUILDING SEWER:** The extension from the building drain to the building connection or other place of disposal. (2809/Reso. 6567)

**BYPASS:** The intentional diversion of wastewater from any portion of a pretreatment process. (2809/Reso. 6567)

**CATEGORICAL STANDARDS:** National/federal categorical pretreatment standards promulgated by the E.P.A. under the authority of D.W.A. §307(b) and (c) which apply to a specific category of industry and which are published in 40 C.F.R. Chapter I, Subchapter N (Parts 401 et seq.) issued in accordance with §307 of the Clean Water Act. (1703,2809/Reso. 6567)

**CITY:** City of Mesa, Arizona. (2809/Reso. 6567)

**CITY MANAGER:** The City Manager pursuant to Section 1-20-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567)

**C.F.R. (CODE OF FEDERAL REGULATIONS):** Compilation of federal regulations promulgated under the C.W.A. and incorporated herein by reference. (2809/Reso. 6567)

**COOLING WATER:** The clean wastewater discharged from any heat transfer system. (2809/Reso. 6567)

**COMPOSITE SAMPLE:** A combination of individual samples obtained at regular intervals over a specified time period, with the volume of each individual sample either proportional to the flow rate during the sample period (flow composite) or constant and collected at equal time intervals during the composite period (time composite) as defined in the Industrial Wastewater Discharge Permit. (2809/Reso. 6567)

**C.W.A. (CLEAN WATER ACT):** Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq., incorporated herein by reference. (2809/Reso. 6567)

**DEVELOPMENT SERVICES DEPARTMENT:** The Department of Development Services of the City of Mesa created by Section 3-4-1 of the Mesa City Code. (2809/Reso. 6567,3766)

**DEVELOPMENT SERVICES MANAGER:** The Development Services Manager pursuant to Section 3-4-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567,3766)
DISCHARGE: The disposal of wastewater into the POTW. (2809/Reso. 6567)

DOMESTIC WASTEWATER: Any wastewater derived from the ordinary living processes in a residential dwelling unit of such character as to permit satisfactory disposal, without special treatment, by conventional POTW processes. (2809/Reso. 6567)

EFFLUENT: Wastewater that has been treated in a POTW. (2809/Reso. 6567)

E.P.A. (ENVIRONMENTAL PROTECTION AGENCY): Federal agency charged with primary enforcement of the C.W.A. (2809/Reso. 6567)

GRAB SAMPLE: An individual sample of effluent collected in less than fifteen (15) minutes. (2809/Reso. 6567)

INDUSTRIAL DISCHARGE: Any introduction into the POTW of wastewater other than domestic wastewater which either: (2809/Reso. 6567)

(A) 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 or (2809/Reso. 6567)

(B) Contains any substance or pollutant for which a discharge limitation or prohibition has been established by any categorical standard or pretreatment requirements. (1703,2809/Reso. 6567)

INDUSTRIAL USER: Any one (1) or more of the following: (2809/Reso. 6567)

(A) A source of indirect discharge of pollutants into a POTW from a person other than a POTW user who discharges only domestic wastewater regulated under C.W.A. §307(b), (c), and (d); (1703,2809/Reso. 6567)

(B) Any nonresidential POTW user of the sewer system which discharges more than the equivalent strength of twenty-five thousand (25,000) gallons per day of domestic wastewater; (1703,2809/Reso. 6567)

(C) Has control over the disposal of a waste as described in (A) and (B) above; or (1703,2809/Reso. 6567)

(D) Has the right of possession and control over any property which produces wastewater as described in (A), (B), or (C) above. (1703,2809/Reso. 6567)

INDUSTRIAL WASTEWATER DISCHARGE PERMIT: A written authorization issued by the Utilities Manager categorized as either Class I or Class II allowing a Class I or Class II industrial user to discharge wastewater into a sanitary sewer owned or operated by the City. (2809/Reso. 6567)

INFLOW: Water other than wastewater that enters the POTW, including sewer service connections, from sources such as roof leaders, cellar drains, foundation 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. (2809/Reso. 6567)
**INTERFERENCE:** A discharge which, alone or in conjunction with a discharge from other sources, both: (1703,2809/Reso. 6567)

(A) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and (2809/Reso. 6567)

(B) Violates any requirement of any environmentally related permit issued by a governmental entity (including an increase in the magnitude or duration of a violation) or prevents sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): C.W.A. §405, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act; and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act. (2809/Reso. 6567)

**LATERAL SEWER:** A sewer which discharges into a branch or other sewer and has no common sewer tributary to it. (2809/Reso. 6567)

**MAIN SEWER:** A sewer which receives wastewater from one (1) or more branch sewers as tributaries. (2809/Reso. 6567)

**MAINTENANCE:** Keeping the POTW in a state of repair, including expenditures necessary to maintain the capacity for which such works were designed and constructed. (2809/Reso. 6567)

**NEW SOURCE:** (4330)

(A) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under C.W.A. §307(c), which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that: (2809/Reso. 6567,4330)

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or (4330)

2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or (4330)

3. The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered. (4330)

(B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (A)2 or (A)3 of this Subsection but otherwise alters, replaces, or adds to existing processes or production equipment. (4330)
(C) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous onsite construction program: (4330)
   (a) Any placement, assembly, or installation of facilities or equipment; or (4330)
   (b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or (4330)

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph. (4330)

NPDES PERMIT: A National Pollutant Discharge Elimination System Permit issued to the City by the E.P.A. or an Arizona Pollutant Discharge Elimination System Permit (AZPDES), issued to the City by the State of Arizona, which imposes standards governing the quality of the treated effluent discharged from the POTW into a navigable water of the United States. (2809/Reso. 6567,4330)

PARAMETER: A fundamental characteristic of wastewater around which treatment is designed, such as flow, B.O.D., S.S., and phosphorus. (2809/Reso. 6567)

PASS-THROUGH: A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of any requirement of the POTW’s NPDES Permit (including an increase in the magnitude or duration of a violation) or which causes or contributes to a violation of an applicable numeric or narrative water quality standard. (2809/Reso. 6567)

PERMITTEE: Any person who owns, operates, processes, or controls an establishment or plant being operated under a valid Industrial Wastewater Discharge Permit to discharge wastewater into the POTW. (2809/Reso. 6567)

PERSON: Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, state, municipality, Indian tribe, political subdivision of the state, federal governmental agency, or any other legal entity, including their legal representatives, agents, or assigns. (2809/Reso. 6567)

pH: The logarithm of the reciprocal of the weight of hydrogen ions in grams per litre of solution. (2809/Reso. 6567)

POLUTANT: Any dredged spoil, solid waste, incinerator residue, wastewater sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes. This includes any substance for which an effluent limitation is identified in Chapter 4 of the Mesa City Code. (2809/Reso. 6567,4330)
POTW: 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 wastewater collection and disposal services. (2809/Reso. 6567)

POTW USER: Any person, lot, parcel of land, building, or premises that discharges or causes or permits the discharge of wastewater into the POTW. (2809/Reso. 6567)

PRETREATMENT: The physical, chemical, biological, or other treatment of any industrial discharge prior to the POTW for the purpose of any one (1) or more of the following activities: (2809/Reso. 6567)

(A) Reducing the amount of concentration of any pollutant; (2809/Reso. 6567)

(B) Eliminating the discharge of any pollutant; or (2809/Reso. 6567)

(C) Altering the nature of any pollutant characteristic to a less harmful state. (2809/Reso. 6567)

PRETREATMENT REQUIREMENTS: All of the duties or responsibilities imposed upon POTW users by this Chapter. (2809/Reso. 6567)

PRETREATMENT STANDARDS: Any regulation containing pollutant discharge limits promulgated by the E.P.A. in accordance with C.W.A. §307(b) and (c) which applies to industrial users. (2809/Reso. 6567)

PROCESS WASTEWATER: Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. (2809/Reso. 6567)

PUBLIC SEWER: A lateral, branch, main, or trunk sewer controlled and maintained by the City. (2809/Reso. 6567)

REPLACEMENT: Those expenditures made for obtaining and installing equipment, accessories, and/or appurtenances during the useful life of the POTW which are necessary to maintain the capacity and performance of the POTW for which they were designed and constructed. (2809/Reso. 6567)

SANITARY SEWER: A sewer which carries wastewater and to which storm water, surface water, and groundwater are not intentionally admitted. (2809/Reso. 6567)

SEWER: A pipe or conduit for carrying wastewater. (2809/Reso. 6567)

SIGNIFICANT INDUSTRIAL USER: An industrial user, identified for purposes of this Chapter as a Class I industrial, that meets either of the following classifications: (2809/Reso. 6567)

(A) Any industrial user subject to categorical standards; or (2809/Reso. 6567)
Any other industrial user that meets any one (1) or more of the following criteria: (2809/Reso. 6567)

1. Contributes process wastewater which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of any of the POTW's treatment plants; (2809/Reso. 6567)

2. Discharges to the POTW an average of twenty-five thousand (25,000) gallons per day or more of process wastewater, excluding sanitary wastewater and boiler blowdown wastewater that is the minimum discharge from boilers of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice; or (2809/Reso. 6567)

3. As designated by the Utilities Manager upon a finding that the industrial user has a reasonable potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement. (2809/Reso. 6567)

SIGNIFICANT NONCOMPLIANCE: As determined by a compliance assessment at the end of each calendar quarter using a six- (6-) month period which includes the present quarter and the previous quarter, any one (1) or more of the following situations will be considered significant noncompliance: (2809/Reso. 6567)

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six- (6-) month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter; (2809/Reso. 6567)

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six- (6-) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (one and four-tenths [1.4] for B.O.D., S.S., fats, oil, and grease and one and two-tenths [1.2] for all other pollutants except pH); (2809/Reso. 6567)

(C) Any other violation of a pretreatment standard, daily maximum, or longer-term average that the Utilities Manager determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public; (2809/Reso. 6567)

(D) Any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (2809/Reso. 6567)

(E) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone developed under this Chapter for starting construction, completing construction, or attaining final compliance; (2809/Reso. 6567)

(F) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety- (90-) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules; (2809/Reso. 6567)
(G) Failure to accurately report noncompliance; or (2809/Reso. 6567)

(H) Any other violation or group of violations which the Utilities Manager determines will adversely affect the operation or implementation of this Chapter. (2809/Reso. 6567)

SLUG LOAD: 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- (24-) hour concentration, quantity, or flow rate for such pollutant during normal operations. (2809/Reso. 6567)

S.S. (SUSPENDED SOLIDS): Solids measured in milligrams per litre that either float on the surface of or are in suspension in wastewater or other liquids and which are largely removable by a laboratory filtration device as defined in the most current edition of "Standard Methods for the Examination of Water and Wastewater" 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 E.P.A. (2809/Reso. 6567)

STANDARD INDUSTRIAL CLASSIFICATION: A coded classification of industries based upon economic activities developed by the U.S. Department of Commerce as published in the Standard Industrial Classification Manual, 1987, Office of Management and Budget. (2809/Reso. 6567)

STORM SEWER: A sewer which carries storm and surface waters and drainage, but does not include wastewater containing pollutants. (2809/Reso. 6567)

TRUNK SEWER: A sewer which receives wastewater from many tributary main sewers and serves as an outlet for a large territory. (2809/Reso. 6567)

UPSET: An exceptional incident in which there is unintentional and temporary noncompliance with a technology-based permit effluent limitation because of factors beyond the reasonable control of the permittee, excluding such factors as operational error, improperly designed or inadequate treatment facilities, or improper operation and maintenance or lack thereof. (2809/Reso. 6567)

USER CHARGE: A portion of the sewer fee levied by the City which shall be sufficient to fund the estimated annual operation and maintenance (including replacement) cost of the POTW. (2809/Reso. 6567)

USER CLASS: Any grouping as determined by the Utilities Manager of POTW users, including Class I, II, and III industrial users. (2809/Reso. 6567)

UTILITIES DEPARTMENT: The Utilities Department of the City of Mesa, created by Section 3-3-1 of the Mesa City Code. (2809/Reso. 6567)

UTILITIES MANAGER: The Utilities Manager pursuant to Section 3-3-2 of the Mesa City Code or authorized deputy, agent, or representative. (2809/Reso. 6567)

WASTEWATER: The spent or used water of a community or industry which contains dissolved and suspended matter. (2809/Reso. 6567)
8-4-2: TREATMENT OF POLLUTED WATERS REQUIRED:

It shall be unlawful to discharge to any outlet into a ditch a channel in which a flow of water occurs, either continuously or intermittently, or to any body of surface water or groundwater within the City or in any area under the jurisdiction of the City any wastewater or other polluted waters except where suitable treatment has been provided in accordance with the provisions of this Chapter. (771, 2809/Reso. 6567)

8-4-3: DISPOSAL OF POLLUTANTS:

(A) It shall be unlawful for any trucked or hauled pollutant to be discharged into the POTW unless previously approved by the City Manager. (2809/Reso. 6567)

(B) It shall be unlawful to dispose of any pollutant by means other than those authorized by applicable federal, state, and local requirements. (2809/Reso. 6567)

8-4-4: DIGGING UP STREETS WITHOUT A PERMIT; TAMPERING WITH EQUIPMENT PROHIBITED:

It shall be unlawful to: (2809/Reso. 6567)

(A) Dig up or cause to be dug up any street or alley in the City for the purpose of connecting to the POTW without first obtaining a permit from the City Engineer; (2809/Reso. 6567)

(B) Having a permit, dig up any portion of any street or alley of the City for the purpose of connecting to the POTW and fail or neglect to place the street or alley in its original condition; or (2809/Reso. 6567)

(C) Maliciously or willfully break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the POTW. (2809/Reso. 6567)

8-4-5: PRIVATE WASTEWATER SYSTEMS:

(A) Except as provided in this Chapter, it shall be unlawful to construct or maintain within the City any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater. (2809/Reso. 6567)

(B) Where a public sanitary sewer is not available within the City or in any area under the jurisdiction of the City, the building sewer shall be connected to a private wastewater disposal system, complying with the provisions and recommendations of the Arizona Department of Environmental Quality and the Sanitary Code of Maricopa County. Such private wastewater disposal system shall be constructed, maintained, and operated at all times in a sanitary manner. (2809/Reso. 6567)

8-4-6: SANITARY SEWERS OUTSIDE CITY:

Any POTW user located outside of the City limits who discharges wastewater into a sanitary sewer owned or operated by the City shall be bound by the requirements of this Chapter. (2809/Reso. 6567)

8-4-7: SANITARY SEWERS; DESIGN, CONSTRUCTION, AND INSPECTION:

(A) The City shall have the authority to approve the design, issue permits, and conduct inspections of sewer facilities that are to be connected to the City’s existing sanitary sewer system. (2809/Reso. 6567)
(B) 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, Mesa Standard Details, and the Arizona Department of Environmental Quality Bulletin No. 11. (2809/Reso. 6567)

(C) All sewers to be attached directly or indirectly to the POTW shall be inspected by personnel of the City during construction. The City shall be notified at least forty-eight (48) hours prior to cutting into the POTW. In making a connection to the POTW, no physical alteration shall commence until an inspector is present. No wastewater shall be discharged into the POTW prior to obtaining City approval of sewer construction. (2809/Reso. 6567)

(D) Following satisfactory completion of construction, the City will issue a construction inspection certificate upon request. (2809/Reso. 6567)

8-4-8: BUILDING CONNECTIONS; PERMIT, APPROVAL, RECORDS, AND RESPONSIBILITY:

(A) No authorized person shall make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Development Services Department. (2809/Reso. 6567,3766)

(B) Each person making application for a building connection shall obtain a valid plumbing permit from the City as a prerequisite for the approval of the required building connection. All applications for building connections to be constructed by the Development Services Department shall be accompanied by the current fee for such work. (2809/Reso. 6567,3766)

(C) The number, location, manner of connection, and size of all building connections shall be subject to the approval of the Development Services Manager. (2809/Reso. 6567,3766)

(D) The Development Services Department shall keep a record of all building connections made and the purpose for which they are to be used, together with the name of the owner of the property, the owner's agent, or a representative. (2809/Reso. 6567,3766)

(E) The property owner shall be responsible for the cleaning, unstopping, maintenance, and repair of the building connection piping serving the property from the owner’s home or building to the public sewer, except as provided in Subsection (F) of this Section. (2809/Reso. 6567)

(F) Where the correction of a stoppage requires the repair or replacement of a damaged or broken section of the building connection and the damaged or broken section is located off-property in a street or alley, the Utilities Department shall make the repair or replacement. (2809/Reso. 6567)
8-4-9: OWNERSHIP OF PUBLIC SEWER LINES AND OTHER EQUIPMENT MAINTAINED BY THE UTILITIES DEPARTMENT:

The ownership of all public sewer lines, pumping stations, treatment facilities, and equipment and other appurtenances to the sewer system maintained or accepted for maintenance by the Utilities Department shall be vested in the City, and in no case shall the owner of any premises have the right to claim any part except where otherwise provided in this Code. (2809/Reso. 6567)

8-4-10: SEWER CHARGES SET BY SEPARATE ORDINANCE:

(A) The Council shall at least biennially by separate ordinance set the fee to be made for sewer service and use. Such fee shall be apportioned to include not only a user charge, which shall be used exclusively to generate revenues sufficient to pay the total operation and maintenance (including replacement) costs of the treatment works, but also other sewer service charges as desired by the Council. The user charge shall be allocated in such a manner that is proportionate to the cost of providing wastewater service to each POTW user or user class insofar as those costs can reasonably be determined. Further, the user charge shall be based upon the volume and strength, including B.O.D. and S.S., of the wastewater discharged. (2809/Reso. 6567, 4038)

(B) Charges for monthly sewer service and use shall be imposed as follows: (4065)

1. Until February 26, 2003, those residential customers not connected to the POTW but with an active utility account and a usable City sewer main adjoining the premises shall pay, in lieu of the user charge and in addition to the charge levied to offset capital expenses, an amount equal to the user charge as stated on the applicable rate schedule, subject to the refund provisions of paragraph (B)5 hereof. (4065)

2. A "usable City sewer main" is defined for purposes of paragraph (B)1 as one that is adjacent to the parcel and which has a service line extended to the property line of the parcel. (4065)

3. In situations where a monthly charge is imposed but the person is not connected to the public sewer, a credit shall be given toward the payment of the sewer development fee when a connection is made. Such credit will be in the sum of the payments previously paid for monthly sewer services, but in no case shall it exceed the amount of the sewer development fee in effect at the time connection to the public sewer is made. (4065)

4. After February 26, 2003, monthly charges for sewer service and use shall only be imposed on a parcel at such time as that parcel is connected to the public sewer. (4065)

5. A person shall be entitled to a refund of the monthly charges for sewer service paid during the period of time beginning March 1, 2000 and ending February 26, 2003, without interest if: (4065)
   
   (a) The person had an active utility account and a usable City sewer main adjoining the premises; (4065)

   (b) The person paid a monthly charge for sewer, but was not connected to the public sewer; and (4065)

   (c) Such charges have not been credited against a sewer development fee as allowable under paragraph (B)1 hereof. (4065)
The refund shall in no case exceed the actual amount paid by the person submitting the application for refund. In order to be eligible to receive such refund, the person who paid such charges shall be required to submit an application for such refund to the Utilities Department within one (1) year after February 26, 2003. (4065)

(C) Although the City strongly encourages that persons should connect to the public sewer system when it becomes available to them, persons with existing septic tanks may continue to use them as long as they function in a manner which does not violate Maricopa County health standards. However, at such time as Maricopa County determines that the septic tanks violate the standards, the person shall connect to the public sewer system. (2809/Reso. 6567,4038,4065)

(D) Upon appeal and presentation of satisfactory evidence by any customer, an adjustment of the established sewer rate schedules may be granted provided that such adjustment is proportional among POTW users or user classes and includes, at a minimum, a user charge component. (2809/Reso. 6567,4038,4065)

(E) Excessive revenues collected from a POTW user or user class through the user charge shall be applied to that POTW user or user class when the user charge portion of the sewer fee is established. (2809/Reso. 6567,4038,4065)

8-4-11: USER CHARGE FORMULA:

In calculating a POTW user or user class sewer fee, the following formula shall be used to determine the user charge portion of the total sewer fee: (2809/Reso. 6567)

**USER CHARGE FORMULA:**  
Flow mg x flow rate + B.O.D. (mg/l) x 8.34 x flow mg x B.O.D. rate - 1000 + S.S. (mg/l) x 8.34 x flow mg x S.S. rate - 1000 + fixed charges. (2809/Reso. 6567)

**WHERE:**

- **FLOW MG** = The total volume of flow for the year in millions of gallons. (2809/Reso. 6567)
- **FLOW RATE** = O & M (FLOW) divided by flow mg. (2809/Reso. 6567)
- **B.O.D. RATE** = O & M (B.O.D.) divided by B.O.D. 1000 lbs. (2809/Reso. 6567)
- **S.S. RATE** = O & M (S.S.) divided by S.S. 1000 lbs. (2809/Reso. 6567)
- **FIXED CHARGES** = O & M (FIXED) divided by the number of customers. (2809/Reso. 6567)
- **O & M (FLOW)** = The operating and maintenance cost of treating the flow portion of wastewater. (2809/Reso. 6567)
- **O & M (B.O.D.)** = The operating and maintenance cost of treating the B.O.D. portion of wastewater. (2809/Reso. 6567)
- **O & M (S.S.)** = The operating and maintenance cost of treating the S.S. portion of wastewater. (2809/Reso. 6567)
**O & M (FIXED)** = The operating and maintenance cost of processing sewer bills. (2809/Reso. 6567)

**B.O.D. 1000 LBS.** = The total amount of B.O.D. in thousands of pounds. (2809/Reso. 6567)

**S.S. 1000 LBS.** = The total amount of S.S. in thousands of pounds. (2809/Reso. 6567)

**NUMBER OF CUSTOMERS** = The total number of sewer customers being billed. (2809/Reso. 6567)

**B.O.D. (MG/L)** = The concentration of biochemical oxygen demand in milligrams per litre of wastewater. (2809/Reso. 6567)

**S.S. (MG/L)** = The concentration of S.S. in milligrams per litre of wastewater. (2809/Reso. 6567)

**8-4-12: BILLING FOR USER CHARGE:**

Each POTW user shall be notified on an annual basis, in conjunction with their regular monthly bill, of the portion of their monthly bill that is attributable to the user charge. Such notice shall state that the revenues derived by the user charge are to be used exclusively for the operation and maintenance (including replacement) of the POTW. (2809/Reso. 6567)

**8-4-13: DISTRIBUTION OF WASTEWATER SYSTEM REVENUES AND UTILIZATION OF FUNDS:**

Revenues attributable to user charges shall be allocated to the Sewer Use Accounts of the Sewer Enterprise Account of the City of Mesa Utility Fund. Such revenues shall be restricted to paying the expenses incurred in the operation and maintenance (including replacement) of the POTW. Additional revenues derived by the charge for sewer service and use shall be allocated to the Sewer Service Account of the Sewer Enterprise Account of the City’s Utility Fund. The Sewer Service Account revenues may be used for any one (1) or more of the following activities: (2809/Reso. 6567)

(A) The expansion or improvement of the sanitary and storm sewer systems operated by the City; (2809/Reso. 6567)

(B) Servicing the debt or retiring sanitary and storm sewer bonds; and (2809/Reso. 6567)

(C) Providing for other pertinent costs as determined by the City Council. (2809/Reso. 6567)

**8-4-14: WASTEWATER TREATMENT BY-PRODUCTS:**

All revenue from the sale of treatment-related by-products shall be used to offset the cost of operating and maintaining the POTW. User charges shall be proportionally reduced for all POTW users. Total annual revenues received from the sale of a by-product shall be credited to the works treatment operation and maintenance cost no later than the fiscal year immediately following their receipt. (2809/Reso. 6567)

**8-4-15: PROHIBITED SUBSTANCES AND DISCHARGE LIMITATIONS:**

(A) No person shall discharge or cause to be discharged at any entry point into the public sewer system any of the following: (2809/Reso. 6567)

1. Wastewater which could cause interference or pass-through with POTW operations. (2809/Reso. 6567)
2. Unless otherwise approved by the Utilities Manager, storm water, surface water, groundwater, roof runoff, subsurface drainage, single-pass cooling water, or condensate that may constitute inflow. (2809/Reso. 6567)

3. Pollutants which create a fire or explosion hazard to the system or POTW. In no case shall pollutants be discharged either: (2809/Reso. 6567,4330)

   (a) With a closed cup flashpoint less than one hundred forty degrees Fahrenheit (140o F) (sixty degrees Centigrade [60o C]); or (2809/Reso. 6567)

   (b) Which would cause an exceedance of ten percent (10%) of the lower explosive limit (lel) at any point within the POTW for any single reading or more than five percent (5%) for any two (2) consecutive readings. (2809/Reso. 6567)

4. Solid or viscous pollutants, animal fats, oils and grease, petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause any one (1) or more of the following: (2809/Reso. 6567,4330)

   (a) Interference; (2809/Reso. 6567)

   (b) Pass-through; or (2809/Reso. 6567)

   (c) Obstruction to the flow in sewers or other interference or damage with the system or POTW. (2809/Reso. 6567,4330)

5. Any waters containing a toxic, radioactive, poisonous, or other substance in sufficient quantity to injure or interfere with any POTW process, cause corrosive structural damage, constitute a hazard to humans, or create any hazard to the POTW or in the receiving waters of the POTW; or pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. (2809/Reso. 6567,4330)

6. Wastewater with a pH less than five (5.0) standard units (SU) or greater than ten and one-half (10.5) SU. (2809/Reso. 6567)

7. Wastewater with a temperature greater than one hundred fifty degrees Fahrenheit (150°F) or heat in amounts which will inhibit biological activity in the POTW resulting in interference; but in no event, heat in such quantities that the temperature at the headworks of the POTW exceeds one hundred four degrees Fahrenheit (104°F) (forty degrees Centigrade [40°C]). (2809/Reso. 6567)

8. Wastewater that has been diluted in any way 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. (2809/Reso. 6567)
9. Wastewater that could cause a violation of any categorical standard or pretreatment requirement. (2809/Reso. 6567)

10. A discharge, other than domestic wastewater, that exhibits a characteristic of a hazardous waste or contains a substance that is listed as a hazardous waste pursuant to either Arizona Administrative Code R18-8-261, as amended, or 40 C.F.R. Part 261, as amended, whichever is applicable, whether or not the discharge is otherwise subject to hazardous waste regulations. The Utilities Manager may allow a discharge of such wastes if, upon written request of the affected person, the Utilities Manager determines that the discharge would not cause interference or pass-through with POTW operations. (2809/Reso. 6567, 4330)

11. Wastewater sampled using the following specified sample type which exceeds the limits for the following parameters, expressed in the total form as micrograms per liter (μG/L): (2809/Reso. 6567)

(a) The instantaneous effluent limitation shall be the maximum allowable concentration permitted in a discharge at any time as measured in a grab sample. The instantaneous effluent limitation for the following parameters shall be: (2809/Reso. 6567)

<table>
<thead>
<tr>
<th>Substance</th>
<th>Limitation</th>
<th>Sample Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Benzene</td>
<td>35</td>
<td>Grab</td>
</tr>
<tr>
<td>(ii) Chloroform</td>
<td>2,000</td>
<td>Grab</td>
</tr>
</tbody>
</table>

(4330)

(b) The following parameters shall have a limit of zero and are therefore prohibited: (2809/Reso. 6567, 4330)

<table>
<thead>
<tr>
<th>Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) 4,4’ – DDE</td>
</tr>
<tr>
<td>(ii) 4,4’ – DDT</td>
</tr>
<tr>
<td>(iii) Aldrin</td>
</tr>
<tr>
<td>(iv) BHC – Alpha</td>
</tr>
<tr>
<td>(v) BHC - Beta</td>
</tr>
<tr>
<td>(vi) BHC – Gamma (Lindane)</td>
</tr>
<tr>
<td>(vii) Heptachlor</td>
</tr>
<tr>
<td>(viii) Heptachlor Epoxide</td>
</tr>
<tr>
<td>(ix) Polychlorinated Biphenyl Compounds</td>
</tr>
</tbody>
</table>

(4330)
(B)  In addition to the requirements contained in Subsection (A) of this Section, all Class I industrial users shall not discharge or cause to be discharged at any entry point into the public sewer system any wastewater which exceeds the daily average effluent limitation specified in paragraph 3 of this Subsection. A Class II industrial user also may be subject to one (1) or more of the daily average effluent limitations if the Utilities Manager determines in writing that such user is responsible for an industrial discharge which causes or has the reasonable potential to cause harm or damage to worker safety, public safety, or the environment. This written determination shall identify the daily average effluent limitations applicable to the user that are necessary to minimize the potential harm or damage to worker safety, public safety, and the environment. (2809/Reso. 6567)

1. The daily average effluent limitation shall be the maximum allowable concentration permitted in a discharge as measured, where feasible, in a composite sample obtained by flow proportional sampling techniques. If the Utilities Manager determines that flow-proportional composite sampling is not feasible, the utilities Manager may allow or conduct composite sampling by time-proportional techniques or by the compositing or averaging of one (1) or more grab samples. (2809/Reso. 6567, 4330)

2. Sampling for the daily average effluent limitation shall be conducted using the sample type specified in paragraph 3 of this Subsection. (2809/Reso. 6567)

3. The daily average effluent limitation for the following parameters, expressed in the total form as milligrams per liter (MG/L), shall be: (2809/Reso. 6567, 4330)

<table>
<thead>
<tr>
<th>SUBSTANCE</th>
<th>LIMITATION</th>
<th>SAMPLE TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Arsenic</td>
<td>0.13</td>
<td>Composite</td>
</tr>
<tr>
<td>(b) Cadmium</td>
<td>0.047</td>
<td>Composite</td>
</tr>
<tr>
<td>(c) Copper</td>
<td>1.5</td>
<td>Composite</td>
</tr>
<tr>
<td>(d) Cyanide</td>
<td>2.0</td>
<td>Grab</td>
</tr>
<tr>
<td>(e) Lead</td>
<td>0.41</td>
<td>Composite</td>
</tr>
<tr>
<td>(f) Mercury</td>
<td>0.0023</td>
<td>Composite</td>
</tr>
<tr>
<td>(g) Selenium</td>
<td>0.10</td>
<td>Composite</td>
</tr>
<tr>
<td>(h) Silver</td>
<td>1.2</td>
<td>Composite</td>
</tr>
<tr>
<td>(i) Zinc</td>
<td>3.5</td>
<td>Composite</td>
</tr>
</tbody>
</table>

(C) No person shall discharge or cause a discharge into a POTW that violates any limitation or prohibition specified or established by the Utilities Manager pursuant to Section 8-4-27(A) of the Mesa City Code. (4330)

(D) All affected individual users or class of users shall comply with any best management practice required by the Utilities Manager pursuant to Section 8-4-27(A) of the Mesa City Code. (4330)

(E) Mass limitations may be imposed on industrial users through industrial wastewater discharge permits where not prohibited by categorical pretreatment standards, and which are using flow equalization to meet applicable federal, state, or City pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. Equivalent mass limits may be established only if industrial users satisfy all conditions set forth in 40 CFR 403.6(c)(5)(i)(A) through (c)(5)(i)(E). In such cases, the
wastewater discharge permit will contain the mass allocation for each pollutant, any concentration-based categorical standards, maximum flow allowed, and the appropriate monitoring and reporting requirements. Where mass limits have been established, the reports required by Section 8-4-19 shall also indicate the mass of limited pollutants in the user’s wastewater. These reports shall also contain the results of sampling and analysis of the discharge, including production and mass of pollutants contained therein which are limited by the applicable pretreatment standards and requirements. (5426)

8-4-16: INDUSTRIAL USERS IDENTIFIED AS CLASS I, II, OR III:

(A) All significant industrial users shall be Class I industrial users under this Chapter. (2809/Reso. 6567)

(B) A Class II industrial user shall be any industrial user that meets all of the following criteria: (2809/Reso. 6567)

1. Is not a significant industrial user; (2809/Reso. 6567)

2. Is determined in writing by the Utilities Manager to be responsible for an industrial discharge which causes or has the reasonable potential to cause harm or damage to the POTW, worker safety, public safety, or the environment; and (2809/Reso. 6567)

3. Has discharges which are any one (1) or more of the following: (2809/Reso. 6567)

   (a) Greater than the equivalent strength of twenty-five thousand (25,000) gallons per day of domestic waste as measured by B.O.D. and S.S. (2809/Reso. 6567)

   (b) Pollutants in groundwater subject to a remedial action plan that has been approved by an appropriate regulatory agency. (2809/Reso. 6567)

   (c) Any of the substances described in Section 8-4-15 of the Mesa City Code. (2809/Reso. 6567)

   (d) Either domestic wastewater or no discharge at all, but such industrial user does have significant quantities of pollutants which, if discharged, would be regulated by this Chapter. (2809/Reso. 6567)

(C) All industrial users that are not Class I or II under Subsections (A) and (B) of this Section shall be identified as Class III industrial users. (2809/Reso. 6567)

8-4-17: GENERAL INDUSTRIAL USER REQUIREMENTS:

All Class I, II, and III industrial users shall, unless otherwise noted: (2809/Reso. 6567)

(A) Comply with the categorical standards, pretreatment requirements, and all other requirements imposed by this Chapter upon POTW users. (2809/Reso. 6567)

(B) Comply with the orders of the Utilities Manager designed to implement the categorical standards, pretreatment requirements, best management practices, and all other requirements imposed by this Chapter. (2809/Reso. 6567, 4330)

(C) If a new industrial user, file, prior to the discharge of wastewater to the POTW, a written notice with the Utilities Manager which identifies all of the following: (2809/Reso. 6567)

1. Name and address of the existing or prospective industrial users; (2809/Reso. 6567)
2. Business locations served or to be served by the POTW; (2809/Reso. 6567)

3. Nature, concentration, and amounts of any substance present at, or intended to be present at, such business locations which, if discharged to the POTW, could constitute an industrial discharge; and (2809/Reso. 6567)

4. Nature and concentration of all pollutants currently discharged to the POTW from such business locations. (2809/Reso. 6567)

(D) Assist the Utilities Manager in updating the industrial user survey which contains the information requested in Subsection (C) of this Section. The Utilities Manager may request additional information to determine compliance. (2809/Reso. 6567)

(E) Carry out and maintain an adequate record of all self-inspection and self-monitoring activities necessary for the industrial user to know at all times whether or not such user is introducing any industrial discharge to the POTW. (2809/Reso. 6567)

(F) Assist the Utilities Manager to determine the exact nature, concentration, and volume of any pollutant intended for discharge to the POTW. Therefore, upon request, any industrial user shall promptly do any one (1) or more of the following: (2809/Reso. 6567)

1. Allow the examination and copying of all relevant records or documents available to the user. (2809/Reso. 6567)

2. 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. (2809/Reso. 6567)

3. Install and maintain at the user’s expense convenient and adequate monitoring and/or sampling points needed by the Utilities Manager for monitoring and/or sampling purposes. (2809/Reso. 6567)

4. Allow the taking and removal of samples from any wastewater discharged or intended for discharge to the POTW. (2809/Reso. 6567)

5. Provide the Utilities Manager with any other information, including chemical analyses of wastewater and architectural or engineering design data, drawings, etc., which is reasonably needed by the Utilities Manager for the purpose of determining such user’s compliance with the requirements of this Chapter. (2809/Reso. 6567)

(G) Refrain from any discharges until the Utilities Manager determines if the industrial user would cause an industrial discharge. Once this determination is made, the Utilities Manager will classify the user as a Class I, II, or III industrial user consistent with Section 8-4-16 of the Mesa City Code. The Utilities Manager shall maintain and amend as necessary a list of the Class I, II, and III industrial users. (2809/Reso. 6567)
(H) Comply with the demand of the Utilities Manager to immediately halt any actual or threatened discharge to the POTW when the Utilities Manager has given notice that such actual or threatened discharge either:

1. Presents or may present an imminent or substantial endangerment to the health or welfare of any person or to the environment; or (2809/Reso. 6567)

2. Will cause interference with POTW operations. (2809/Reso. 6567)

(I) Immediately give notice to the Utilities Manager of any problem-causing discharge to the POTW. A problem-causing discharge may not have caused an actual limit violation but had a characteristic of the narrative prohibitions of Section 8-4-15 of the Mesa City Code. The discharge also may be an accidental discharge, upset, slug load, limit violation of any categorical standard, pretreatment requirement, or permit condition imposed by this Chapter. Such notification will not relieve the industrial user 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. The notice shall be followed within ten (10) working days with a written report that shall include all of the following: (2809/Reso. 6567)

1. Location of the discharge; (2809/Reso. 6567)

2. Known or estimated nature, concentration, and volume of the discharged pollutants; (2809/Reso. 6567)

3. Type of assistance desired from the City; (2809/Reso. 6567)

4. Corrective action undertaken, being undertaken, and/or to be undertaken by the industrial user. Any industrial user causing such a discharge also shall initiate all appropriate corrective action required by the Utilities Manager needed to accomplish all of the following: (2809/Reso. 6567)

   (a) Prevent injury to human health or safety or to the environment, the POTW, and/or any other property; (2809/Reso. 6567)

   (b) Promptly repair all or part of any injury or damage caused by such discharge; and (2809/Reso. 6567)

   (c) Ensure that a discharge does not occur again. (2809/Reso. 6567)

(J) Pay all sewer fees charged by the City for the POTW services provided by the Utilities Manager pursuant to the requirements of this Chapter. Such service fees will apply equally to all industrial 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 wastewater discharged to the POTW by each user. (2809/Reso. 6567)

(K) Reimburse the City for all expenses reasonably incurred by the City in insuring such industrial user’s compliance with the applicable requirements of this Chapter. A schedule of such costs will be determined by the Utilities Manager. Expenses include the costs related to all of the following: (2809/Reso. 6567)
1. Issuing permits; (2809/Reso. 6567)

2. Conducting inspection, surveillance, and monitoring activities; (2809/Reso. 6567)

3. Obtaining laboratory analysis of wastewater samples; (2809/Reso. 6567)

4. Taking enforcement actions against industrial users not in compliance with the requirements of this Chapter; and (2809/Reso. 6567)

5. 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. (2809/Reso. 6567)

(L) If a significant industrial user, comply with the requirements of Section 8-4-19(G)2 of the Mesa City Code when a limit violation is detected during self-monitoring. (2809/Reso. 6567)

(M) Notify the Utilities Manager, the E.P.A. Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261, the E.P.A. hazardous waste number, and the type of discharge (continuous, batch, or other). (2809/Reso. 6567)

1. If the industrial user discharges more than one hundred kilograms (100kg) of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the industrial user: (2809/Reso. 6567)

   (a) An identification of the hazardous constituents contained in the wastes; (2809/Reso. 6567)

   (b) An estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month; and (2809/Reso. 6567)

   (c) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. (2809/Reso. 6567)

2. Industrial users shall provide the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. (2809/Reso. 6567)

3. Any notification under this Subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted under 40 C.F.R. §403.12(j).

4. The notification requirement in this Subsection does not apply to pollutants already reported under the self-monitoring requirements of 40 C.F.R. §403.12(b), (d), and (e). (2809/Reso. 6567)
5. Dischargers are exempt from the requirements of this Subsection during a calendar month in which they discharge no more than fifteen kilograms (15kg) of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§261.30(d) and 261.33(e). Discharge of more than fifteen kilograms (15kg) of nonacute hazardous wastes in a calendar month or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification. (2809/Reso. 6567)

6. In the case of new regulations promulgated by the E.P.A. under Section 3001 of the Resource Conservation and Recovery Act identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the Utilities Manager of the discharge of such substance within ninety (90) days from the effective date of such regulations. (2809/Reso. 6567)

7. In the case of any notification made under this Subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment. (2809/Reso. 6567)

(N) If a significant industrial user, sign applications for permits, correspondence, and required reports following the requirements in Section 8-4-19(H) of the Mesa City Code. (2809/Reso. 6567)

(O) Promptly notify the Utilities Manager in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 C.F.R. §403.12(p). (2809/Reso. 6567)

(P) For purposes of record keeping: (2809/Reso. 6567)

1. Maintain records of all information resulting from any monitoring activities required by this Section. Such records shall include all of the following information for all samples: (2809/Reso. 6567)

   (a) The date, exact place, method, and time of sampling and the names of the individuals taking the samples; (2809/Reso. 6567)

   (b) The dates that analyses were performed; (2809/Reso. 6567)

   (c) Who performed the analyses; (2809/Reso. 6567)

   (d) The analytical techniques/methods used; and (2809/Reso. 6567)

   (e) The results of such analyses. (2809/Reso. 6567)

2. Retain for a minimum of three (3) years all records of monitoring activities and results, whether or not such monitoring activities are required by this Section, and shall make such records available for inspection and copying by the Utilities Manager. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or when requested by the Utilities Manager. (2809/Reso. 6567)
(Q) In order that officers, agents, and employees of permittees shall make available to their employees copies of this Chapter together with such other wastewater 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 who to call in case of an accidental discharge in excess of the limits authorized by the permit. (2809/Reso. 6567)

(R) If a significant industrial user, submit a compliance schedule that contains the information required in Section 8-4-19(F) of the Mesa City Code if found to be out of compliance by the Utilities Manager. (2809/Reso. 6567)

(S) Provide protection from accidental discharge of prohibited materials or other wastewater regulated by this Chapter. (2809/Reso. 6567)

(T) Label any possible connection or entry point for a hazardous and/or prohibited substance to the plumbing or drainage system to warn operating personnel against discharge of such substance in violation of this Chapter. (2809/Reso. 6567)

(U) Submit and maintain reports subject to all of the following: (2809/Reso. 6567)

1. The provisions of 18 U.S.C. §1001 relating to fraud and false statements; (2809/Reso. 6567)

2. The provisions of C.W.A. §309(c)4 governing false statements, representation, or certification; and (2809/Reso. 6567)

3. The provisions of C.W.A. §309(c)6 regarding responsible officers. (2809/Reso. 6567)

(V) Implement methods at the industrial user's expense to reduce or control the concentration of pollutants through the use of best management practices or measures used to reduce the amount of pollution entering surface water, air, land, or groundwater. Each industrial user shall keep written records of the methods used, and such records shall be kept on-site for a minimum of three (3) years. (2809/Reso. 6567)

8-4-18:  CLASS I AND II INDUSTRIAL USER PERMIT REQUIREMENTS:
Class I and II industrial users shall do all of the following: (2809/Reso. 6567)

(A) Obtain an Industrial Wastewater Discharge Permit from the Utilities Manager. Any application for a permit or an amended permit shall contain the information in the application form or such other information as may be requested by the Utilities Manager. The Utilities Manager shall issue an Industrial Wastewater Discharge Permit within sixty (60) days after determining that an application for such permit is complete. Such a permit: (2809/Reso. 6567)

1. Will be categorized as Class I or Class II; (2809/Reso. 6567)
2. Will be for a period of time not to exceed five (5) years. A permit may be terminated by revocation by the Utilities Manager under Section 8-4-28 of the Mesa City Code or upon voluntary surrender of the permit by the permittee at an earlier date; (2809/Reso. 6567)

3. Is nontransferable by the permittee; (2809/Reso. 6567)

4. May be amended as deemed appropriate by the Utilities Manager; (2809/Reso. 6567)

5. Will specifically identify all applicable discharge prohibitions and limitations and monitoring and reporting requirements which the Utilities Manager will enforce; (2809/Reso. 6567)

6. For all Class I industrial users, shall include a provision requiring all pretreatment necessary to comply with the categorical standards and pretreatment requirements, and best management practices imposed by this Chapter; (2809/Reso. 6567,4330)

7. May contain requirements for installation and maintenance of inspection and sampling facilities; (2809/Reso. 6567)

8. May require implementation of best management practices to reduce or eliminate the amount of pollutants discharged to the POTW. (2809/Reso. 6567,4330)

9. May contain other conditions and requirements as deemed reasonably necessary by the Utilities Manager to meet the following concerns: (2809/Reso. 6567)

   (a) Prevent pass-through or interference; (2809/Reso. 6567)

   (b) Protect the quality of the water body receiving the POTW's effluent; (2809/Reso. 6567)

   (c) Protect worker health and safety; (2809/Reso. 6567)

   (d) Facilitate sludge management and disposal; (2809/Reso. 6567)

   (e) Protect against damage to the POTW; and (2809/Reso. 6567)

   (f) Ensure user compliance with this Chapter. (2809/Reso. 6567)

10. May be appealed by the applicant by filing a petition for review with the Utilities Manager within twenty (20) days of receipt of the permit. Such petition shall identify the permit provisions objected to, specify in detail the reasons for objection, and present the alternative condition, if any, sought to be placed in the permit. During the appeal process, the provisions of the permit that are not objected to shall be in effect, and the provisions that are objected to shall be stayed pending a final decision by the Utilities Manager. If the Utilities Manager fails to act within thirty (30) days of receipt of the petition for review, the petition shall be deemed to be denied. (2809/Reso. 6567)
Comply fully with all requirements and conditions of any Industrial Wastewater Discharge Permit. Once a permit is issued, no Class I or II industrial user shall do any of the following: (2809/Reso. 6567)

1. Make any new or increased industrial discharge; (2809/Reso. 6567)

2. Make any change in the nature of its industrial discharge if such change will cause any new or increased industrial discharge; (2809/Reso. 6567)

3. Fail to give notice to the Utilities Manager not less than ninety (90) days prior to any facility expansion, production increase, or process modifications which results or may result in new or increased discharges or a change in the nature of the discharge; or (2809/Reso. 6567)

4. Fail to give advance notice to the Utilities Manager of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. (2809/Reso. 6567)

SIGNIFICANT INDUSTRIAL USER REPORTING REQUIREMENTS:

A) Significant industrial users not subject to categorical standards shall submit to the Utilities Manager at least once every six (6) months (on dates specified by the Utilities Manager) a description of the nature, concentration, and flow of the pollutants required to be reported to the Utilities Manager. These reports shall be based on sampling and analysis performed in the period covered by the report. This sampling and analysis may be performed by the Utilities Manager in lieu of such significant industrial user. Where the Utilities Manager collects all the information required for the report, such significant industrial user will not be required to submit the report. (2809/Reso. 6567)

B) Within one hundred eighty (180) days after the effective date of a categorical standard or one hundred eighty (180) days after the final administrative decision made upon a category determination submission under 40 C.F.R. §403.6(a)(4), whichever is later, existing industrial users subject to such a categorical standard and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Utilities Manager a report which contains all of the following information: (2809/Reso. 6567)

1. The name and address of the facility, including the name of the owner and operator; (2809/Reso. 6567)

2. A list of any environmental control permits held by or for the facility; (2809/Reso. 6567)

3. A brief description of the nature, average rate of production, and standard industrial classification of the operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes; (2809/Reso. 6567)

4. The measured average daily and maximum daily flow, in gallons per day (verifiable estimates of these flows where justified by cost of feasibility considerations may be allowed by the Utilities Manager) from the POTW from both of the following: (2809/Reso. 6567)

   (a) Regulated process streams and (2809/Reso. 6567)

   (b) Other streams as necessary to allow use of the combined wastestream formula of 40 C.F.R. §403.6(e), as described in subparagraph 5(e) of this Subsection; (2809/Reso. 6567)
5. A measurement of pollutants conducted as follows: (2809/Reso. 6567)

(a) The user shall identify the categorical standards applicable to each regulated process. (2809/Reso. 6567)

(b) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the categorical standard or the Utilities Manager) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. (2809/Reso. 6567)

(c) A minimum of four (4) grab samples shall be used for pH, cyanide, total phenol, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four- (24-) hour composite samples shall be obtained through flow-proportional composite sampling techniques where feasible. The Utilities Manager may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. (2809/Reso. 6567)

(d) The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this paragraph. (2809/Reso. 6567)

(e) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 C.F.R. §403.6(e) in order to evaluate compliance with the categorical standards. Where an alternate concentration or mass limit has been calculated in accordance with §403.6(e), this adjusted limit, along with supporting data, shall be submitted to the Utilities Manager. (2809/Reso. 6567)

(f) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 for the pollutant in question, or where the approval authority determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Utilities Manager or other parties approved by the approval authority. (2809/Reso. 6567)

(g) The baseline report shall indicate the time, date, and place of sampling and methods of analysis and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW. (2809/Reso. 6567)

6. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether categorical standards are being met, and if not, whether additional operations and maintenance (O & M) and/or additional pretreatment is required for the industrial user to meet the categorical standards and pretreatment requirements; and (2809/Reso. 6567)
7. If additional pretreatment and/or O & M will be required to meet the categorical standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable categorical standard. (2809/Reso. 6567)

(C) At least ninety (90) days prior to commencement of a discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the Utilities Manager a report which contains the information listed in paragraphs 1-5 of Subsection (B) of this Section. New sources also shall be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in paragraphs 4 and 5 of Subsection (B) of this Section. (2809/Reso. 6567)

(D) Within ninety (90) days following the date for final compliance with applicable categorical standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any industrial user subject to categorical standards shall submit to the Utilities Manager a report containing the information described in paragraphs 4-6 of Subsection (B) of this Section. (2809/Reso. 6567)

(E) Any industrial user subject to a categorical standard after the compliance date of such standard or in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Utilities Manager during the months of June and December, unless required more frequently in the categorical standard or by the Utilities Manager or approval authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph 4 of Subsection (B) of this Section, except that the Utilities Manager may require more detailed reporting of flows. (2809/Reso. 6567)

(F) The compliance schedule for meeting categorical standards required by paragraph 7 of Subsection (B) of this Section shall be as follows: (2809/Reso. 6567)

1. The compliance schedule shall contain increments of progress, not to exceed nine (9) months, in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical standards. “Major events” include activities such as hiring an engineer, completing preliminary plans, completing final plans, executing a contract for major components, commencing construction, and completing construction. (2809/Reso. 6567)

2. Not later than fourteen (14) days following each date in the compliance schedule and the final date for compliance, the industrial user shall submit a progress report to the Utilities Manager, including whether or not it complied with the increment of progress to be met on such date, and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. (2809/Reso. 6567)

(G) Monitoring and analysis to demonstrate continued compliance shall be conducted as follows: (2809/Reso. 6567)
1. The reports required in Subsections (B), (C), (D), and (E) of this Section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Utilities Manager, of pollutants contained therein which are limited by the applicable categorical standards. This sampling and analysis may be performed by the Utilities Manager in lieu of the industrial user. Where the Utilities Manager performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under 40 C.F.R. §§403.12(b)6 and 403.12(d). In addition, where the Utilities Manager collects all the information required for the report, including flow data, the industrial user will not be required to submit the report. (2809/Reso. 6567)

2. If sampling performed by an industrial user indicates a violation, the user shall notify the Utilities Manager within twenty four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Utilities Manager within thirty (30) days after becoming aware of the violation. However, the industrial user is not required to resample if either:
   (a) The Utilities Manager performs sampling of the industrial user at a frequency of at least once per month or
   (b) The Utilities Manager performs sampling of the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling. (2809/Reso. 6567)

3. The reports required in Subsection (E) of this Section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Utilities Manager shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable categorical standards. (2809/Reso. 6567)

4. All analyses shall be performed in accordance with procedures established by the approval authority pursuant to C.W.A. §304(h) and contained in 40 C.F.R. Part 136 or with any other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 C.F.R. Part 136 does not include sampling or analytical techniques for the pollutants in question or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the Utilities Manager or other parties approved by the administrator. (2809/Reso. 6567)

5. If an industrial user subject to the reporting requirements in Subsection (E) of this Section monitors any pollutant more frequently than required by the Utilities Manager using the procedures prescribed in paragraph 4 of this Subsection, the results of this monitoring shall be included in the report. (2809/Reso. 6567)

(H) The reports required by Subsections (B), (C), (D), and (E) of this Section shall both:

1. Include the certification statement set forth as follows: (2809/Reso. 6567)

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation." (2809/Reso. 6567)
2. Be signed as follows: (2809/Reso. 6567)

   (a) By a responsible corporate officer, if the industrial user submitting the reports required by Subsections (B), (C), (D), and (E) of this Section is a corporation. For purposes of this paragraph, a “responsible corporate officer” means either: (2809/Reso. 6567)

      (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision making functions for the corporation or (2809/Reso. 6567)

      (ii) The manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25 million) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (2809/Reso. 6567)

   (b) By a general partner or proprietor if the industrial user submitting the reports required by Subsections (B), (C), (D), and (E) of this Section is a partnership or sole proprietorship. (2809/Reso. 6567)

   (c) By a duly authorized representative of the individual designated in subparagraph (a) or (b) of this paragraph if all of the following criteria are met: (2809/Reso. 6567)

      (i) The authorization is made in writing by the individual described in subparagraph (a) or (b); (2809/Reso. 6567)

      (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (2809/Reso. 6567)

      (iii) The written authorization is submitted to the Utilities Manager. (2809/Reso. 6567)

   (d) If an authorization under subparagraph (c) of this paragraph is no longer accurate because a different individual or position has responsibility for either the overall operation of the facility or environmental matters for the company, a new authorization satisfying the requirements of subparagraph (c) of this paragraph shall be submitted to the Utilities Manager prior to or together with any reports to be signed by an authorized representative. (2809/Reso. 6567)

8-4-20: MORE STRINGENT FEDERAL REQUIREMENTS TO CONTROL:

Upon the effective date of any categorical standards for a particular industrial subcategory, the federal standard shall immediately supersede these limitations if it is more stringent than limitations imposed under this Chapter. (2809/Reso. 6567)
8-4-21: PRETREATMENT; MAINTENANCE OF FACILITIES AND BYPASS:

(A) Where pretreatment facilities are provided for wastewater, the facilities shall be maintained continuously in satisfactory and effective operation by the owner at the owner’s expense. The owner shall keep written records of all cleaning, repair, calibration, and maintenance required under this Subsection. The owner shall keep such records at the facility for a minimum of three (3) years. (2809/Reso. 6567)

(B) All bypasses are prohibited except in the following circumstances: (2809/Reso. 6567)

1. The bypass is unavoidable to prevent loss of life, personal injury, or substantial property damage; (2809/Reso. 6567)

2. No feasible alternatives to the bypass exist; or (2809/Reso. 6567)

3. The purpose of the bypass is maintenance which is essential to assure efficient operation and the bypass will not cause the exceedance of an effluent limitation contained in an NPDES Permit. (2809/Reso. 6567)

(C) If a permittee has prior knowledge of the need for a bypass, the permittee shall submit written notice of such fact to the Utilities Manager at least ten (10) days before the date of the bypass. If an unanticipated bypass occurs, the permittee shall notify the Utilities Manager within twenty-four (24) hours of receiving knowledge of the bypass and shall submit within five (5) days a written report to the Utilities Manager specifying all of the following information: (2809/Reso. 6567)

1. A description of the bypass, including its cause and duration; (2809/Reso. 6567)

2. Whether the bypass has been corrected, and if not, specific plans, including time frames, to correct it; and (2809/Reso. 6567)

3. The steps being taken or to be taken to reduce, eliminate, and prevent a reoccurrence of the bypass. (2809/Reso. 6567)

8-4-22: INTERCEPTORS:

(A) Interceptors such as grease, oil, or sand shall be provided for laundries, restaurants, service stations, auto repair shops, carwashes, and other facilities when the Utilities Manager determines that they are necessary for the proper handling of liquid wastes containing grease or oil in excessive amounts or any flammable wastes, sand, and other harmful ingredients. (2809/Reso. 6567,4330)

(B) All interceptors shall be of a type and capacity approved by the Utilities Manager and shall be located as to be readily and easily accessible for cleaning and inspection. (2809/Reso. 6567)

(C) Interceptors such as grease, oil, or sand 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. When bolted covers are required, they shall be gastight and watertight. (2809/Reso. 6567,4330)
(D) Where installed, interceptors such as grease, oil, or sand shall be maintained by the owner, at the owner’s expense, in continuously efficient operation at all times. The owner shall keep written records and documentation of all cleaning, repair, calibration, and maintenance required to demonstrate compliance with this Section. Records shall be kept at the facility for a minimum of three (3) years and shall be made available to the Utilities Manager upon his request. (2809/Reso. 6567,4330)

8-4-23: CONTROL MANHOLES:
When required by the Utilities Manager, the owner of any property served by a building sewer carrying any liquid or free-flowing wastewater, excluding uncontaminated water but including cooling water, resulting from any industrial or manufacturing process or from the development, recovery, or processing of natural resources, with or without S.S., shall install a suitable control manhole in the building sewer to facilitate observation, measurement, and sampling of the wastes. Such manhole shall be accessible, safely located, and constructed in accordance with plans approved by the Utilities Manager. The manhole shall be installed by the owner at the owner’s expense. (2809/Reso. 6567)

8-4-24: RIGHT OF ENTRY FOR INSPECTION:
(A) Any authorized employee of the Utilities Department shall have free access, upon presentation of credentials and at all reasonable hours, to all commercial or industrial premises connected to the City sewer system service area for the purpose of assessing applicability and/or compliance with the requirements of this Chapter. For purposes of this Section, “free access” shall be the ability of City personnel to enter POTW user facilities under safe and nonhazardous conditions with a minimum of delay to inspect any and all parts of the user’s facility. (2809/Reso. 6567)

(B) Any POTW user or potential user shall allow all actions, including inspection, monitoring, and copying of records, reasonably needed by the Utilities Manager to perform the duties required or needed under this Chapter. (2809/Reso. 6567)

(C) Servicemen, industrial wastewater inspectors, sanitary engineers, or other employees of the Utilities Department whose duty it may be to enter upon commercial or industrial premises to make inspections and collect samples or measure the quantity of wastewater discharged to the City sewer shall be provided with credentials to identify them as authorized representatives for the Utilities Department. (2809/Reso. 6567)

(D) No person except an authorized employee of the Utilities Department shall have or exhibit any credentials of the Utilities Department. It shall be the duty of each employee of the Utilities Department upon resignation or dismissal to deliver and surrender at the office of the Utilities Manager all credentials of the Utilities Department in the employee’s possession. (2809/Reso. 6567)

8-4-25: DETERMINATION OF WASTEWATER QUALITY:
(A) Testing by direct sampling, utilizing recognized field techniques, equipment, and procedures, will be used for all industrial users. Wastewater characteristics shall be determined by the Utilities Manager on the basis of monitored wastewater discharged, a certified statement from the user, or on the best available data as to the characteristics of such discharges. (2809/Reso. 6567)
(B) If it is determined through testing that a significant variation exists between the user’s certified data and the discharge characteristics monitored by the Utilities Manager, 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 Utilities Department of changes in loading and giving specific dates of changes. (2809/Reso. 6567)

(C) Where sampling and gauging of a specific user is not practical for physical, economic, safety, or other reasons, the Utilities Manager may designate values for concentrations of the wastewater discharged to the POTW for all users in the same standard industrial classification or subclassification. (2809/Reso. 6567)

8-4-26: CONFIDENTIAL INFORMATION:
Information and data on a POTW user obtained from inspections, reports, questionnaires, permit applications, permits, and monitoring programs shall be available to the public or other governmental agencies 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. However, all information shall be made available upon written request by governmental agencies for uses related to this Chapter, the NPDES Permit, State Disposal System Permit, and/or the pretreatment programs, including judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. To claim this trade secret protection, the user must specify at the time of submitting reports or information that part he desires to protect. (2809/Reso. 6567)

8-4-27: AUTHORITY OF THE UTILITIES MANAGER TO REGULATE AND ENFORCE POTW USER COMPLIANCE:
The Utilities Manager is authorized to regulate and enforce POTW user compliance with the requirements of this Chapter. In carrying out this responsibility, the Utilities Manager has authority to: (2809/Reso. 6567)

(A) Consistent with applicable state and federal requirements, such as the pretreatment standards: (2809/Reso. 6567)

1. Regulate the volume and flow rate of discharge to the POTW; (2809/Reso. 6567)

2. Establish permissible limits of concentration for various specific substances, materials, waters, or wastes that can be accepted into the POTW; (2809/Reso. 6567)

3. Specify those pollutants, materials, waters, or wastes that are prohibited from entering the POTW. All prohibitions so established shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the date of filing; (2809/Reso. 6567,4330)

4. Establish limitations for individual users or class of users for various pollutants, materials, waters, or wastes that can be accepted into the POTW. All limitations so established shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the date of filing; (2809/Reso. 6567,4330)
5. Identify those pollutants, materials, waters, or wastes that shall be controlled with best management practices. Pollutants, materials, waters, or wastes to be controlled with best management practices that have been identified by the Utilities Manager shall be placed on file with the City Clerk and will become effective and enforceable on the thirty-first (31st) day after the filing; (4330)

6. Require individual users or class of users to implement best management practices for any pollutant, materials, water, or waste. (4330)

7. Regulate the admission into the public sewers of any wastewater having one (1) or more of the following characteristics: (2809/Reso. 6567,4330)

   (a) A five- (5-) day biochemical oxygen demand greater than three hundred (300) milligrams per litre by weight; (2809/Reso. 6567)

   (b) More than three hundred fifty (350) milligrams per litre by weight S.S.; or (2809/Reso. 6567)

   (c) An average daily flow of greater than twenty-five thousand (25,000) gallons. (2809/Reso. 6567)

   (B) Issue an Industrial Wastewater Discharge Permit pursuant to Section 8-4-18 of the Mesa City Code. (2809/Reso. 6567)

   (C) Incorporate the pertinent requirements of this Chapter into every City contract with any POTW user located outside of the municipal jurisdiction of the City. Such contracts may also provide for liquidated damages and, if applicable, specific performance as remedies for breach of contract. (2809/Reso. 6567)

   (D) Receive and analyze all self-monitoring reports and notices submitted by industrial users. (2809/Reso. 6567)

   (E) Randomly sample and analyze effluent for industrial users at least once a year and conduct those surveillance and inspection activities needed to identify, independently of any information supplied by such users, occasional or continuing noncompliance with any categorical standard or pretreatment requirement. (2809/Reso. 6567)

   (F) Investigate instances of noncompliance with any categorical standard or pretreatment requirement when notice of any actual or probable noncompliance has been received by the Utilities Manager. (2809/Reso. 6567)

   (G) Notify POTW users of noncompliance with categorical standards or pretreatment requirements discovered by the Utilities Manager. Such notice shall also contain a demand for any appropriate corrective action which is necessary to meet the applicable requirements of this Chapter. The appropriate level of action shall be based on detailed written procedures developed by the Department. (2809/Reso. 6567)

1. Any POTW user will be allowed an opportunity to respond to an order of the Utilities Manager before any enforcement action against such user is initiated unless the discharge is a threat to the public health, safety, or welfare, in which case the Utilities Manager may initiate enforcement action without giving notice. (2809/Reso. 6567)
2. A timely and satisfactory response to an order may result in the issuance of a negotiated settlement agreement signed jointly by the user and the Utilities Manager indicating a mutually agreeable resolution of the noncompliance action. If such a settlement agreement is reached, the Utilities Manager shall provide notice in the largest daily newspaper published in the City of the agreement and a thirty- (30-) day public comment period on the agreement. If no public comments are received on the settlement agreement, the agreement shall become final and effective thirty-one (31) days after the notice publication date. Any public comments received by the Utilities Manager shall be responded to in writing and mailed to the commenting party and the affected POTW user. A determination by the Utilities Manager that no changes are necessary to the settlement agreement shall result in the agreement becoming final and effective upon the issuance of the Utilities Manager’s written response. If the Utilities Manager determines that public comment warrants any modification to the settlement agreement, then an attempt shall be made to renegotiate the agreement. If a modified settlement agreement is reached, the Utilities Manager shall determine whether the modification significantly alters the substance of the initial settlement agreement. The modified settlement agreement shall become final and effective if the Utilities Manager determines that no significant alteration occurred. The Utilities Manager shall repeat the public notice process described in this paragraph for a modified settlement agreement that has been significantly altered. (2809/Reso. 6567)

(H) Comply with the public participation requirements of 40 C.F.R. Part 25 in connection with the City’s enforcement of any categorical standards. (2809/Reso. 6567)

(I) Both: (2809/Reso. 6567)

1. Determine which actual or threatened discharge to the POTW will cause interference with the POTW or may present an imminent or substantial endangerment to the health or welfare of any person and/or to the environment and (2809/Reso. 6567)

2. 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 Chapter. (2809/Reso. 6567)

(J) Annually publish in the largest daily newspaper published in the City public notice of all industrial users who at least once during the preceding twelve- (12-) month period were in significant noncompliance with any categorical standard or pretreatment requirement imposed by this Chapter. The notification also shall summarize any enforcement actions taken against such users during the same twelve- (12-) month period. (2809/Reso. 6567)

(K) Notify industrial users of applicable categorical standards and any applicable requirements under C.W.A. §§204(b) and 405 and Subtitles C and D of the Resource Conservation and Recovery Act. (2809/Reso. 6567)

(L) Keep on file one (1) copy of all federal statutes and regulations cited by this Chapter in order to allow required users adequate opportunity to be informed of the applicable federal requirements herein incorporated by reference. (2809/Reso. 6567)

(M) Evaluate at least once every two (2) years whether each significant industrial user needs a plan to control slug loads. The results of such activities shall be available to the approval authority upon request. If the Utilities Manager decides that a slug control plan is needed, the plan shall contain all of the following elements: (2809/Reso. 6567)
1. Description of discharge practices, including nonroutine batch discharges; (2809/Reso. 6567)

2. Description of stored chemicals; (2809/Reso. 6567)

3. Procedures for immediately notifying the Utilities Manager of slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. §403.5(b), with procedures for follow-up written notification within five (5) days; and (2809/Reso. 6567)

4. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of material, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. (2809/Reso. 6567)

(N) Require both: (2809/Reso. 6567)

1. The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment requirements and (2809/Reso. 6567)

2. The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment requirements, including the reports required in 40 C.F.R. §403.12. (2809/Reso. 6567)

(O) If the Utilities Manager determines that it will not harm the POTW, approve the discharge of storm water, surface water, groundwater, roof runoff, subsurface drainage, single-pass cooling water, or condensate that may constitute inflow. (2809/Reso. 6567)

8-4-28: VIOLATIONS; RESTRICTION OF SEWER SERVICE:

(A) Failure to comply with any of the requirements of this Chapter may result in the following actions: (2809/Reso. 6567)

1. The Utilities Manager may restrict or otherwise limit allowable discharges. (2809/Reso. 6567)

2. The Utilities Manager may suspend or revoke any Industrial Wastewater Discharge Permit issued to a permittee. (2809/Reso. 6567)

3. The Utilities Manager may discontinue water and/or sewer service to the premises, and such service shall not be restored until such violations have been discontinued or eliminated and all outstanding charges paid. (2809/Reso. 6567)

(a) Before discontinuing water and/or sewer service as provided herein, the Utilities Manager shall give written notice to the person of the discontinuance and an opportunity to appear before the Utilities Manager on any disputed matter relative to the discontinuance of sewer service. (2809/Reso. 6567)
(b) However, the Utilities Manager may abate any actual or threatened discharge which would violate any categorical standard or pretreatment requirement imposed by this Chapter by promptly plugging or disconnecting the sewer service. (2809/Reso. 6567)

(c) The discontinuance of sewer service shall be accomplished by physically cutting and blocking the building connection. A charge of seven hundred fifty dollars ($750.00) shall be paid to the Utilities Department for reconnecting the sewer service. (2809/Reso. 6567)

(B) Upon notice of a final determination by the Utilities Manager of an assessment owing or order to correct a violation under this Chapter, the responsible party shall tender the fee assessed and correct the violation within ten (10) days of the date ordered. In the event the violation is not corrected or the assessment is not tendered, it is hereby declared to be, and is, a public nuisance which may be abated by injunctive relief in the Superior Court or by other order of a court of competent jurisdiction. Such action shall be in addition to any other remedy authorized by this Chapter. (2809/Reso. 6567)

8-4-29: VIOLATIONS; ADMINISTRATIVE PENALTIES:

(A) Any person who violates any provision of this Chapter or any order enforcing the provisions of this Chapter may be assessed an administrative penalty by the City Manager in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day that a violation continues shall constitute a separate violation. (2809/Reso. 6567)

(B) In determining the amount of an administrative penalty, the City Manager shall consider all of the following:

1. The seriousness of the violation; (2809/Reso. 6567)
2. The economic benefit, if any, resulting from the violation; (2809/Reso. 6567)
3. Any history of such violation; (2809/Reso. 6567)
4. Any good faith efforts to comply with the applicable requirements; (2809/Reso. 6567)
5. The economic impact of the penalty on the violator; and (2809/Reso. 6567)
6. Such other factors as justice may require. (2809/Reso. 6567)

(C) The Utilities Manager shall provide written notice and an opportunity to be heard to any person assessed an administrative penalty under this Section. Within fifteen (15) days of receipt of the notice, such person shall pay the penalty or file a written request for a hearing with the City Manager. If a hearing is held, the City Manager shall issue a written decision, and such decision shall be final. (2809/Reso. 6567)

(D) The assessment of administrative penalties under this Section shall not limit the availability or imposition of other penalties, remedies, or sanctions under the law or this Chapter. (2809/Reso. 6567)
8-4-30: VIOLATIONS; CIVIL AND CRIMINAL ACTIONS:
The City Manager may request that the City Attorney commence criminal and/or civil action against any POTW user violating any requirement of this Chapter, including an action pursuant to A.R.S. §49-391 to enforce the collection of administrative penalties assessed under Section 8-4-29 of the Mesa City Code. (2809/Reso. 6567)

8-4-31: ENFORCEMENT OF CHAPTER:

(A) The requirements of this Chapter are made for the benefit of the POTW users, for the protection of the POTW, and to protect the quality of effluent. Their enforcement shall in no case be willfully ignored by any City official or employee. (2809/Reso. 6567)

(B) Upon written request from any person for an exemption from a requirement contained in this Chapter, the Utilities Manager may determine whether the requirement would cause a gross injustice to a particular POTW user and whether it is in the public interest to grant the exemption. The Utilities Manager shall explain in writing to the person seeking the exemption the ultimate determination granting or denying the request. Under no circumstances may an exemption be sought or granted from requirements imposed by applicable state and federal laws. (2809/Reso. 6567)
CHAPTER 5

STORM WATER POLLUTION CONTROL (5062, 5144)

SECTION:

8-5-1: DEFINITIONS
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8-5-1: DEFINITIONS:

The following terms as used in this Chapter shall mean: (2774, 5062/Reso. 6528)

**A.A.C. (ARIZONA ADMINISTRATIVE CODE):** Official compilation of rules that govern state agencies, boards and commissions. (5062)

**A.R.S. (ARIZONA REVISED STATUTES):** Statutory laws in the State of Arizona. (5062)

**AZPDES STORM WATER PERMIT:** A permit issued by any agency of the State of Arizona having appropriate authority over the Arizona Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (5062)

**BEST MANAGEMENT PRACTICES:** Schedules of activities, prohibitions of practices, structural and nonstructural controls, operational and maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States to the maximum extent practicable. (5062)

**CITY:** City of Mesa, Arizona. (2774/Reso. 6528)

**CITY MANAGER:** The City Manager appointed in accordance with Article III of the Mesa City Charter. (2774, 5062/Reso. 6528)
**CITY STORM SEWER SYSTEM:** Those facilities not part of a publicly owned treatment works within the City by which storm water may be conveyed to waters of the United States, including all roads, streets, catch basins, curbs, gutters, ditches, channels, storm drains, retention or detention basins, and drywells that are owned and operated by the City. (2774, 5062/Reso. 6528)

**CIVIL HEARING OFFICER:** The Mesa Zoning Administrator within the Development and Sustainability Department or such other person as designated by the City Manager. (5062)

**C.F.R. (CODE OF FEDERAL REGULATIONS):** Codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States. (2774, 5062/Reso. 6528)

**C.W.A. (CLEAN WATER ACT):** The Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 86 STAT. 816; 33 United States Code Sections 1251 through 1376), as amended [A.R.S. § 49-201(6)]. (2774, 5062/Reso. 6528)

**DISCHARGE OF A POLLUTANT:** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. (5062)

**HAZARD:** A condition that presents a risk to the public health or the environment. (5062)

**IMMINENT HAZARD:** A condition that presents an immediate likelihood for causing harm to the public health or the environment. (5062)

**NOTICE TO ABATE:** A notice issued to a responsible party concerning a violation of this Chapter of the Mesa City Code. (5062)

**NPDES STORM WATER PERMIT:** A permit issued by any agency of the United States having appropriate authority over the National Pollutant Discharge Elimination System which authorizes the discharge of storm water pursuant to the C.W.A. (2774, 5062/Reso. 6528)

**PERSON:** Any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity [A.R.S. § 49-201(27)]. (2774, 5062/Reso. 6528)

**PROPERTY:** Any building, facility, lot, parcel, real estate, or land or portion of land, whether improved or unimproved, and including adjacent sidewalks and parking strips. (2774, 5062/Reso. 6528)

**POINT SOURCE:** Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged to waters of the United States. Point source does not include return flows from irrigated agriculture. (5062)
**POLLUTANT:** Any fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances [A.R.S. § 49-201(29)]. (5062)

**POTW (PUBLICLY OWNED TREATMENT WORKS):** A treatment works owned by this state or a municipality of this state as defined in Section 502(4) of the Clean Water Act [A.R.S. § 49-255(5)]. (5062)

**RELEASE:** Any direct or indirect spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing of a pollutant to the City storm sewer system. (2774, 5062/Reso. 6528)

**RESPONSIBLE PARTY:** A person who knows or has reason to know of the existence of any violation of this Chapter on that person’s property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessor, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5062)

**STORM WATER:** Storm water runoff, snow melt runoff, and surface runoff and drainage [A.A.C R18-9-A901(36)]. (2774, 5062/Reso. 6528)

**WATERS OF THE UNITED STATES:** All waters as defined in 40 C.F.R. 122.2. (5062)

**8-5-2: RELEASES AND CONNECTIONS: (5062)**

(A) Unless expressly permitted or exempted by this Chapter, no person shall release, directly or indirectly, to the City storm sewer system. (2774, 5062/Reso. 6528)

(B) The release of pollutants to the City storm sewer system authorized by any AZPDES or NPDES Storm Water Permit or other AZPDES or NPDES permit which is issued to the person who causes the release is permitted under this Chapter. (2774, 5062/Reso. 6528)

(C) Unless identified by the City Manager or designee under Subsection (D) of this Section, the following are exempt from the prohibition set forth in Subsection (A) of this Section: (2774, 5062/Reso. 6528)

1. Releases composed entirely of storm water. (2774, 5062/Reso. 6528)

2. Releases caused by a person from any of the following activities: (2774, 5062/Reso. 6528)

   (a) Water line flushing and other potable water sources; (2774, 5062/Reso. 6528)

   (b) Lawn watering and landscape irrigation; (2774, 5062/Reso. 6528)

   (c) Irrigation water; (2774/Reso. 6528)

   (d) Diverted stream flows; (2774, 5062/Reso. 6528)
(e) Rising groundwaters; (2774, 5062/Reso. 6528)

(f) Uncontaminated groundwater infiltration to separate storm sewers; (2774, 5062/Reso. 6528)

(g) Uncontaminated pumped groundwater; (2774, 5062/Reso. 6528)

(h) Foundation and footing drains; (2774/Reso. 6528)

(i) Water from crawl space pumps; (2774/Reso. 6528)

(j) Air conditioning condensation; (2774, 5062/Reso. 6528)

(k) Springs; (2774, 5062/Reso. 6528)

(l) Individual residential car washing; (2774/Reso. 6528)

(m) Flows from riparian habitats and wetlands; (2774, 5062/Reso. 6528)

(n) Flows resulting from fire fighting activities; or (2774, 5062/Reso. 6528)

(o) Street wash water; (5062)

(D) No person shall cause a release, directly or indirectly, to the City storm sewer system which is exempted under Subsection (C) of this Section if the City Manager or designee identifies and provides written notice to the person that the release from such person has the potential to result in a discharge of pollutants to waters of the United States. (2774, 5062/Reso. 6528)

(E) No person shall release any pollutant, directly or indirectly, to the City storm sewer system where such release would result in or contribute to a violation of any AZPDES or NPDES Storm Water Permit issued to the City, either separately considered or when combined with other releases. Liability for any such release shall be the responsibility of the person causing or responsible for the release, and the person shall defend, indemnify, and hold harmless the City in all administrative or judicial enforcement actions relating to such release. (2774, 5062/Reso. 6528)

(F) No person shall establish, use, maintain, or continue any direct or indirect connection to the City's storm sewer system which has the potential to result in a violation of this Section. This prohibition is retroactive and shall apply to connections made in the past, regardless of whether they were made under a permit or other authorization or whether they were permissible under the law or practices applicable or prevailing at the time of the connection. (2774/Reso. 6528)
8-5-3: REDUCTION OF POLLUTANTS IN STORM WATER:

(A) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in the release of pollutants to the City storm sewer system, either directly or indirectly, shall undertake appropriate best management practices to minimize the release of such pollutants to the maximum extent practicable. (2774, 5062, 5144/Reso. 6528)

(B) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept, except in appropriate containers or in lawfully established dumping grounds, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations into or upon any component of the City storm sewer system or upon any public property. Additionally, no person shall do the same upon any private property in such a manner that could reasonably result in the release of pollutants to the City storm sewer system. (2774, 5062/Reso. 6528)

(C) Persons owning or operating a parking lot, storage or loading area, or similar property which is exposed to rainfall shall maintain those properties in a manner so that any release from such properties does not cause or contribute to a violation of Section 8-5-2. (2774, 5062/Reso. 6528)

(D) Any person performing construction activities shall undertake appropriate best management practices to minimize the release of pollutants and sediment to the maximum extent practicable. Such best management practices shall include the requirements imposed by both of the following: (2774, 5062/Reso. 6528)

1. This Chapter; and (2774, 5062/Reso. 6528)

2. For construction operations at City projects or occurring in the City of Mesa public right-of-way that are required to comply with and AZPDES or NPDES Storm Water Permit, that certain document known as the Drainage Design Manual for Maricopa County, Erosion Control dated November 28, 2012, a public record of the City of Mesa together with the following appendices thereto: (2774, 5062, 5144/Reso. 6528)

Appendix A Construction General Permit (5144)

Appendix B Forms (5144)

Appendix C Links and References (5144)

Appendix D Glossary (5144)

Appendix E Bibliography (5144)

Are hereby referred to, adopted, and made a part hereof as if fully set forth in this Section, with the following changes in and amendments to said document: (5144)

(a) Section 5 Best Management Practices; EC-2: Mulching

Emulsified asphalt is not permitted as a mulching option on City properties or for City projects. (5144)
(b) Section 5 Best Management Practices; EC-3 Protection of Trees and Vegetation in Construction Areas
Where plans provide for the preservation of trees and other vegetation, these areas shall be delineated (i.e. staked, flagged, or fenced) to prevent damage from construction equipment and other forms of access. (5144)

(c) Section 5 Best Management Practices; EC-5 Stabilized Construction Entrance
Course aggregate pad dimensions must be a minimum of thirty feet in width, three inches in depth, and fifty feet in length or the length of the longest haul truck, whichever is greater. Instead of a course aggregate pad, construction site entrance stabilization may also include a paved surface one hundred feet in length and twenty feet in width or a grizzly or rumble grate consisting of raised dividers a minimum of three inches tall, six inches apart, and twenty feet in length. (5144)

(d) Section 5 Best Management Practices; SPC-2 Sand Bag Barrier
Sand bags may not be used for the purposes of inlet protection. Where sand bags are used for other purposes, they shall be delineated (i.e. staked and flagged) to keep construction equipment from damaging these structures. Sand bags must be inspected on at least a weekly basis to ensure they have not ruptured and the sand has become a stormwater pollutant. (5144)

(e) Section 5 Best Management Practices; SPC-5 Silt Fence
For projects greater than five acres requirements regarding perimeter control of the construction activity as provided in any applicable stormwater permit shall be met through the use of silt fences excepting those areas of high flow, construction site entrances, areas where perimeter control are impracticable (i.e. projects in the public right-of-way); and areas where all stormwater flows are directed to an on-site temporary sediment basin or sediment trap. (5144)

(f) Section 5 Best Management Practices; SPC-6 Re-Vegetation
Where plans provide for re-vegetation, installation of such vegetation shall take place as soon as practicable and these areas shall be delineated (i.e. staked, flagged, or fenced) to prevent damage from construction equipment and other forms of access. (5144)

(g) Section 5 Best Management Practices; SPC-7 Storm Drain Inlet Protection
To prevent flooding issues, storm drain inlet protection should only be used when sufficient construction site perimeter control is not possible (e.g. utility installations in public roadways or other public right-of-way areas). City of Mesa personnel may remove any storm drain inlet protection device where flood conditions may exist. It is the responsibility of the operator in charge of day-to-day operations to replace or re-install these devices after the threat of flooding has subsided. (5144)

Course gravel and cinder block configurations and sand bags are not to be used to protect storm drains. When installing any storm drain inlet protection that is installed above grade traffic control devices must be placed at the end of both sides of the installation to prevent damage from public and construction traffic, all traffic control devices must be installed in accordance with temporary traffic control requirements as provided in Title 10, Chapter 10 of the Mesa City Code. (5144)

(E) Persons having the potential to cause a release of pollutants to the City storm sewer system and who are required to submit a notice of intent to comply with an AZPDES or NPDES Storm Water Permit shall provide a copy of any approval or statement of authorization from the permitting agency to the City Manager or designee. Where a waiver is available, a copy of that waiver must then be provided in lieu of the approval or statement of authorization. The City will not issue a construction permit nor will verbal authorization be given to proceed with initial grading and drainage operations until the approval or statement of authorization from the permitting agency has been submitted to the City. (2774, 5062, 5144/Reso. 6528)
8-5-4: **AUTHORITY TO INSPECT: (5062)**

(A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. (5062)

(B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5062)

8-5-5: **COMMENCEMENT OF AN ACTION: (5062)**

(A) The City Manager or designee is authorized to commence and enforcement action under this Chapter by issuing a notice of abatement under this Chapter or a citation for civil sanctions under this Chapter, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Chapter. (5062)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5062)

8-5-6: **REMEDIES NOT EXCLUSIVE: (5062)**

Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (5062)

8-5-7: **DEFENDANTS AND RESPONSIBLE PARTIES: (5062)**

Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter, is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (5062)

8-5-8: **CIVIL VIOLATIONS AND CITATION: (5062)**

(A) A civil action for violations of this Chapter may be commenced by issuance of a citation. (5062)

(B) The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-5-9 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served pursuant to the Arizona Rules of Civil Procedure. (5062)
The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, through an attorney or by e-mail with the clerk of the Civil Hearing Officer and admit or deny the allegations contained in the citation. (5062)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by e-mail and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-5-9; or, (5062)

2. If the responsible party appears in person, through an attorney or by e-mail and denies the allegations contained in the citation, the clerk of the Civil Hearing Office shall set the matter for hearing. (5062)

(D) If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5062)

(E) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona rules of civil procedure for special actions. (5062)

(F) Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5062)

8-5-9: CIVIL PENALTIES: (5062)

(A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development and Sustainability Department (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5062)
(B) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-5-9(A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5062)

1. Written and notarized confirmation from the City inspector that the violation has been successfully abated, and (5062)

2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5062)

If either item has not been received by the Civil Hearing Officer 7 calendar days before, then the compliance hearing shall take place as previously scheduled. (5062)

(C) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5062)

(D) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5062)

8-5-10: (RESERVED)

8-5-11: HABITUAL OFFENDER: (5062)

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a Class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a Class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (5062)

(B) Upon conviction of a violation of this Section, the court may impose a sentence authorized by the laws of the State of Arizona for a Class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all sections of this Chapter within 90 days of sentencing. (5062)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (5062)
8-5-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY: (5062)

A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person’s full name, residence address, and date of birth. (5062)

8-5-13: ABATEMENT: (5062)

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a notice to abate any violation of this Chapter. (5062)

(B) The notice to abate shall set forth the following information: (5062)

1. The responsible party has 30 calendar days from service of the notice to abate or correct the violation. (5062)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map, and parcel number. (5062)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5062)

4. Reinspection date and time. (5062)

5. Name, business address, and business phone number of the City inspector who issued the notice to abate. (5062)

6. A warning stating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the responsible party for the cost of such abatement, and record a lien on the property for the assessment. (5062)

7. Hearing procedures. (5062)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5062)

(C) If the responsible party or other person served a notice to abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served pursuant to the Arizona Rules of Civil Procedure. That statement shall further set forth the following: (5062)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5062)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay. (5062)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5062)

4. Appeal procedures. (5062)
(D) The notice to abate and the statement of abatement costs shall be served to the responsible party pursuant to the Arizona Rules of Civil Procedure. (5062)

8-5-14: REQUEST FOR ABATEMENT HEARING: (5062)
The responsible party receiving a notice to abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development and Sustainability Department within 15 calendar days of service of the notice to abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development and Sustainability Department, then the notice of abatement or statement of costs is final and binding. (5062)

8-5-15: RECORDING AN ABATEMENT VIOLATION: (5062)
The notice to abate and statement of costs shall run with the land. The City, at its sole option, may record a notice to abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of notice to abate shall be filed with the Maricopa County Recorder. (5062)

8-5-16: EMERGENCY ABATEMENT: (5062)
(A) If a situation presents an imminent hazard to life or public safety, the City may issue a notice to abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City’s right under this Section to correct or abet the emergency itself. (5062)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-5-13(C). The responsible party may appeal the City’s emergency abatement action under this Section or the City’s statement of costs for an emergency abatement in the same manner as provided for in Section 8-5-14. (5062)

8-5-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE: (5062)
Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Section 8-5-2 or Section 8-5-3 of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (5062)
CHAPTER 6
PUBLIC NUISANCES, PROPERTY MAINTENANCE, NEIGHBORHOOD PRESERVATION AND ANIMAL REGULATIONS
(3478, 4764, 4765, 4845, 4945, 5030, 5124, 5274, 5480)

ARTICLE I
PURPOSE, APPLICABILITY, DEFINITIONS, AND PROHIBITIONS

SECTION:
8-6-1: PURPOSE AND APPLICABILITY
8-6-2: DEFINITIONS
8-6-3: PUBLIC NUISANCES PROHIBITED

8-6-1: PURPOSE AND APPLICABILITY:

(A) The purpose of this Chapter is to promote the health, safety and welfare of the citizens of Mesa, Arizona by:

1. Setting minimum standards necessary for the maintenance of improved lots and parcels, buildings, fences or walls, structures, and vacant or unimproved properties in order to safeguard against potential hazards, and reduce occurrences of blight and other influences considered to cause deteriorating conditions, unattractive neighborhoods, and potential loss of property value. (5124)

2. Setting minimum standards for the proper location, control, and care required for the keeping of large animals and livestock within the City's corporate limits. (5124)

3. Providing standards for inspecting the interiors of properties being rented and occupied, based on criteria consistent with and specified by the Arizona Revised Statutes. (5124)

(B) This Chapter shall apply to all land within the City of Mesa without regard to the use or occupancy or the date of acquisition, alteration, or improvement of such land. (5124)

(C) The Director of Development and Sustainability or Designee shall interpret this Chapter to the public, City departments, and other branches of government subject to the general and specific policies established by the City Council. (5124)

(D) Appeals of the interpretations of this Chapter shall be filed within 30 days of the date of the decision and shall be reviewed by the Board of Adjustment except when the requirement references the Building or Fire Codes or Regulations. (5124)
8-6-2:  DEFINITIONS:
The following words, terms, and phrases, when used in this Chapter, shall have the meanings
ascribed to them in this Section, except where the context clearly indicates a different meaning: (5124)

ABANDONED OR INOPERABLE VEHICLE: A vehicle physically incapable of its intended operation as
evidenced by:

A. A condition of being partially or wholly dismantled, discarded, wrecked, on blocks or similar devices,
stripped, or scrapped; or (5124)

B. The presence of a deflated tire or tires or from which a wheel or tire has been removed; or (5124)

C. Being inoperable due to mechanical failure or mechanical disassembly or other reasons which may be
evidenced by the lack of a valid license plate lawfully affixed to the vehicle, or by the presence of an expired
license plate affixed to the vehicle. (5124)

ACCESSIBLE: Capable of being removed or exposed without damaging the building structure or finish or not
permanently closed in by the structure or finish of the building. (5124)

ACCESSIBLE, READILY (READILY ACCESSIBLE): Capable of being reached quickly for inspections
without requiring inspectors to climb over or remove obstacles or to use portable ladders or similar tools. (5124)

AUTHORIZED PRIVATE RECEPTACLE: A litter storage and collection receptacle as required and
authorized in this Code. (5124)

BLIGHT: Unsightly conditions including the accumulation of litter or debris; buildings or structures exhibiting
holes, breaks, rot, crumbling, cracking, peeling or rusting materials; general damage to the integrity of the
construction of a building or structure; uncontrolled growth of landscaping exhibited by lack of maintenance,
untended damage to plant and landscape materials, the continued presence of dead or decaying plants; and any
similar conditions of disrepair and deterioration regardless of the condition of other properties in the vicinity or
neighborhood. (5124)

BUILDING: Any structure used or intended for supporting or sheltering any use or occupancy. (5124)

BUILDING, ENCLOSED: A building with a perimeter composed of rigid walls and a roof. (5124)

BUILDING REGULATIONS: Includes all construction codes in force at the time a building was constructed,
altered, remodeled, repaired or enlarged. Including Building Code, Plumbing Code, Mechanical Code, Electrical
Title 7 for fire and existing building construction codes (such as, but not limited to, those set forth in Title IV,
Mesa City Code) and includes any property maintenance codes, neighborhood preservation codes, anti-blight
codes (such as, but not limited to, those set forth in this title) or other similar codes, however denominated. (5124)

CITY INSPECTOR: A City of Mesa staff member authorized by the Director of the Development and
Sustainability Department to conduct inspections, investigate complaints and file civil actions with the Mesa
Civil Hearing Office on matters related to enforcement of the Mesa City Code, and as provided by the Mesa City
Code. (5124)

CIVIL HEARING OFFICER: The Mesa Zoning Administrator within the Development and Sustainability
Department or such other person as designated by the City Manager. (5124)
COMMERCIAL VEHICLE: Any vehicle having a Gross Vehicle Weight Rating (GVWR) exceeding 13,000 pounds and is intended to be used primarily for commercial purposes in the conduct of a business, rather than for private family or individual use. (5124)

DETERIORATION OR DISREPAIR: A decline of the general condition or appearance of a building, structure, or parts thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, damage, neglect, or lack of maintenance. (5124)

DRIVEWAY, LEGAL: That area that aligns with the City designated and approved driveway depression in the curb of the public or private street. Where a roll curb or no curb exists and there is no driveway clearly designated, the legal driveway is the area that aligns with the observed designated access to parking for the structure such as a carport or garage. On properties with roll curbs or no curb and with no clearly designated parking area for the structure, the legal driveway shall be as observed and commonly used by the owner of the property, as may be designated by private recorded easements or other methods of ingress and egress, and shall at no time violate the provisions of this Code. (5124)

EUTROPHIC: Waters rich in phosphates, nitrates, and organic nutrients that promote a proliferation of plant life, especially algae. (5124)

FENCE, SCREEN WALL, AND/OR RETAINING WALL: Freestanding, self-supporting structures constructed of durable wood, chain link, metal, masonry, or other standard fencing materials designed to provide privacy, security, screening, or bank retention between grade separations. (5124)

GARAGE SALE: The occasional and/or temporary sale of used or second hand tangible personal property from a residential location. This activity may also be known as a yard sale, carport sale, estate sale or similar type of quasi-commercial indoor or outdoor activity that takes place on residential premises. It shall be considered a commercial use when the garage sale activity takes place on a continuous basis, and/or the activity includes the sale of first hand merchandise manufactured off-premises. (5124)

GARBAGE: An accumulation of spoiled, decaying or discarded animal or vegetable material resulting from the handling, preparation, cooking, or consumption of food for humans or animals, as well as other organic waste material subject to rapid decomposition. (5124)

GRAFFITI: An inscription or drawing carved or drawn on a stationary structure or object so as to be discernible from the public right-of-way and which degrades the beauty and appearance of property. (5124)

GRASS: Barnyard grass, Bermuda grass, bluegrass, brome grasses, crab grass, foxtail, Johnson grass, ragweed, rye grass, St. Augustine, wild oats, or hybrids thereof. (5124)

HAZARD: A condition that presents a risk to the public safety, health or the environment. (5124)

IMMINENT HAZARD: A condition that presents an immediate likelihood for causing harm to the public safety, health, or the environment. (5124)

IMPROVED DUSTPROOF PARKING SURFACE: Concrete, asphalt, "chip seal," crushed rock or aggregate that is a minimum of 3 inches thick. All crushed rock or aggregate must be contained by a permanent border. (5124)

IMPROVED PROPERTY: Land on which buildings or other structures are located. (5124)

INCONGRUOUS MATERIALS, COLORS, AND FINISHES: Exterior surfaces that are not matching, and are inconsistent, incompatible, and discordant with the adjacent exterior surfaces. (5124)
INFESTATION: The presence of biological vectors, including insects, rodents, or other pests identified as carriers of pathogenic bacteria, virus, fungus or similar infectious biological hazards. (5124)

JUNK: Items that are of little or no economic value as the items may exist in their present condition, other than value as salvage, and that are not confined within an industrial area in compliance with the Mesa Zoning Ordinance, such as an accumulation of the following materials: discarded or scrapped furniture; glass, metal, paper, or machinery parts; inoperable machinery or appliances; building material wastes; litter; or discarded or empty containers. Junk shall also include all types of solid waste described in Chapter 3 of Title 8 of the Mesa City Code. (5124)

LAND: All lots, or parcels within the official boundaries of City of Mesa, whether improved or unimproved. (5124)

LANDSCAPED YARD, IMPROVED: Area with planted, configured and maintained landscaping material, such as trees, shrubs, turf, rock, gravel or stone, vegetative ground cover, natural desert landscape, artificial turf, mulch, decorative natural and structural features (walls, fences, hedges, trellises, fountains, sculptures), and bedding material, that serve an aesthetic or functional purpose. (5124)

LIVESTOCK: Domestic animals, such as cattle or horses, raised for home use or for profit. (5124)

NOTICE TO ABATE: A notice issued to a responsible party concerning a violation of the Mesa City Code. (5124)

OCCUPANT: The person occupying or having custody of a structure or premises as a lessee or otherwise. (5124)

OWNER: The person, corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust shown on the lawfully recorded title to the property. (5124, 5274)

PERSON: A human being, enterprise, corporation, association, partnership, firm, limited liability company, limited partnership, trust or real estate investment trust. (5124, 5274)

PLANT GROWTH: Vegetation, whether living or dead, such as grass, weeds, vines, bushes, cactus, or trees. (5124)

POLLUTED: A condition that exists in water and is characterized by bacterial growth, algae, insect infestation, the remains of litter, debris, garbage, or any other foreign matter which, because of its nature or location, constitutes an unhealthy, unsafe, or unsightly condition. (5124)

PUBLIC PLACE: Any street, sidewalk, boulevard, alley, right-of-way, or other public way and any public park, square, space, ground, or building. (5124)

RESIDENTIAL RENTAL PROPERTY: Property that is used solely as leased or rented property for residential purposes. If the property is a space rental mobile home park or a recreational vehicle park, "residential rental property" includes the rental space that is leased or rented by the owner of that rental space but does not include the mobile home or recreational vehicle that serves as the actual dwelling if the dwelling is owned and occupied by the tenant of the rental space and not by the owner of the rental space. The term also includes any property defined as a residential rental dwelling unit by state law. (5124)

RESPONSIBLE PARTY: A person who knows or has reason to know of the existence of any violation of this Chapter on that person’s property or property which that person occupies or controls, in whole or in part, including but not limited to an owner, occupant, lessee, manager, managing agent, licensee or any person who has legal care or control of the property. (5124)
SERVICE: Methods of delivering official notice to a responsible party of an alleged civil violation of the Mesa City Code, as specified by the latest edition of the Arizona Rules of Civil Procedure and/or the Mesa City Code. (5124)  

SLUM PROPERTY: Residential rental property that has deteriorated or is in a state of disrepair and that manifests 1 or more of the following conditions that are a danger to the health or safety of the public: (5124)  
(A) Structurally unsound exterior surfaces, roof, walls, doors, floors, stairwells, porches, or railings. (5124)  
(B) Lack of potable water, adequate sanitation facilities, adequate water, or waste pipe connections. (5124)  
(C) Hazardous electrical systems or gas connections. (5124)  
(D) Lack of safe, rapid egress. (5124)  
(E) Accumulation of human or animal waste, medical or biological waste, hazardous, gaseous or combustible materials, dangerous or corrosive liquids, flammable or explosive materials, or drug paraphernalia. (5124)  
(F) Any other condition recognized as a basis for slum property designation by the Arizona Revised Statutes. (5124)  

STORED: Parking, leaving, locating, keeping, maintaining, depositing, remaining, or being physically present on private property. (5124)  

STREET OR HIGHWAY: The entire width between the boundary lines of every way publicly owned or maintained space when any part thereof is open to the use of the public for purposes of vehicular traffic. (5124)  

UTILITY TRAILER: A vehicle without motive power designed for carrying property and for being drawn by a motor vehicle. (5124)  

VEHICLE: Every device by which any person or property is or may be transported or drawn upon a street or highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (5124)  

WATERCRAFT: Any craft or vehicle specifically designed for use on water, such as a boat, canoe, jet ski, pontoon, or similar-type vehicle. (5124)  

WEEDS: Bull thistle, cocklebur, foxtail, horseweed, lambs quarters, London rocket, mallow, milkweed, pigweed, mustards, prickly lettuce, ragweed, Russian thistle, shepardspurse, sowthistle, white horserentle, willow weed, and those types of plant growth defined as noxious weeds in A.R.S. §3-201 regardless of whether a particular property owner or occupant who is the subject of enforcement action under this Code regards the growth as desirable. (5124)  

YARD: An open space on the perimeter of the same lot or parcel of land that is unoccupied and unobstructed from the ground upward, except by structures or other items otherwise permitted as encroachments, as may be specified by Title 11. Yards may be described as front, side or rear based on the definitions found in this Chapter and Chapter 87 of Title 11, and shall not include courtyards or other open space found principally towards the lot interior. (5124)
YARD, FRONT: A yard extending across the full width of the lot or parcel of land between the most forward plane of the building fronting the street and the street. On single residence corner lots the front yard shall be the narrower frontage of the lot or the frontage with the primary entrance. For any other corner lots, all land between the portion of the building closest to the street, and the street shall be considered a front yard for the purposes of this Chapter of the City Code. (5124)

YARD, SIDE: A yard extending from the front plane of the building to the rear plane of the building, and then extending away from the building to the closest side property line. (5124)

8-6-3: PUBLIC NUISANCES PROHIBITED:
The following acts, omissions, conditions, and things in or upon any land or structure in the City constitute public nuisances, the existence of which are hereby prohibited and declared to be unlawful: (5124)

(A) The responsible party of any property shall not cause or allow any abandoned, inoperable or unregistered vehicle, or parts of a vehicle thereof, to be parked or stored outside or under a carport or other roof area not enclosed by walls, doors or windows of any building on any lot for longer than 10 days, unless in complete conformance with the following terms: (5124)

1. When an unregistered vehicle is operable and visible from the right-of-way, it shall be placed under a carport or other roof area of any building; (5124)

2. In the RS-6 and RS-7 zoning districts, a maximum of 3 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

3. In the RS-9, RS-15 and RS-35 zoning districts, a maximum of 5 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

4. In the RS-43 and RS-90 zoning districts, a maximum of 7 inoperable or unregistered vehicles may be stored on a single lot. Such vehicles shall be stored within the side or rear yards and shall be screened by a 6’ high opaque fence; (5124)

5. Vehicles stored on the premises of a business enterprise operated in a lawful place and manner in accordance with the provisions of the Mesa City Code where the storage of the vehicle is necessary to the operation of the business enterprise. (5124)

(B) The responsible party of any property shall not cause or allow the deposit, storage, or maintenance of any garbage or junk, or an accumulation of materials such as: vehicle parts, appliances, indoor furniture, boxes, crates, packing cases, mattresses, bedding, lumber, scrap iron, tin, and other metals, unless stored safely in compliance with all applicable ordinances and regulations, and within a lawful, enclosed building or structure, or screened by a lawful fence or within a trash receptacle in such a manner as to not be visible from beyond the lot boundaries, except as authorized for collection under Title 8, Chapter 3 of this Code. (5124)

(C) The responsible party of any property or place of business within the city shall keep the sidewalk or public places fronting or bordering such property or place of business free of garbage, junk, obstructions, and weeds or grass; provided, however, this Section shall not prohibit the temporary storage of such matters in authorized receptacles for collection consistent with Chapter 3 of Title 8 of the Mesa City Code. (5124)

(D) The responsible party of any property shall not allow or permit trees, shrubs, or plants on land adjacent to sidewalks or public places fronting or bordering their property to grow in a manner that impedes, obstructs, or interferes with the passage on any street, sidewalk, alley or other passageway within the city or that limits the visibility of any traffic control device or signal. Vegetation must be trimmed a minimum of 8 feet over the sidewalk and 14 feet over the street or alley. (5124)
(E) The responsible party of any property within the city shall not allow plant material to remain on a property that is dead, diseased, dying or so dry as to be readily flammable or combustible that may constitute a fire hazard or other threat to the public health or safety. (5124)

(F) The responsible party of any property shall not deposit, sweep, or permit the drainage of any garbage, junk, liquid, obstruction, or other material which is offensive to sight or smell or impedes passage or is detrimental to public health, into any public right of way, public place in the city, public utility easement (PUE) or public utility and facilities easement (PUFE). (5124)

(G) The responsible party of any property shall not permit:

1. Any swimming pool or other body of water on the property to stagnate and therefore become eutrophic, polluted, or offensive to the senses and unsafe, or (5124)

2. The ponding of water to become stagnant so as to cause a hazardous or unhealthy condition, facilitate the breeding of insects, or oversaturate the soil in a manner that may cause damage to foundation walls. (5124)

3. Revision, blockage or disruption of storm water drainage patterns otherwise designed to flow into an on-site retention basin or storm water drain, such that storm water may be diverted to neighboring sites, and/or may cause local flooding to occur. (5124)

(H) The responsible party of any property, building or structure within the city shall not permit graffiti on the building, structure, trailer, dumpster or any other object located on the property to remain, and shall be required to eradicate graffiti should it occur. (5124)

(I) The responsible party of any property shall not:

1. Erect or maintain, or allow anyone to erect or maintain, any electric fence; (5124)

2. Attach or allow anyone to attach to any fence such items as glass, nails, metal objects, or other materials in such a manner that is likely to injure any person who comes in contact with such object; or (5124)

3. Erect or maintain, nor allow anyone to erect or maintain, barbed wire or razor wire; (5124)

   a. Exception: no more than 3 strands of barbed wire or 1 coil of razor wire may be used when such wire is a minimum of 6 feet and 2 inches above the ground and such wire is placed at the top of an otherwise lawful fence enclosing a municipal, institutional, commercial or industrial building, structure or property. (5124)

   b. Exception: barbed wire fencing may be primarily used for agricultural or livestock purposes only when a property is larger than 1 acre. This exception does not extend to the use of razor wire or similar products. (5124)

   c. Where allowed, barbed wire or razor wire shall only extend up from the top of the fence either parallel to the fence alignment or towards the interior of the enclosed space, and not outwards beyond the property or enclosed space. (5124)
(J) It shall be unlawful for any responsible party of any property to allow on vacant or undeveloped property, as may be evidenced by a lack of an improved dust-proof surface, the lack of a residence or an office or other enclosed building, or the lack of lawfully installed electric or water related utility improvements on the property. (5124)

1. To store a vehicle or boat, or (5124)

2. To display any vehicle or boat for sale, rent, or lease or, (5124)

3. To allow or permit such storage or displays of vehicles or boats to occur. (5124)

(K) The responsible party of any property shall maintain, repair, replace or complete improvements to the exposed exterior surfaces of all buildings or structures including but not limited to exterior windows, doors, canopies, metal awnings, roofs, exhaust ducts, chimneys, painted surfaces, window screening, fences, screen walls, retaining walls, foundations, cooling devices, outdoor stairs, porches, and railings as visible from any rights-of-way so that such exterior surfaces do not exhibit deterioration or disrepair, damage or blight. The responsible party shall not allow the maintenance, repair, replacement, completion or use of materials, colors, or finishes that are incongruous with the predominant materials, colors, or finishes of such exposed exterior surface unless such incongruous materials, colors, or finishes are less than 20 contiguous square feet, or less than 10 percent of the area of any exposed individual plane surface unbroken by corners or angles. This Section is not intended to regulate signs as defined by Section 11-41-5 of the Mesa City Code, art, murals, architectural styles or color patterns and schemes as permitted or authorized in other titles of this Code. (5124)

(L) No person or responsible party shall allow or permit any person to park any commercial vehicle on any undeveloped private property or property without an improved dustproof surface except when such parking is necessarily required while actually carrying out a lawful commercial purpose. The vehicle owner, the vehicle operator, and any responsible party for the land shall be jointly and severally liable for violation of this paragraph. (5124)

(M) No person shall attach or cause to be attached any sign to any public utility structure, traffic control device, streetlight standard, or similar structure in the public right-of-way or erect any portable/temporary sign in the public right-of-way excepting those signs erected by a public utility, government agency or as otherwise permitted by the City Code. (5124)

(N) The responsible party of vacant, abandoned, partially destroyed or partially constructed buildings shall secure such building against unauthorized entry at all times. (5124)

(O) The responsible party of a parcel of land within the City shall not allow thereon weeds or grass which occupy more than 10 percent or 50 square feet, in total area of a developed parcel to attain a predominant height in excess of 9 inches, or more than 10 percent of the area of an undeveloped parcel to attain a predominant height in excess of 12 inches. This provision shall not apply to: (5124)

1. Single residence rear yards not visible from the adjacent right-of-way; or (5124)

2. Parcels of land in which livestock graze; or (5124)

3. Parcels of land used to raise feed crops. (5124)

(P) No responsible party shall permit or cause the escape or flow of water into or upon a public street or alley from any source in such quantity as to cause flooding, to impede vehicular or pedestrian traffic, to create a hazardous condition to such traffic, to cause damage to the public streets or alleys, or to cause a condition which constitutes a public nuisance or a threat to the public health and safety. (5124)
(Q) It shall be unlawful for any person to place or allow to be placed any rubbish, trash, filth or debris upon any private or public property not owned or under their control. (5124)

(R) No person shall offer to sell, or plant any male mulberry tree (morus alba) or olive tree (olea europea) in the City unless it is one of the nonpollinating varieties of such trees. The City shall maintain a current list of nonpollinating varieties, which shall be available for public review and shall be based on industry standard for nonpollinating varieties, applicable horticultural and scientific research and data, review and evaluation by qualified experts, and other appropriate information. (5124)

(S) No responsible party shall maintain or display any sign regulated under the Mesa City Code, Title 11 Article 5, that is damaged or deteriorated to a condition constituting a visual blight. Visual blight shall include conditions detectable from beyond the lot boundaries such as chipping, peeling, fading, or rusting surfaces; the presence of cracks, holes, buckles, warps, or splinters in any sign component; and defective bulbs, fluorescent tubes, or neon or other inert gas light segments. (5124)

(T) It shall be unlawful to park any motor vehicle within the front or side yard of a single-residence use unless such parking is on an improved, dustproof parking surface. Such parking within the front yard of a single-residence use shall be on or contiguous to a legal driveway and such parking shall not exceed a maximum of 50 percent of the front yard area. (5124)

(U) It shall be unlawful to store any watercraft, utility trailer, or any nonvehicle-mounted camper shell or truck camper in the front yard or in front of the front plane of the nearest adjacent enclosed building on the same lot or parcel as such watercraft, utility trailer or nonvehicle-mounted camper. All watercraft trailers, utility trailers, nonvehicle-mounted campers and truck campers visible to the public rights-of-ways must be operable, have inflated tires and be kept free of weeds and debris. (See Figure 8-6-3.A) (5124)
(V) The responsible party of improved property within the City shall maintain all buildings, additions, appendages, accessory structures or other structures and exposed exterior surfaces such as, but not limited to, exterior windows, doors, canopies, metal awnings, roofs, exhaust ducts, chimneys, painted surfaces, window screening, fences, screen walls, retaining walls, foundations, cooling devices, outdoor stairs, porches and railings, in a structurally sound condition that does not constitute a hazard and is impervious to moisture and weather elements. (5124)

(W) The responsible party of any property shall maintain:

1. All improved landscaped yards visible from the adjacent rights of way so as not to exhibit deterioration, disrepair, or blight constituting more than 20 contiguous square feet, or more than 10 percent of the area and (5124)

2. All improved ground surfaces, such as but not limited to, private streets, drives, paving, concrete and asphalt so as not to exhibit deterioration, disrepair, or blight constituting an accumulation of pot holes, large surface cracks, or peeling, chipping away or disintegrating surface material. (5124)

(X) No responsible party shall permit the conducting of garage sales from any property in excess of 4 events per calendar year with no more than 3 consecutive days for any given event. (5124)

The provisions of this Section may be applied cumulatively or separately for purposes of enforcement. (5124)

ARTICLE II

INSPECTIONS

SECTION:

8-6-4: AUTHORITY TO INSPECT:

(A) The Mesa Development and Sustainability Department or such other City division or department as the City Manager may designate is hereby authorized to make inspections for violations of this Chapter in the normal course of job duties or in response to a citizen complaint that an alleged violation of the provisions of this Chapter may exist or when there is a reason to believe that a violation of this Chapter has been or is being committed. The City may also conduct inspections of individual residential rental property in accordance with state law. (5124)

(B) In order to determine compliance with this Chapter, private property may be entered with the consent of the owner or occupant or as authorized by a court of competent jurisdiction. (5124)
ARTICLE III

ENFORCEMENT

SECTION:

8-6-5: COMMENCEMENT OF AN ACTION
8-6-6: REMEDIES NOT EXCLUSIVE
8-6-7: DEFENDANTS AND RESPONSIBLE PARTIES
8-6-8: CIVIL VIOLATIONS AND CITATION
8-6-9: CIVIL PENALTIES
8-6-10: (RESERVED)
8-6-11: HABITUAL OFFENDER
8-6-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY
8-6-13: ABATEMENT
8-6-14: REQUEST FOR ABATEMENT HEARING
8-6-15: RECORDING AN ABATEMENT VIOLATION
8-6-16: EMERGENCY ABATEMENT
8-6-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE
8-6-18: SLUM PROPERTY
8-6-19: INDIVIDUAL RESIDENTIAL RENTAL INSPECTION
8-6-20: (RESERVED)

8-6-5: COMMENCEMENT OF AN ACTION:

(A) The City Manager or designee is authorized to commence an enforcement action under this Chapter by issuing a notice of abatement under this Article or a citation for civil sanctions under this Article, or both. They may also seek the issuance of a complaint by the Mesa City Prosecutor for criminal prosecution of habitual offenders as defined in this Article. (5124,5480)

(B) Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings, or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances. (5124,5480)

8-6-6: REMEDIES NOT EXCLUSIVE:

Violations of this Chapter are in addition to any other violation established by law, and this Chapter shall not be interpreted as limiting the penalties, actions, or abatement procedures which may be taken by the City or other persons under other laws, ordinances, or rules. (5124,5480)

8-6-7: DEFENDANTS AND RESPONSIBLE PARTIES:

Any responsible party who causes, permits, facilitates, aids, or abets any violation of this Chapter or who fails to perform any act or duty required pursuant to this Chapter is subject to the enforcement provisions of this Chapter. Responsible parties may be individually and jointly responsible for the violations, the prescribed civil or criminal sanctions, for abatement of the violation and for any associated costs and fees. (5124,5480)
A civil action for violations of this Chapter may be commenced by issuance of a citation. (5124,5480)

The citation will be substantially in the form established by the City Manager or designee. The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the City Code section that was violated. The citation shall direct the responsible party to pay the civil sanction and all applicable fees in accordance with Section 8-6-9 of this Chapter within the time period specified on the citation or to appear before the Civil Hearing Officer within the time period specified on the citation and admit or deny the allegations contained in the citation. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the responsible party are not thereby prejudiced. The citation shall be served in accordance with Section 8-6-8 (H). However, in a violation involving Section 8-6-3(L) of the Mesa City Code, a citation may be served upon the owner or owners of the vehicle, the registered owner or owners of the vehicle, or the operator or person who parked or placed the vehicle where the violation occurred by attaching a copy of the citation to the vehicle. (5124,5480)

The responsible party shall, within the time period specified on the citation or within 10 calendar days of the issuance of the citation, whichever is greater, either pay the civil sanction and the fees, or appear in person, or through an attorney or by email to the designated clerk of the Civil Hearing Office and admit or deny the allegations contained in the citation. (5124,5480)

1. If the responsible party timely pays the civil sanction and the fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If the responsible party appears in person, through an attorney or by email and admits the allegations, the Civil Hearing Officer shall enter judgment against the responsible party in the amount of the civil sanction, plus any applicable fees designated in Section 8-6-9; or (5124,5480)

2. If the responsible party appears in person, through an attorney or by email and denies the allegations contained in the citation, the matter shall be set for a hearing. (5124,5480)

If a person served with a citation fails to pay the civil sanction and the fees or to file on or before the time directed on the citation or appear at the time set for hearing, the allegations in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter a finding of responsible and a judgment for the City and impose the appropriate sanctions and fees. (5124,5480)

All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, except under extraordinary circumstances as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand. (5124,5480)

Any person aggrieved by a decision of the Civil Hearing Officer, at any time within 30 calendar days after a final judgment has been rendered, may file a complaint of special action in Superior Court to review the Civil Hearing Officer’s decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing, affirm or reverse, in whole or in part, or modify the decision reviewed. (5124,5480)

Any civil judgment issued pursuant to this Article shall constitute a lien against the real property of the responsible party that may be perfected by recording a copy of the judgment with the Maricopa County Recorder. Any judgment issued pursuant to this Article may be collected as any other civil judgment. (5124,5480)

Citations issued under this chapter shall be served in compliance with A.R.S. §9-500.21 as follows: (5480)
1. First, by personal service as described in the procedures set forth Arizona Rules of Civil Procedure, Rule 4.1 by: (5480)
   
   a. A Code Compliance Officer; or
   b. A City of Mesa sworn police officer; or
   c. The City Manager or designee.

2. If the citation cannot be personally served, the citation shall be served as follows: (5480)
   
   a. By certified or registered mail, return receipt requested; or
   b. By publication, in the same manner prescribed by the Arizona Rules of Civil Procedure.
   
   Before the date of the first publication, the citation shall be mailed, by certified or registered mail, return receipt requested, or by any other mail or delivery service that allows the sender to track the progress and confirm the delivery of the citation.

8-6-9: CIVIL PENALTIES:

(A) Any responsible party who is found responsible for a civil violation of this Chapter, whether by admission, default, or after a hearing, shall pay a civil sanction of not less than $150 or more than $1,500. A second finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $250 or more than $2,500. A third finding of responsibility within 36 months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. In addition to the civil sanction, the responsible party shall pay the applicable fees and charges set forth in the City’s Development Services (Code Compliance) Schedule of Fees and Charges, and may be ordered to pay any other applicable fees and charges. (5124,5480)

(B) Under unusual or extraordinary circumstances, and for good cause, the Civil Hearing Officer shall have the discretion to reduce or eliminate any portion of the civil sanctions specified in this section, and/or to make any other judgments or orders deemed by the Civil Hearing Officer to be in the best interests of the City of Mesa, which will result in the furtherance of these regulations and effectuate the abatement or cessation of any violation of this Chapter. (5124,5480)

(C) After entering a judgment of responsible and setting a civil sanction and fees as specified in Section 8-6-9 (A), the Civil Hearing Officer may order a compliance hearing and set a date for such hearing. Upon presentation of evidence and/or testimony by the City Inspector at the compliance hearing that the violation(s) specified in the complaint has been abated, the Civil Hearing Officer may reduce all or a portion of the civil sanction commensurate with the cost borne by the defendant to achieve compliance, or the Civil Hearing Officer may vacate the previous judgment and dismiss the citation(s). If, a minimum of 7 calendar days before a scheduled compliance hearing, the Civil Hearing Officer receives both of the following items, then the Civil Hearing Officer may issue written orders commensurate with the authority given in this Section, to reduce civil sanctions and/or vacate the related judgment without holding the scheduled compliance hearing: (5124,5480)

1. A written and notarized confirmation from the City Inspector that the violation has been successfully abated; and (5124,5480)

2. A written and notarized statement from the defendant describing the actions taken and the itemized costs borne to abate the violation. (5124,5480)

   If either item has not been received by the designated Clerk of the Civil Hearing Office seven (7) calendar days before, then the compliance hearing shall take place as previously scheduled. (5124,5480)

(D) The 36 month provision of paragraph (A) of this Section shall be calculated by the dates the violations were committed. The responsible party shall receive the enhanced sanction upon a finding of responsibility for any violation of this Chapter that was committed within 36 months of the commission of another violation for which the responsible party was convicted or was otherwise found responsible, irrespective of the order in which the violations occurred or whether the prior violation was civil or criminal. (5124,5480)

(E) Each day in which a violation of this Chapter continues or the failure to perform any act or duty required by
this Chapter or by the Civil Hearing Officer continues shall constitute a separate civil offense. (5124,5480)

8-6-10: (RESERVED):

8-6-11: HABITUAL OFFENDER:

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing civil violations of this Chapter on 3 separate dates and within a 36 month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be guilty of a class 1 criminal misdemeanor. The Mesa City Prosecutor is authorized to file a class 1 criminal misdemeanor complaint in the Mesa City Court (Court) against habitual offenders. For purposes of calculating the 36 month period under this paragraph, the dates of the commission of the offenses are the determining factor. (5124,5480)

(B) Upon conviction of a violation of this Section, the Court may impose a sentence authorized by the laws of the State of Arizona for a class 1 misdemeanor, including incarceration not to exceed 6 months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than $500 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months. The Court may reduce such fines to $250 for each count upon which a conviction has been obtained provided all violations have been abated and the site is in compliance with all Sections of this Chapter within 90 days of sentencing. (5124,5480)

(C) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (5124,5480)

8-6-12: FAILURE TO PROVIDE EVIDENCE OF IDENTITY:

A person who fails or refuses to provide evidence of his identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Chapter, is guilty of a misdemeanor. Evidence of identity under this Section shall consist of a person's full name, residence address, and date of birth. (5124,5480)

8-6-13: ABATEMENT:

(A) In addition to or in lieu of filing a civil citation or criminal complaint, the City may serve a Notice to Abate any violation of this Chapter in accordance with Section 8-6-8(H). (5124,5480)

(B) The Notice to Abate shall set forth the following information, (except in the case of an imminent hazard): (5124,5480)

1. The responsible party has 30 calendar days from the service of the Notice to Abate or correct the violation. (5124,5480)

2. Identification of the property in violation by street address, if known, and if unknown, then by legal description of the property or by Maricopa County book, map, and parcel number. (5124,5480)

3. Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s). (5124,5480)

4. Reinspection date and time. (5124,5480)
5. Name, business address, and business phone number of the City inspector who issued the Notice to Abate. (5124,5480)

6. A statement indicating that if the violations are not corrected within the 30 calendar day period, the City may abate the problem itself or by private contractor, assess the owner for the cost of such abatement, and record a lien on the property for the assessment. (5124,5480)

7. Hearing procedures. (5124,5480)

8. Statement indicating that the 30 calendar day notice set forth in this Section shall not apply to emergency abatements pursuant to this Chapter. (5124,5480)

(C) If the responsible party served a Notice to Abate by the City pursuant to this Chapter fails to comply with such notice; the City may correct or abate the conditions subject to the notice if those conditions constitute a hazard. If the City corrects or abates those conditions, the City Manager or designee may prepare a verified statement as to the actual cost of correcting or abating the violation, including costs of inspection and other City-incurred costs associated with abating the violation. The statement shall be served in accordance with 8-6-8(H) to the responsible party upon which the Notice to Abate or order was served. That statement shall further set forth the following: (5124,5480)

1. That the statement of costs is an assessment upon the lots and tracts of land from which the City corrected or abated the violation. (5124,5480)

2. That the party has 15 calendar days from the date of delivery or mailing of the statement to pay the assessment. (5124,5480)

3. In the event payment is not received in 15 calendar days, the City will place a lien on the property in the amount of the assessment. (5124,5480)

4. Appeal procedures. (5124,5480)

(D) The Notice to Abate and the statement of abatement costs shall be served in accordance with 8-6-8(H) to the responsible party. Service is deemed effective and complete on the date it is received by the responsible party. (5124,5480)

8-6-14: REQUEST FOR ABATEMENT HEARING:

The responsible party receiving a Notice to Abate under this Chapter or a statement of costs incurred by the City in abating a hazard may appeal by requesting in writing a hearing and by serving such a request to the Development Services Department within 15 calendar days of service of the Notice to Abate or the statement of costs. The hearing shall be held before the Civil Hearing Officer as soon as practicable after the filing of the request. An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Civil Procedure for special actions. If no written and timely request for hearing is made under this Section to the Development Services Department, then the Notice of Abatement or statement of costs is final and binding. (5124,5480)

8-6-15: RECORDING AN ABATEMENT VIOLATION:

The Notice to Abate and statement of costs shall run with the land. The City, at its sole option, may record a Notice to Abate or statement of costs with the Maricopa County Recorder and thereby cause compliance by a person thereafter acquiring such property. When the property is brought into compliance, a satisfaction of Notice to Abate shall be filed with the Maricopa County Recorder. (5124,5480)
8-6-16: EMERGENCY ABATEMENT:

(A) If a situation presents an imminent hazard, the City may issue a Notice to Abate directing the responsible party to immediately take such action as is appropriate to correct or abate the emergency described in the notice. In addition, the City may act immediately to correct or abate the emergency itself or may commence an action in Superior Court to enjoin the responsible party to abate the imminent hazard. In the event the City is unable to contact the responsible party despite reasonable efforts to do so, it in no way affects the City's right under this Section to correct or abate the emergency itself. (5124,5480)

(B) The City may recover its costs incurred in abating an imminent hazard under this Section in the same manner as provided for in Section 8-6-13(C). The responsible party may appeal the City's emergency abatement action under this Section or the City's statement of costs for an emergency abatement in the same manner as provided for in Section 8-6-14. (5124,5480)

8-6-17: SUSPENSION OF CONSTRUCTION PERMIT OR LICENSE:
Any construction permit or license issued by the City which authorizes work resulting in an alleged violation of Article I of this Chapter may be suspended pending abatement of said violation or final resolution of a civil hearing of the matter. (5124,5480)

8-6-18: SLUM PROPERTY

(A) Slum property designation: (5124,5480)

1. The City Manager, or designee, is authorized to designate residential rental property as a slum property consistent with and pursuant to the provisions of Title 33, Chapter 17, Article 1, Arizona Revised Statutes. (5124,5480)

2. Notice of slum property designation shall be provided to all owners and lien holders of the affected property. Such notice shall inform of the designation, the reason or reasons for the designation, and the procedure to appeal the designation. The effective date and manner of service shall be as described in Section 8-6-8 (H). (5124,5480)

3. The City may record the notice of slum property designation with the County Recorder. A recorded notice shall run with the land. Failure to record a notice shall not affect the validity of the notice as to persons who receive the notice. (5124,5480)

(B) Assessment and liens: (5124,5480)

1. The City Manager, or designee, is authorized to impose civil penalties, assessments and liens pursuant to the provisions of Title 33, Chapter 17, Article 1, Arizona Revised Statutes. (5124,5480)

2. Notice of a civil penalty, assessment or lien shall be provided to all owners and lien holders of the affected property. Such notice shall inform of the amount of the assessment or lien, the reason for the assessment or lien, and the procedure to appeal the assessment or lien. The effective date and manner of service shall be as described in Section 8-6-8 (H). (5124,5480)
3. The City may record an assessment or lien with the County Recorder or the Department of Transportation, if the lien is for a rental mobile home or a recreational vehicle not owned by a landlord. A recorded assessment shall run with the land. Failure to record an assessment or lien shall not affect the validity of the assessment or lien as to persons who have notice thereof. The City shall release the assessment or lien upon receipt of payment. (5124,5480)

4. In the event that it is necessary to enforce an assessment or lien by sale, the sale shall be made from a judgment of foreclosure and order of sale. The City shall have the right to enforce an assessment or lien in the Superior Court, at any time after recording, but failure to enforce an assessment or lien shall not affect its validity. The recorded assessment or lien shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording. Prior assessments or liens for the purposes provided for in this ordinance shall not be a bar to subsequent assessments or liens, and any number of liens or assessments on the same property may be enforced in the same action. (5124,5480)

(C) Appeals: (5124)

1. Appeals from designations as a slum property or assessments by the City Manager or designee as set forth in 8-6-18(A) and (B) shall be submitted to the office of the Zoning Administrator in the manner set forth in Section 11-77-4 of the Mesa City Code. Said appeals shall be in writing and shall contain: (5124,5480)

(a) A heading in the words: "Before the Zoning Administrator..." (5124,5480)

(b) A caption reading: "Appeal of...," giving the names of all appellants participating in the appeal. (5124,5480)

(c) A brief statement setting forth the legal interest of each of the appellants in the building or land involved in the notice and order. (5124,5480)

(d) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant. (5124,5480)

(e) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside. (5124,5480)

(f) The signatures of all parties named as appellants and their official mailing addresses. (5124,5480)

(g) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal. (5124,5480)

2. All applications shall be accompanied by a fee in accordance with the Development Services Fee Schedule. (5124,5480)

3. The appeal shall be filed within 30 calendar days from the date of the service of such order or action of the designation of a slum. (5124,5480)

4. Appeals to decisions of the Zoning Administrator may be filed with the Board of Adjustment in accordance with Section 11-77-4 of the Mesa City Code. (5124,5480)
8-6-19: INDIVIDUAL RESIDENTIAL RENTAL INSPECTION

(A) The City may conduct interior inspections of individual residential rental property if an exterior inspection of the property reveals or if the property is found to have any of the following: (5124)

1. Conditions that materially affect the health and safety of the occupants (as defined in Section B). (5124)

2. A significant level of crime associated with the property. (5124)

3. A documented history of violations of building regulations. (5124)

4. The responsible party repeatedly fails to comply with code enforcement requirements imposed by the City. (5124)

5. There is probable cause that the property is not in compliance with building regulations. (5124)

6. A complaint is received from, or consent for the inspection is given by, the responsible party. (5124)

(B) For the purposes of this Article, a condition that materially affects the health and safety of the occupants of a residential rental property includes any of the following conditions: (5124)

1. Inadequate sanitation, ventilation or space requirements, including the following: (5124)
   
   (a) Lack of adequate water closets, lavatories, bathtubs or showers. (5124)

   (b) Lack of a required kitchen sink or a kitchen sink that complies with building regulations. (5124)

   (c) Lack of hot and cold running water to plumbing fixtures. (5124)

   (d) Lack of adequate heating and cooling. (5124)

   (e) Lack of or improper operation of required ventilating equipment or broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers. (5124)

   (f) Lack of minimum amounts of natural light and ventilation as required by building regulations. (5124)

   (g) Inadequate room and space dimensions as required by building regulations. (5124)

   (h) Lack of required adequate electricity and lighting as required by building regulations. (5124)

   (i) Infestation of insects, vermin or rodents. (5124)

   (j) Lack of connection to a sewage disposal system as required by building regulations. (5124)

   (k) Lack of adequate garbage and rubbish storage and removal facilities. (5124)
2. Structural hazards, including the following: (5124)

(a) Significantly deteriorated or inadequate foundations or foundation areas that are not provided with adequate drainage. (5124)

(b) Flooring or floor supports of insufficient size to carry imposed loads with safety. (5124)

(c) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration. (5124)

(d) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that significantly sag, split or buckle due to defective material or deterioration. (5124)

(e) Fireplaces or chimneys that list, bulge or settle due to defective material or deterioration or that are of insufficient size or strength to carry imposed loads with safety. (5124)

3. Hazardous wiring that does not conform with building regulations or that has not been maintained in good condition, or both, and that is not being used in a safe manner. (5124)

4. Hazardous plumbing that does not conform with building regulations or that has not been maintained in good condition, or both, and that is not free of cross-connections and backflow between fixtures. (5124)

5. Hazardous mechanical equipment including vents that do not conform with building regulations or that have not been maintained in good and safe condition, or both, and that are not working properly. (5124)

6. Faulty weather protection that may include: (5124)

(a) Significantly deteriorated, crumbling or loose plaster. (5124)

(b) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors. (5124)

(c) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering. (5124)

(d) Broken, rotted, split or buckled exterior wall coverings or roof coverings. (5124)

7. Fire hazards or inadequate fire protection, including: (5124)

(a) Any building or portion of a building or any device, apparatus, equipment, combustible waste or vegetation that is not in compliance with building and fire codes and regulations and that is in such a condition as to cause a fire or explosion or to provide a ready fuel to augment the spread and intensity of a fire or explosion arising from any cause. (5124)

(b) Any building or portion of a building that is not provided with fire-resistant construction or fire extinguishing systems or equipment required by building and fire codes and regulations, except those buildings or portions of buildings that conformed with all applicable building and fire codes and regulations in effect at the time of construction and that have fire-resistant integrity and fire extinguishing systems or equipment that has been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy. (5124)

(c) Lack of adequate fire detection systems as required by building and fire codes and regulations. (5124)
8. Faulty materials or construction that is not specifically allowed or approved by building and fire codes and regulations or that has not been adequately maintained in good and safe condition. (5124)

9. Hazardous or unsanitary premises, including those premises on which an accumulation of weeds, vegetation, refuse, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials and similar materials or conditions that constitute fire, health or safety hazards. (5124)

10. Inadequate maintenance, including any building or portion of a building that is determined to be an unsafe building in accordance with building and fire codes and regulations. (5124)

11. Unhealthy conditions, including any condition defined in building regulations that results in the failure to maintain minimum standards of sanitation, health or safety or that renders air, food or drink that is detrimental to health. (5124)

12. Inadequate exit facilities, including: (5124)

   (a) All buildings or portions of a building that are not provided with exit facilities as required by building and fire codes and regulations; or (5124)

   (b) Exit facilities that have not been adequately maintained; or (5124)

   (c) Exit facilities that have not increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy. (5124)

13. Improper occupancy, including all buildings or portions of a building that are occupied for living, sleeping, cooking or dining purposes and that were not designed and permitted to be used for such occupancies, or that are occupied in excess of the maximum occupancy load allowed by any applicable provision of building, fire and zoning codes and regulations or state law. (5124)

   (C) Before entry into the interior of a residential rental property, the City shall obtain consent of the owner, managing agent, or occupant or obtain a warrant for entry. (5124)

   (D) Interior inspections performed under this Section shall be limited to items that can be easily viewed and shall not include hidden hazards, not accessible or readily accessible, that may be in the interior of the construction of the dwelling unit (e.g., inside of walls or ceilings or under floors). (5124)

   (E) No owner shall allow or permit a condition that materially affects the health and safety of the occupants of a residential rental property. (5274)

(F) This section does not limit the authority of the City to:

   1. Perform an exterior inspection of any property in the City at any time. (5124)

   2. Upon receipt of a complaint or consent from the owner or occupant perform an interior inspection of any property in the City’s jurisdiction. (5124)

   3. Perform interior, exterior or construction job site inspections of new construction before issuance of a Certificate of Occupancy. (5124)

   4. Perform interior or exterior inspections of illegal construction that occurred without a required building permit. (5124)

   5. Perform an interior inspection of any property during an emergency or natural disaster. (5124)

   6. Perform any other inspection authorized by other provisions of the Mesa City Code. (5124)
ARTICLE IV

LIVESTOCK AND LARGE ANIMAL REGULATIONS

SECTION:

8-6-21: FOWL, RODENT, AND LIVESTOCK RESTRICTIONS
8-6-22: PREMISES TO BE SANITARY; INSPECTION OF PREMISES
8-6-23: SANITARY REGULATIONS FOR THE KEEPING OF FOWL AND RODENTS
8-6-24: SANITARY REGULATIONS FOR THE KEEPING OF LIVESTOCK
8-6-25: CONDITIONS UNDER WHICH FLIES BREED PROHIBITED
8-6-26: OFFENSIVE OR NOXIOUS GASES OR ODORS PROHIBITED
8-6-27: OBSTRUCTING OFFICERS
8-6-28: UNSANITARY PREMISES UNLAWFUL
8-6-29: NUISANCES; ABATEMENT
8-6-30: FECAL MATTER
8-6-31: NONHUMAN PRIMATES
8-6-32: LIVESTOCK LICENSE
8-6-33 DEFINITIONS
8-6-34: VIOLATIONS AND CITATIONS
8-6-35: CIVIL PENALTIES

8-6-21: FOWL, RODENT, AND LIVESTOCK RESTRICTIONS

It shall be a violation of this article for any person to keep fowl, rodents, or livestock within the city, other than listed in this chapter and permission is hereby given to any such person to keep and maintain the same, but only in the manner and upon the conditions set forth in this chapter. Such permission may be withdrawn by a court of competent jurisdiction in the even a person is charged as a habitual offender in accordance with 8-6-11 and found guilty of any offense listed in Article IV of this Title. Except for Sections 8-6-25 through 8-6-30, this chapter does not apply to the keeping and maintenance of domestic dogs and cats. (4845, 4968)

(A) Except as specified in Section 11-3-2, 11-3-3, and 11-4-3 of this Code, no more than a total of ten (10) rodents or fowl or a combination of rodents and fowl shall be kept upon the first one-half (1/2) acre or less; for each additional ten (10) head of rodents or fowl, an additional one-half (1/2) acre of land is required. For areas larger than two and one-half (2-1/2) acres, the number of such rodents and fowl shall not be limited. (4845)

(B) Except as specified in Sections 11-3-2, 11-3-3, and 11-4-3 of this Code, it shall be a violation of this article to keep livestock or any similar large animal regulated by this chapter within the City on any property less than thirty-five thousand (35,000) square feet. (4845, 4968)

(C) The maximum number of livestock and similar large animals allowed on a property at any one time shall be based on a calculation of animal points as specified below: (4968)

1. Animal points shall be assessed based upon the entire area of land held by the owner as a parcel or as abutting and contiguous parcels, and by the relative location of the parcels within the Lehi Sub-Area Plan as adopted by Resolution 8655 on January 23, 2006. (4968)
(a) Parcels located within the corporate limits of Mesa, but outside of the Lehi Sub-Area and without a livestock license, as described in Section 8-6-32, shall be assessed animal points based upon Table 8.6-A, below: (4968)

<table>
<thead>
<tr>
<th>PROPERTY SIZE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>35,000 SQ. FT. – 43,560 SQ. FT.</td>
<td>TWO (2) ANIMAL POINTS</td>
</tr>
<tr>
<td>FOR EVERY ADDITIONAL</td>
<td></td>
</tr>
<tr>
<td>10,890 SQ. FT. (1/4 ACRE)</td>
<td>ONE (1) ADDITIONAL ANIMAL POINT</td>
</tr>
</tbody>
</table>

(4968)

(b) Parcels located within the Lehi Sub-Area and owners outside of the Lehi Sub-Area with an approved livestock license pursuant to Section 8-6-32, shall be assessed animal points based upon Table 8.6-B.

<table>
<thead>
<tr>
<th>PROPERTY SIZE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>35,000 SQ. FT. – 43,560 SQ. FT.</td>
<td>FOUR (4) ANIMAL POINTS</td>
</tr>
<tr>
<td>FOR EVERY ADDITIONAL</td>
<td></td>
</tr>
<tr>
<td>5,445 SQ. FT. (1/8 ACRE)</td>
<td>ONE (1) ADDITIONAL ANIMAL POINT</td>
</tr>
</tbody>
</table>

(4968)

2. Animal points shall be assigned to the animals present on a property, as set forth below in Table 8.6-C:

<table>
<thead>
<tr>
<th>ANIMAL TYPE</th>
<th>ANIMAL POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FULL-SIZED EQUINES (HORSES OR SIMILAR)</td>
<td>ONE (1) ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>FULL-SIZED BOVINES (CATTLE, OXEN, BISON OR SIMILAR)</td>
<td>ONE (1) ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>SHEEP</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>GOATS</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>MINIATURE EQUINES OR BOVINES (MINIATURE HORSES OR CATTLE OR SIMILAR)</td>
<td>ONE-HALF (0.5) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>LARGE FLIGHTLESS BIRDS (OSTRICHES, RHEAS, EMUS OR SIMILAR)</td>
<td>THREE-QUARTERS (0.75) OF ANIMAL POINT PER HEAD</td>
</tr>
<tr>
<td>CAMELIDS (LLAMAS, ALPACAS OR SIMILAR)</td>
<td>THREE-QUARTERS (0.75) OF ANIMAL POINT PER HEAD</td>
</tr>
</tbody>
</table>

(4968)

3. Unless the owner obtains a Special Use Permit issued by the City pursuant to Title 11 of the Mesa City Code, it shall be a violation of this article for any owner to have present on the owner’s property any combination of listed animals that, in the aggregate, have a total sum of animal points assigned under paragraph (C)(2) that exceeds the total sum of animal points assessed for the owner’s property under paragraphs (C)(1) or (C)(2), as may be applicable. (4968)
Paragraphs (A), (B) and (C) of this Section shall not apply to any lot or parcel which is reduced in size as a result of an acquisition by gift, purchase, or condemnation of a portion of the lot or parcel for right-of-way by a governmental entity, provided the size of the parcel was in excess of 35,000 square feet prior to the size reduction or the parcel is not reduced by more than twenty percent (20%) of the size that existed prior to the right-of-way acquisition. (4845, 4968)

Exceptions shall be allowed to paragraphs (B) and (C) regarding animals raised by students participating in an affiliated State of Arizona sponsored or nationally chartered agricultural education program, such as FFA or 4-H. The maximum number of exceptions permitted for parcels of less than one-acre (43,560 square feet) is one. The maximum number of exceptions permitted for parcels greater than one acre is four. (4968)

An exception to paragraphs (B) and (C) shall permit infant animal(s) of less than one (1) year in age to remain with its mother. In the event an infant is separated from its mother, this exception no longer applies. (4968)

It shall be a violation of this article to keep any animal regulated by this chapter in an enclosure within a distance of less than forty feet (40') from another person’s lawfully erected permanent residence, dining, or sleeping quarters that was constructed before the construction of such animal enclosure. (4845, 4968)

It shall be a violation of this article for any animal regulated by this chapter to be cooped, stabled, or confined in any building within seventy-five feet (75') from another person’s lawfully erected permanent residence, dining, or sleeping quarters that was constructed before the construction of such animal enclosure. (4845, 4968)

All animals regulated by this Chapter shall be kept in suitable enclosures and shall not be permitted to run at large. (4845, 4968)

The provisions of this Section shall not apply to registered homing (racing) pigeons, fancy pigeons, or show pigeons. (4845, 4968)

It shall be a violation of this article for any swine (pigs, hogs or similar) to be kept within the corporate limits of the City, except as follows: (4845, 4968)

1. Swine kept by a student that is participating in an affiliated State of Arizona sponsored or nationally chartered agricultural education program, such as FFA or 4-H. No more than one (1) swine may be kept per participating student. (4968)

2. Vietnamese Pot-belly Pigs or similar miniature varieties of swine that, at full maturity, stand less than twenty-one (21) inches at the withers and weigh less than two-hundred (200) pounds may be kept on any lot as a personal pet such as a cat or dog, provided no more than two (2) such pigs are kept on one (1) parcel of land. (4968)

Miniature equines, miniature bovines, miniature sheep, and miniature goats, which at full maturity meet the national miniature animal standards, may be kept on any lot as person pets such as a cat or dog, provided no more than two (2) such miniature equine, miniature bovines, miniature sheep, or miniature goats, or combination thereof, are kept on one (1) parcel of land. The maximum number of miniature equines, miniature bovines, miniature sheep or miniature goats that may be kept on lots in excess of 35,000 square feet shall be based on paragraphs (B) and (C) of this section. (4968)

Apiaries shall be limited to locations within agricultural and/or rural areas of the City, zoned AG or R1-43. (4845, 4968)
8-6-22: PREMISES TO BE SANITARY; INSPECTION OF PREMISES
The premises upon which fowl, rodents, cattle, horses, mules, sheep, or goats are kept shall always be sanitary and subject to inspection and regulations by the City Manager or designee. (4845, 4968)

8-6-23: SANITARY REGULATIONS FOR THE KEEPING OF FOWL AND RODENTS

(A) The droppings of chickens or other fowl or rodents must be removed from the enclosure as frequently as necessary to prevent the breeding of flies, but in no case less than a minimum of twice weekly. (4845, 4968)

(B) Adequate fly-tight containers approved by the City Manager or designee for the storage of fowl or rodent excreta must be provided and shall always be kept sanitary in a manner to prevent the breeding of flies. (4845, 4968)

(C) Water and feed troughs must be provided, and shall always be kept sanitary to prevent the breeding of flies, mosquitoes or other vectors. (4845, 4968)

(D) Feeding vegetable or meat waste or garbage shall be exclusively in containers that shall be kept sanitary in a manner to prevent the breeding of flies, mosquitoes or other vectors, and on an impervious platform. (4845, 4968)

8-6-24: SANITARY REGULATIONS FOR THE KEEPING OF LIVESTOCK

(A) Manure shall be removed from stalls, paddocks, arenas, corrals and other livestock keeping areas on a regular basis, and at a minimum of no less than once a week. Manure run-off which discharges onto adjacent property, onto city streets or into flood control channels is prohibited, and allowing such to occur, intentionally or negligently, shall be in violation of this article. (4845, 4968)

(B) Adequate containers approved by the City Manager or designee must be provided for the storage of manure in a manner to prevent the breeding of flies and shall be kept sanitary unless it is completely removed from the premises at least twice weekly. All such containers shall be equipped with working lids to minimize water accumulating within the container. (4845, 4968)

(C) Mound storage of animal droppings or manure will be permitted only on an impervious slab with adequate provisions to prevent the breeding of flies or migration of the fly larvae (maggots) into the surrounding soil. Each installation of the latter type must be approved by the City Manager or designee. (4845, 4968)

(D) Drinking troughs or tanks must be maintained in a manner to prevent the breeding of flies, mosquitoes or other vectors, and shall be provided with adequate overflow drainage to prevent saturation of the surrounding soil. (4845, 4968)

(E) Feeding shall require adequate containers or feed troughs of size, kind, and number to eliminate scatter and unsanitary surroundings. Such containers shall always be kept sanitary. It is a violation of this article to feed at random upon the surface of the ground. (4845, 4968)

(F) Spillage and leftovers from animal feedings, including grains, hay, and vegetable foods, etc., must be either removed or otherwise disposed of in such manner as to prevent fly propagation or the creation of odors. (4845)
8-6-25: CONDITIONS UNDER WHICH FLIES BREED PROHIBITED
No owner, tenant, or occupant of any premises within the City shall suffer, permit, or have upon
such premises any cesspool, vault, pit, or like place; animal manure; garbage; trash; litter; rags; or any other thing in
which flies may breed or multiply, unless the same shall be protected as to prevent the attraction, breeding, and
multiplying of flies. (4845)

8-6-26: OFFENSIVE OR NOXIOUS GASES OR ODORS PROHIBITED
Every owner, tenant, or occupant of any premises within the City in or upon which are kept any
animals governed by the requirements of this chapter shall at all times keep and maintain such premises so covered,
enclosed, protected, cleaned, drained, and disinfected that no offensive or noxious gases or odors may or shall arise
therefrom, and any such premises which are not at all times kept and maintained so covered, closed, protected,
cleaned, drained, and disinfected as to prevent any and all offensive noxious gases and odors arising therefrom or
which are allowed or suffered to become a breeding place for flies and insects or to become offensive or noxious to
the residents in the immediate neighborhood are hereby declared to be nuisances and subject to summary abatement.
(4845, 4968)

8-6-27: OBSTRUCTING OFFICERS
It shall be a violation of this article for any person to resist, delay, or obstruct any public officer in
the discharge or attempt to discharge of any duty of his office. (4845, 4968)

8-6-28: UNSANITARY PREMISES UNLAWFUL
It shall be a violation of this article for any person to permit any premises, building, yard, pasture,
enclosure, or place owned, leased, or occupied by him to become unsanitary or to permit the same to become
offensive to sight or smell. (4845, 4968)

8-6-29: NUISANCES; ABATEMENT
The causing of, producing, bringing about, making, leaving, or permitting of any condition or
conditions implicitly or expressly prohibited by or forbidden or declared a violation of this article by this Chapter
shall constitute a nuisance, and such nuisance may be abated as provided for by the laws of the City at the cost and
expense of any person chargeable therewith. The costs of abating any such nuisance may be recovered by civil
action in a court of competent jurisdiction. (4845, 4968)

8-6-30: FECAL MATTER
Any person owning, possessing, harboring, or having the care, charge, control, or custody of any
dog, or other animal governed by this Chapter, shall immediately remove and thereafter dispose of any fecal matter
deposited by the dog, or other animal governed by this Chapter, on public or private property unless the owner of the
property has given prior approval to use said property for this purpose. This Section shall not apply to disabled
individuals who, due to their disability, are unable to comply. (4845, 4968)

8-6-31: NONHUMAN PRIMATES
It shall be a violation of this article for any person to possess, keep, harbor, control, or maintain a
nonhuman primate within the corporate limits except in the manner and upon the conditions herein set forth: (4968)

(A) Any person possessing, keeping, harboring, controlling, or maintaining a nonhuman primate must comply
with all federal and state laws and the rules of the Arizona Administrative Code - Title 12, Chapter 4 entitled
Wildlife Rules. (4845)

(B) Three is the maximum number of nonhuman primates allowed per residence. (4845)
(C) If a nonhuman primate is kept outside of the owner’s residence, the following restrictions apply:

1. All nonhuman primates must be kept in an enclosure which has a secured top, sides, and bottom. (4845)

2. The enclosure must be kept securely locked with a device that cannot be opened by the nonhuman primate. (4845)

3. All enclosures, coops, stalls, hutches, or structures used to house any nonhuman primate must be at least seventy-five feet (75') from any neighbor’s residence. (4845)

(D) All nonhuman primates shall be contained within the confines of the owner’s private property with the following exceptions:

1. When in transport to or from a licensed veterinarian;

2. Transport into or out of Arizona for lawful purposes. (4845)

(E) Anytime a nonhuman primate is removed from the owner’s residence or lawful enclosure, it must be securely restrained by a leash, chain, rope, or cord of not more than six feet (6') in length and of sufficient strength to control the primate; or the primate must be securely contained in an animal carrier of sufficient size and strength. (4845)

(F) The owner shall be responsible for compliance with all other City Code sections pertaining to unsanitary premises, breeding of flies, noise, et cetera, found elsewhere within the City Code. (4845)

8-6-32: LIVESTOCK LICENSE

(A) Any person desiring to obtain a livestock license shall apply to the licensing office. On a form established by the City Manager or designee, the application shall include, but not limited to, the following: (4968)

1. Full legal name and current residence address of the applicant; (4968)

2. The address for which the livestock license shall apply and its lot size; (4968)

3. Documentation that the land referenced in (2) above is owned by the applicant (such documentation may be satisfied by a copy of the deed, a property tax bill, or other document showing legal ownership); (4968)

4. A list of other properties within the city limits owned by applicant and for which a livestock license is currently issued or had been issued within the previous five (5) years; and (4968)

5. An acknowledgement that, as the owner, the applicant shall remain in compliance with all applicable livestock ordinances and Code sections, that the owner understands that the City may inspect the property for which the license pertains, and that the license is revocable as permitted under this section. (4968)

6. An acknowledgement that the owner agrees to manage and maintain the animal(s) in a humane and healthful manner that is consistent with the recommended practices adopted for the animal by the FFA or similar nationally recognized organization related to the care and management of animals. (4968)
Each application shall be accompanied by the fee required in accordance with the current Schedule of Fees and Charges, as adopted by resolution by the City Council. The license shall be issued if no citation for an applicable livestock ordinance has been issued in connection with the licensed property within the last twelve (12) months. The licensing office is authorized to obtain necessary information to update the original license application and to determine whether the license should be issued. (4968)

Within twelve (12) months of the issue date for the previously effective license, all licensees under this Chapter wishing to remain licensed shall apply for renewal of the license on a form established by the City Manager or designee. The renewal form must be submitted with the applicable renewal license fee. The licensing office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. The license shall be renewed if the original applicant (or an inter vivos trust of the applicant) continues to be the legal owner of the licensed property; and no citation for an applicable livestock ordinance has been issued in connection with the licensed property within the previous twelve (12) months. (4968)

The licensee shall apply for renewal of their license within thirty (30) calendar days of the renewal deadline. Failure to renew the license within forty five (45) calendar days of the renewal deadline shall cause the license to become null and void. Licensees who fail to apply to renew their license yet who wish to keep animal counts assessed under Table 8.6-B as opposed to Table 8.6-A for their properties must file a new application for license. (4968)

All fees under this Section are nonrefundable and are not prorated. (4968)

No livestock license shall be issued or renewed if the applicant(s) have been prosecuted as a habitual offender in accordance with Article III of this Title and found guilty of any offense listed in Article IV of this Title within the previous thirty-six (36) months. (4968)

All license applicants and all licensees under this Section shall permit representatives of the City Manager or designees or any city, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, welfare, or structural safety inspect the licensed property to ensure compliance with the applicable law. (4968)

Livestock licenses are not transferable to other persons or entities. Upon the sale or transfer of the licensed property, the license shall become null and void. A new application may be made by any subsequent owner, if desired. (4968)

It shall be the duty and responsibility of the City Manager or designee to administer the provisions of this Chapter. Pursuant to this duty, the City Manager or designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. Any party aggrieved by a decision of the City Manager or designee under this Section shall appeal within ten (10) calendar days after being sent by registered or certified mail notice of such decision. As to such mailed notice, the City Manager or designee shall send the notice to the applicant’s address as shown by the license application. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the licensing office. The licensing office or designee shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. (4968)
A livestock license or application may be denied, revoked, suspended, or denied renewal upon any one or more of the following grounds: (4968)

1. The licensee has violated any of the provisions of this Chapter and such violation has remained uncured or was not cured within thirty (30) calendar days; (4968)

2. The licensee is not the owner of the property to be licensed; (4968)

3. The licensee has had a prior livestock license revoked or renewal denied due to failure to timely cure a violation of this Chapter or due to the frequency of citations; or (4968)

4. The licensee has demonstrated a failure to cure, in a timely manner, prior violations of this Chapter under the application of the animal points assessed under Table 8.6-A, or has had frequent violations that do not justify raising the animal count under Table 8.6-B for the applicant. (4968)

The licensee may not apply for a livestock license within twelve (12) months from the denial, suspension or revocation of any such license. (4968)

8-6-33: DEFINITIONS:
As used in Article IV, unless the context otherwise indicates, the following terms shall have the meanings herein ascribed to them: (4968)

ANIMAL: Any mammal, bird, reptile or amphibian. (4968)

AT LARGE: On or off premises of owner and not under control of owner or other persons acting for the owner. (4968)

ENCLOSURE: Any fencing, corral, or barrier of sufficient strength and height to prevent an animal from escaping its primary confines. (4968)

ENFORCEMENT AGENT: That person or persons designated by the City who is responsible for the enforcement of this Chapter and any regulations promulgated thereunder. (4968)

FECAL MATTER: Solid animal droppings including excreta, feces and manure. (4968)

FOWL: Any domesticated bird including but not limited to chickens, ducks, geese, guineas, peacocks, pheasants, and turkeys. (4968)

IMPOUND: The act of taking or receiving into custody by the enforcement agent any dog or other animal for the purpose of confinement in an authorized pound or appropriate facility in accordance with the provisions of this Chapter. (4968)

LARGE ANIMAL: Terrestrial animals commonly considered too large to be kept indoors within a human household. The term includes domestic and working animals, but does not include small animals such as dogs, cats, rodents, birds, or fish kept as pets. (4968)
LIVESTOCK: Domestic animals, such as bovines including cattle, oxen, bison, etc., camelids including llamas, alpacas, etc., equines including horses, donkeys, burros, mules, ponies, etc., goats, sheep, swine, or ratites including ostriches, rheas, emus cassowaries, kiwis, etc., raised for home use or for profit. (4968)

NONHUMAN PRIMATE: Any mammal of the order primate not including man; including all monkeys and apes. (4968)

OWNER: Any person or legal entity having a possessory property right in an animal or land or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them. (4968)

PERSON: Any corporation, company, partnership, firm, association, organization, joint venture, business trust, proprietor, agent, or society as well as a natural person. (4968)

PIGEON: Any domesticated bird of the family Columbidae including fancy, show, and homing (racing) pigeons. (4968)

POUND: Any establishment authorized for the confinement, maintenance, safekeeping, and control of dogs and other animals that come into custody of the enforcement agent in the performance of official duties. (4968)

RODENT: Any herbivorous mammal including rabbits, hares or lagomorphs. (4968)

VECTOR: Any insect or other organism that can transmit a pathogenic fungus, virus, bacterium, etc. (4968)

VETERINARIAN: Unless otherwise indicated, veterinarian means licensed to practice in this state or any veterinarian employed in this state by a governmental agency. (4968)

8-6-34: VIOLATIONS AND CITATIONS:
Any violations and/or citations issued under this article shall be in accordance with and pursuant to Article III of this Title. (4968)

8-6-35: CIVIL PENALTIES:
The penalty for a violation or violations of this Article shall be in accordance with and pursuant to Article III of this Title. (4968)
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CHAPTER 7

HEALTH OFFICER

(Repealed by 1628)

CHAPTER 8

SWEEPING OF REFUSE ON SIDEWALKS OR STREETS
(185)

(Repealed by 2568)

CHAPTER 9

ACCUMULATIONS OF LITTER PROHIBITED
(592, 610, 627, 1768, 2143)

(Repealed by 2568)
CHAPTER 1

RIGHT-OF-WAY MANAGEMENT
(298,327,1487,3078,4570,5369)

SECTION:

9-1-1: DEFINITION OF TERMS
9-1-2: RIGHT-OF-WAY PERMITS
9-1-3: NOTIFICATION
9-1-4: PLAN REVIEW AND INSPECTION CHARGES
9-1-5: RELOCATION, JOINT LOCATION
9-1-6: PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS (5369)
9-1-7: AUTHORITY TO INSPECT (5369)
9-1-8: STOP WORK ORDERS (5369)
9-1-9: UNAUTHORIZED WORK (5369)
9-1-10: APPEALS (5369)
9-1-11: PENALTIES (5369)

9-1-1: DEFINITION OF TERMS:

CITY ENGINEER: The director of the City’s Engineering Department and his or her designee. (5369)

DEVELOPMENT AND SUSTAINABILITY DIRECTOR: The director of the City’s Development and Sustainability Department and his or her designee. (5369)

EASEMENT, PUBLIC: An area of land over which the City of Mesa coordinates the locations of public or private improvements, underground or overhead, furnished for the use of the public; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, etc. owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. (3078, 3309)

ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public or private improvements within the right-of-way or public easements, prepared by a person, firm, company, corporation, public entity, or board in compliance with the code and rules of the Arizona State Board of Technical Registration, unless exempted thereunder; and conforming with (i) the public or private improvement standards of design and construction developed by the City Engineer; or (ii) standards developed by the person, firm, company, corporation, public entity, or board that the City Engineer accepts as substantially equivalent to the City Engineer’s standards in protecting the public health, safety, and welfare; or (iii) in the case of a political subdivision of the State of Arizona, standards of design and construction developed and approved by such political subdivision and filed with the City Engineer. (3309, 3766, 5369)

MESA PROJECTS: Public improvement projects for which the City of Mesa is the general contracting agency. (3309)

NEW PAVEMENT: Paving material applied in or near the right-of-way to construct a new street, highway, alley, road or bikeway where no such material previously existed. (5369)

PAVEMENT RECONSTRUCTION: Rebuilding a portion of the street by removing all the pavement material and re-paving. (5369)
PAVEMENT RENOVATION: A major rehabilitation of street pavement, which includes mill and overlay, cold in place recycle, hot in place recycle, fractured aggregate surface treatment, cape seal, and stress absorbing membrane interlayer or other similar roadway improvement that physically modifies the surface of the roadway. (5369)

PAVEMENT RESTORATION FEE: The fee required by the City when a permittee cuts into, excavates, opens, bores, trenches, potholes, damages, or disturbs pavement in the right-of-way. (5369)

PERMIT CHARGES: Fees assessed at the time of issuance of a right-of-way permit that are intended to cover costs incurred by the City for permit processing, plan review services, materials testing and inspections. Refer to latest schedule of fees and charges. (4570, 5369)

PERMITTEE: The governmental entity, person, or business entity that has received a right-of-way permit pursuant to this section or engaged in construction or maintenance in the right-of-way. (5369)

RIGHT-OF-WAY: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public right-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state, or municipal regulations. (3078, 3309, 4570, 5369)

RIGHT-OF-WAY IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, installation, and construction of public or private improvements within the right-of-way or within easements; formulated by the City Engineer, the County Health Department, the Maricopa Association of Governments, and other City departments. (3309, 3766, 5369)

RIGHT-OF-WAY PERMIT: An official document issued by the City authorizing performance of a specified activity or work within the right-of-way and public easements of the City of Mesa by a person, contractor, company, firm, or corporation duly qualified under the statutes and rules of the Arizona Registrar of Contractors, unless exempted thereunder. A Right-of-Way Permit may also authorize specified activity or work involving City utilities or facilities outside the corporate limits when issued in conjunction with the appropriate permit required for specified activity or work within another jurisdiction. (3078, 3309, 3766, 5369)

STREET MAINTENANCE: Application of slurry and fog seals to street pavement. (5369)

9-1-2: RIGHT-OF-WAY PERMITS:

(A) It shall be unlawful for any person, firm, company, corporation, business entity, public entity or board to grade, pave, fill, or level any street or alley within the right-of-way or public easements of the City of Mesa or to construct, alter, or repair therein any pavement, sidewalk, crosswalk, curb, driveway, gutters, landscaping, sewers, water mains, or other structures or to make therein any excavation or in any manner disturb or obstruct the same or perform any other activity or work without first obtaining a Right-of-Way Permit. (298, 1487, 3078, 3309, 3766, 5369)

(B) A person, firm, company, corporation, business entity, public entity or board seeking a Right-of-Way permit shall apply for said permit by submitting an application and engineering plans to the Development and Sustainability Director. The City Engineer shall review the application and plans, and approve the issuance of a Right-of-Way permit if the application and plans meet the requirements of this Chapter and the right-of-way improvement standards. (3309, 3766, 5369)
(C) All construction and maintenance activities in the right-of-way and public easements shall be subject to the inspection of the City Engineer. (5369)

(D) All improvements, construction and maintenance activities in the right-of-way and public easements shall be in accordance with the terms and conditions of a Right-of-Way Permit and in compliance with right-of-way improvement standards. (5369)

(E) While work is being done in the right-of-way and public easements, permittee shall provide to the City, upon demand, proof of the Right-of-Way Permit that authorizes the work, including a description of the work and construction limits. (5369)

(F) A Right-of-Way Permit may be revoked by the City Engineer under any of the following circumstances: (5369)

1. When the right-of-way or a public easement, or any portion thereof, occupied and used by the permittee is needed in connection with the construction of a Mesa project, upon reasonable notice from the City Engineer, unless a City license, franchise or agreement provides otherwise. (5369)

2. If the permittee does not comply with the terms and conditions of the Right-of-Way Permit or performs work that is not in compliance with right-of-way improvement standards. (5369)

3. If the City Engineer finds that a delay in completion of work authorized by a Right-of-Way Permit is due to lack of diligence on the part of the permittee, the City may revoke the permit and restore the right-of-way or the area of the public easement to its former condition unless such restoration, relocation, or removal is completed by the permittee. The City will give the permittee fifteen (15) days’ written notice before restoring the right-of-way or public easement area. However, if the City Engineer determines that the circumstances warrant an extension, the City may extend this time period. The permittee shall reimburse the City for all documented costs and expenses incurred by the City in connection with locating and removing the work, and restoring the right-of-way or the public easement area. (5369)

(G) Permittee shall participate as a member of the Arizona Location Service, as set forth in A.R.S. § 40-360.21, ET SEQ. A copy of each permittee’s agreement or proof of participation shall be submitted to the City Engineer. (5369)

(H) Permittee shall prepare and maintain accurate record drawings of its facilities in the right-of-way and in public easements, and shall furnish such record drawings to the City upon request, subject to all applicable statutes for the protection from disclosure of critical utility infrastructure information. If accurate record drawings of a permittee’s facilities are not provided to the City, and the City incurs costs or expenses locating the permittee’s facilities in connection with the construction of a Mesa project, the permittee shall reimburse the City for documented costs associated with locating and potholing permittee’s facilities. (5369)

9-1-3: NOTIFICATION:
Right-of-Way Permits shall require that the person, firm, company, corporation, public entity, or board to whom the same is issued shall give the Engineering Department twenty-four (24) hours' notice of the commencement of such activity or work authorized by said Right-of-Way Permit and shall carry on such activity or work to the satisfaction and subject to the approval of the City Engineer. The permittee shall diligently prosecute the same to completion, shall leave the right-of-way or public easements in a good and safe condition, and shall at all times keep signal lights, barricades, or other safety devices functioning properly to prevent injury to persons and property, and such person, firm, company, corporation, public entity, or board shall comply with such additional reasonable provisions and conditions as may be prescribed by the City Engineer. (298, 3078, 3309, 3766, 5369)
9-1-4: PLAN REVIEW AND INSPECTION CHARGES: (3309, 4570, 5369)

A Right-of-Way Permit shall not be issued under the provisions of this Chapter until the applicant has paid all applicable fees and charges as established in the most recent City of Mesa Schedule of Fees and Charges. The Development and Sustainability Director and the City Engineer are authorized to enter into agreements with the United States, the State of Arizona, political subdivisions of the State of Arizona, and agencies thereof, establishing offsets or credits for fees or charges applied by both agencies. (298, 1487, 3078, 3241, 3309, 3766, 4570, 5369)

9-1-5: RELOCATION, JOINT LOCATION: (3309, 5369)

(A) If a public or private improvement has been installed in a public easement in accordance with the requirements of this Chapter and the City of Mesa subsequently requires relocation of said public or private improvement to accommodate a Mesa project, the City shall reimburse the owner of the public or private improvement for documented relocation costs; unless an existing City license, franchise, or agreement provides otherwise. (298, 3078, 3309)

(B) As part of the coordination of public or private improvements and as a condition of obtaining a Right-of-Way Permit for activity or work within the Right-of-Way and all easements, the City may require joint location of all underground and overhead public or private improvements when said joint location is not otherwise prohibited by applicable safety or design standards. (3309, 5369)

9-1-6: PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS: (5369)

(A) Pavement Restoration Fees. A permittee shall pay a pavement restoration fee in connection with any Right-of-Way Permit to cut into, excavate, open, bore trench or disturb street pavement within a period of five (5) years after the City’s acceptance of street construction that includes new pavement, pavement renovation or pavement reconstruction at the location for which the Right-of-Way Permit is being sought. The amount of the pavement restoration fee shall be as established in the City’s fee schedule. The pavement restoration fee shall be paid before a Right-of-Way Permit is issued unless the permittee has a written agreement with the City that allows for payment of the pavement restoration fee after the pavement cut is made. The pavement restoration fee will be in addition to, and will be offset by, all license and franchise fees, expenses and taxes. (5369)

(B) Pavement Cut Restrictions. The City Engineer shall not approve a Right-of-Way Permit to cut into, excavate, open, bore, trench, or disturb street pavement for a period of two (2) years after the City’s acceptance of street construction that includes new pavement, pavement renovation, pavement reconstruction, or street maintenance at the location for which the permit is being sought. The City Engineer may authorize an exception to this pavement cut restriction under any one of the following conditions: (5369)

1. A verifiable emergency exists that endangers life or property; (5369)

2. There is an interruption of essential utility service; (5369)

3. Utility or other service for buildings is required where no other feasible means of providing such service exists; or (5369)

4. A pavement cut is required by city, county, state or federal regulation. (5369)

(C) Between one (1) year and two (2) years after acceptance, if the City Engineer determines, upon reviewing evidence submitted by the permittee, that the cost to mill and overlay/inlay is substantially less than the cost of alternate routing for permittee’s facilities the permittee may choose to cut the pavement and perform a mill and overlay/inlay as described in Subsection (E) below. (5369)
(D) If the City Engineer authorizes a pavement cut pursuant to an exception set forth in Subsection (B) the permittee shall: (5369)

1. Pay the pavement restoration fee established by the City Council in the City’s fee schedule; and (5369)

2. Repair the pavement, after making the permitted cut, to meet right-of-way improvement standards. (5369)

(E) If the City issues a street cut permit within one (1) year of construction, reconstruction or renovation of pavement, permittee shall renovate such street by mill and overlay/inlay, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet in both directions from the area of the cut(s) and for collector and residential streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the City Engineer/designee. Provided, however, for one pothole smaller than two (2) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply. (5369)

9-1-7: AUTHORITY TO INSPECT: (5369)
The City Engineer is hereby authorized and directed to conduct inspections and testing for violations of this Chapter. (5369)

9-1-8: STOP WORK ORDERS: (5369)
If the City Engineer determines that work in the right-of-way or a public easement is being conducted in a manner that is contrary to the provisions of this Chapter or presents a public health or safety threat, the City Engineer is authorized to issue a Stop Work Order. (5369)

(A) Issuance. The Stop Work Order shall be in writing and shall be given to the permittee, owner’s agent, or the person doing the work. Upon issuance of a Stop Work Order, the cited work shall immediately cease and the permittee shall make the work area safe. The Stop Work Order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. (5369)

(B) Unlawful Continuance. Any person who continues any work after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or a condition that threatens the public health or safety, shall be subject to penalties pursuant to this Chapter. (5369)

9-1-9: UNAUTHORIZED WORK: (5369)
Unauthorized work in the right-of-way or a public easement does not exempt a person from the requirements of this Chapter. Any person who commences work before obtaining the necessary Right-of-Way Permit shall be subject to a separate unauthorized construction fee as adopted in the City’s Schedule of Fees and Charges. (5369)

9-1-10: APPEALS: (5369)
Any decision made by any City official in connection with the enforcement of this Chapter may be appealed by submitting an appeal to the City Clerk within thirty (30) calendar days after the determination for which the appeal is being filed. All appeals must include a written Notice of Appeal that contains an explanation of why the appellant believes that the determination was in error. (5369)

The appeal will be heard by the City’s Right-of-Way Manager, who shall render a decision within three (3) business days of the submission of the appeal. The decision of the Right-of-Way Manager may then be appealed to the City Manager or his designee, who shall render a decision within five (5) business days of receiving the appeal. The determination of the City Manager, or his designee, may be appealed to the City Council committee that is designated by the City to hear such appeals. The determination of the City Council committee shall be final. (5369)
9-1-11: PENALTIES: (5369)

(A) Notice of Violation. The City Engineer is authorized to issue a Notice of Violation for unauthorized work, a violation of the provisions of this Chapter, or for the violation of a permit issued pursuant to the provisions of this Chapter. (5369)

(B) Penalty Clause. Any person, firm, or corporation violating any provision of this Chapter and any amendment to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the city jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570, 5369)

(C) Remedies not Exclusive. Penalties under this Chapter are in addition to any other penalties established by law, and this Chapter shall not be interpreted as limiting the remedies, actions, or abatement procedures that may be taken by the City. (5369)
CHAPTER 2

OBSTRUCTION OF STREETS

SECTION:

9-2-1: OBSTRUCTING PROHIBITED
9-2-2: EXCEPTIONS
9-2-3: ENCROACHMENTS
9-2-4: EXCEPTIONS TO ENCROACHMENTS

9-2-1: OBSTRUCTING PROHIBITED:
It shall be unlawful for any person to cause or permit any street, alley, or right-of-way within the City to become obstructed or encumbered by placing or leaving thereon any personal property of any kind or character or any trash or rubbish. (575)

9-2-2: EXCEPTIONS:
The provisions of Section 9-2-1 shall not prohibit the use of such streets, alleys, and rights-of-way for pedestrian or vehicular traffic or for necessary moving or conveying of personal property or trash or rubbish on, over, and across such streets, alleys, and rights-of-way or the encumbering or obstructing of same after having obtained a permit for the construction, alteration, or repair of any portion of such public street, alley, or right-of-way from the Development Services Manager. (575,4570)

9-2-3: ENCROACHMENTS:
(A) Prohibited Except Under Permit. It shall be unlawful for any person, firm or corporation to cause or to maintain any encumbrance or obstruction of public right-of-way by encroachment therein with any foundation, wall, fence, post, or other structure or any cohesive ground-surfacing material without having first obtained a written Right-of-Way Encroachment Permit to do so from the City Engineer. Such permit may be issued upon a finding by the City Engineer that the encroachment requested and specified by the applicant will not impair necessary public use or impair access to public facilities located therein and that such encroachment is not otherwise prohibited by the Mesa City Code. (1900)

(B) Terms of Permit. Encroachments into the public right-of-way for which a permit has been issued shall not exceed the terms, conditions, period of time, or extent specified by the permit, and the permit may be revoked at any time by the City Engineer. The City Engineer shall not issue such permit until the applicant shall have executed and delivered to the City an undertaking to hold the City harmless of and from any liability of any nature resulting from any such encumbrance or obstruction being located within the right-of-way and releasing the City from any liability for any obligation to maintain the encroachment or for any damage thereto. The applicant for a permit shall also agree in writing to remove same and restore the premises to the original condition without compensation and upon request by the City Engineer. (1900)
9-2-4: **EXCEPTIONS TO ENCROACHMENTS:**
The following encroachments are exempt from the terms of Section 9-2-3: (1900)

(A) Authorized traffic-control structures and signs. (1900)

(B) Vehicle driveway surfacing properly aligned with curb openings provided for the purpose. (1900)

(C) Pedestrian walkway surfacing less than five feet (5') wide perpendicular to public right-of-way. (1900)

9-2-5: **PENALTIES: (4570)**
Any person, firm, or corporation violating any provision of this chapter and any amendment to it shall be guilty of a Class 1 Misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570)

CHAPTER 3

REPEALED BY MEMO 6-11-1986
CHAPTER 4

PARADE REGULATIONS

SECTIONS:

9-4-1: PERMIT REQUIRED
9-4-2: APPLICATION
9-4-3: PARADE ROUTE
9-4-4: STANDARDS FOR ISSUANCE
9-4-5: NOTICE OF REJECTION
9-4-6: APPEAL PROCEDURE
9-4-7: NOTICE TO OTHER OFFICIALS
9-4-8: CONTENTS OF PERMIT
9-4-9: DUTIES OF PERMITTEE
9-4-10: PUBLIC CONDUCT DURING PARADE
9-4-11: REVOCATION OF PERMIT

9-4-1: PERMIT REQUIRED:
No person shall engage in, participate in, aid, form, or start any parade utilizing any portion of any public street or public park within the City limits of the City unless a Parade Permit shall have been obtained from the Chief of Police. The word parade shall mean any organized procession, march, public walk, or promenade for display and shall include distance running and bicycle races and similar activities. (624,1420)

Exceptions. This Chapter shall not apply to: (624,1420)

(A) Funeral processions. (624,1420)

(B) Students going to and from school classes or participating in any educational activities, provided such conduct is under the immediate direction and supervision of the proper school authorities; and (624,1420)

(C) A governmental agency acting within the scope of its functions. (624,1420)

9-4-2: APPLICATION:
A person seeking issuance of a Parade Permit shall file an application with the Chief of Police on forms provided by him. (624,1420,1434)

(A) Filing Period. An application for a Parade Permit shall be filed with the Chief of Police not less than thirty (30) days before the date on which it is proposed to conduct the parade. (624,1420,1434)

(B) Contents. The application for a Parade Permit shall set forth the following information: (624,1420,1434)

1. The name, address, and telephone number of the person seeking to conduct such parade; (624,1420,1434)

2. If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization; (624,1420,1434)
3. The name, address, and telephone number of the person who will be the parade chairman and who will be responsible for its conduct; (624,1420,1434)

4. The date when the parade is to be conducted; (624,1420,1434)

5. The route to be traveled, the starting point, and the termination point; (624,1420,1434)

6. The approximate number of persons who, and animals and vehicles which, will constitute such parade, the type of animals, and the description of the vehicles; (624,1420,1434)

7. The hours when such parade will start and terminate; (624,1420,1434)

8. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed; (624,1420,1434)

9. The location by streets of any assembly areas for such parade; (624,1420,1434)

10. The time in which units of the parade will begin to assemble at any such assembly area or areas; (624,1420,1434)

11. The interval of space to be maintained between units of such parade; (624,1420,1434)

12. If the parade is designated to be held by and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the Chief of Police a communication in writing from the person proposing to hold the parade authorizing the applicant to apply for the permit on his behalf; (624,1420,1434)

13. Any additional information which the Chief of Police shall find reasonably necessary to a fair determination as to whether a permit should be issued; (624,1420,1434)

14. The applicant shall procure such public liability and property damage insurance as shall protect the applicant and the City from all claims for bodily injury, including accidental death, as well as for property damage arising from the holding of the parade. The coverage shall be in an amount of not less than one million dollars ($1,000,000.00) and the applicant shall attach a Certificate of Insurance naming the City as an additional insured to the application. (1420,1434)

15. The applicant shall execute a hold harmless form to be provided by the Mesa Police Department and attach the form to the application. The hold harmless form shall provide that the applicant agrees to indemnify the City and hold it harmless against any and all losses and liabilities for personal injury, death, or property damage arising out of, or as a consequence of, the parade and any and all expenses related to claims or lawsuits resulting from the above, including court costs and attorney fees, excepting for such losses, liabilities, claims, or lawsuits arising out of acts or omissions to act on the part of any officer, agent, or employee of the City. (1420,1434)

(C) Late Applications. The Chief of Police, where good cause is shown therefore, shall have the authority to consider and approve or disapprove any application hereunder which is filed less than thirty (30) days before the date such parade is proposed to be conducted. (624,1420,1434)
9-4-3: **PARADE ROUTE:**
All parades shall be held on routes designated by the Chief of Police. (624,1420)

9-4-4: **STANDARDS FOR ISSUANCE:**
The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that: (624)

(A) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route; (624)

(B) The conduct of the parade will not require the diversion of so great a number of the police officers of the City to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the City; (624)

(C) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the City other than that to be occupied by the proposed line of march and areas contiguous thereto; (624)

(D) The concentration of persons, animals, and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas; (624)

(E) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire; (624)

(F) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct, or to create a disturbance; (624)

(G) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route; (624)

(H) The parade is not to be held for the sole purpose of advertising any product, goods, or event and is not designed to be held purely for private profit. (624)

9-4-5: **NOTICE OF REJECTION:**
The Chief of Police shall act upon the application for a Parade Permit within five (5) days after the filing thereof. If the Chief of Police disapproves the application, he shall mail to the applicant within five (5) days after the date upon which the application was filed a notice of his action stating the reasons for his denial of the permit. (624)

9-4-6: **APPEAL PROCEDURE:**
Any person aggrieved shall have the right to appeal the denial of a parade permit to the Council. The appeal shall be taken within five (5) days after notice, and the Council shall act upon the appeal at its next regular meeting. (624,1420)

9-4-7: **NOTICE TO OTHER OFFICIALS:**
Immediately upon the issuance of a Parade Permit, the Chief of Police shall send a copy thereof to the following: (624,1420)
9-4-7

Mayor, City Manager (624,1420)

Fire Department (624,1420)

Traffic Engineering (1420)

Development Services Department (624,1420,3766)

City Clerk (1420)

Arizona Highway Department, if State highway is involved. (1420)

9-4-8: CONTENTS OF PERMIT:
Each Parade Permit shall state the following information: (624)

(A) Starting time; (624)

(B) Minimum speed; (624)

(C) Maximum speed; (624)

(D) Maximum interval of space to be maintained between the units in the parade; (624)

(E) The portions of the streets to be traversed that may be occupied by the parade; (624)

(F) The maximum length of the parade in miles or fraction thereof; (624)

(G) Such other information as the Chief of Police shall find necessary to the enforcement of this Chapter. (624)

9-4-9: DUTIES OF PERMITTEE:
A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. (624)

Possession of Permit. The Parade Chairman or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade. (624)

9-4-10: PUBLIC CONDUCT DURING PARADE:

(A) Interference. No person shall unreasonably hamper, obstruct, impede, or interfere with any parade or parade assembly or with any person, vehicle, or animal participating or used in a parade. (624)

(B) Driving Through Parades. No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicle or parade is in motion and is conspicuously designated as a parade. (624)

(C) Parking on Parade Route. The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street, or part thereof, constituting a part of the route of a parade. The Chief of Police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattached any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this Chapter. (624)

9-4-11: REVOCATION OF PERMIT:
The Chief of Police shall have the authority to revoke a Parade Permit issued hereunder upon application of the standards for issuance as herein set forth. (624)
CHAPTER 5

PRIMARY VEHICULAR ALLEY ACCESS

SECTION:

9-5-1: ALLEY WIDTH

Alleys that are provided to serve multiple-residence, commercial, or industrial property shall be twenty-four feet (24') in width when such alley is to be used as primary vehicular access to such property. If existing alley dedication is less than twenty-four feet (24'), then additional property shall be dedicated to provide the full twenty-four-foot (24') alley width prior to usage thereof as primary vehicular access to such property. Such alleys shall be paved and improved in accordance with the applicable standards therefore established by the Engineering Department of the City. (708)

9-5-2: WHEN WALL OR FENCE REQUIRED

Wherever a multiple-residential area abuts a single-family residential area, a solid wall or fence shall be required separating all multiple-residential parking areas from the single-family residential yards. A solid wall or fence shall be placed on the side of the alley opposite the parking area unless prior authorization is obtained from the City Engineer to place such solid wall or fence on the side of the alley adjacent to the parking area. (708,4570)

9-5-3: ENTRANCE INTO ALLEYS BY FORWARD MOTION ONLY; EXCEPTIONS

All entrances into alleys which provide primary vehicular access to the property described in Section 9-5-1 hereof shall be by forward motion only, excepting under the following circumstances: (708)

(A) If a multiple-residence parking area has less than six (6) spaces, by special permit issued by the City Engineer, motor vehicles from these parking areas may be permitted to back into a public alley, provided that when required by the City Engineer, an approved guardrail shall be installed as a condition to granting such permit. (708)

(B) In a subdivision of multiple-residence lots backing up to each other and where a twenty-four-foot (24') improved alley is provided for primary vehicular access, motor vehicles from parking areas of six (6) or less cars may back directly into such alley without providing for the vehicles to enter the alley in a forward motion. (708)

(C) As authorized by adoption of modifications pursuant to Sections 9-6-7 and 9-8-4, and filed concurrently with an Application for Rezoning to PC District. (4771)

9-5-4: HARDSHIP CASES

The minimum requirements hereinabove set forth in this Chapter may be waived or modified by the Development Services Manager upon recommendation by the City Engineer in any case where existing physical conditions would cause impossibility of performance, extreme hardship, or unreasonable expense. (708,4570)

9-5-5: PENALTIES

Any person, firm, or corporation violating any provision of this chapter and any amendment to it shall be guilty of a Class 1 Misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (4570)
CHAPTER 6

SUBDIVISION REGULATIONS

SECTION:

9-6-1: PURPOSE AND APPLICATION
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9-6-1: PURPOSE AND APPLICATION:

(A) Purpose and Application. The purpose of these regulations is to provide for the orderly growth and harmonious development of the City of Mesa; to insure adequate traffic circulation through coordinated street systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for schools, recreation areas, and other public facilities; to promote the conveyance of land by accurate legal description; and to provide logical procedures for the achievement of this purpose. In its interpretation and application, the provisions of these regulations are intended to provide a common ground of understanding and equitable working relationship between public and private interests to the end that both independent and mutual objectives can be achieved in the subdivision of land. (2474/Reso. 6188)

(B) Adoption of Figures. All figures within these regulations are hereby adopted and fully incorporated herein as a part of these regulations. (2474/Reso. 6188)

(C) Definitions. (2474/Reso. 6188)

ALLEY: A public right-of-way used to provide secondary vehicular access to properties which abut it. (2474/Reso. 6188)

BERM: A mound of soil, either natural or man-made. (2474/Reso. 6188)

BLOCK: A piece or parcel of land or group of lots entirely surrounded by public streets, streams, railroads, parks, or a combination thereof. (2474/Reso. 6188)

BOARD: The Planning and Zoning Board of the City of Mesa. (2474/Reso. 6188)

BOARD OF ADJUSTMENT: The Zoning Board of Adjustment of the City of Mesa. (2474/Reso. 6188)
CHANNEL: The bed and banks of a natural or man-made stream which convey the constant or intermittent flow of the stream. (2474/Reso. 6188)

CHANNELIZATION: The consolidating, combining, and/or redirecting by improving the surface of a channel to permit water to move rapidly and/or directly. (2474/Reso. 6188)

COMMON OPEN SPACE: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development. It may include complementary structures and improvements. (2474/Reso. 6188)

CONCEPT PLAN: See Sketch Plan. (2474/Reso. 6188)

CONDITIONAL APPROVAL: An affirmative action by the Board or the Council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations. (2474/Reso. 6188)

CONVENTIONAL DEVELOPMENT: Development other than planned area development. (2474/Reso. 6188)

COUNCIL: The City Council of the City of Mesa. (2474/Reso. 6188)

DENSITY: A ratio expressing the number of dwelling units per acre (refer to City of Mesa Zoning Ordinance for densities permitted by zoning district). (2474/Reso. 6188)

DEPARTMENT: The Development Services Department of the City of Mesa. (2474/Reso. 6188,3766)

DESERT UPLANDS AREA: The area of Mesa, Arizona that is bounded by the Central Arizona Project Canal on the west, Meridian Road and Usery Mountain Regional Park on the east, University Drive on the south, and the Tonto National Forest boundary on the north and as depicted in Figure 36. (5376)

DESIGN REVIEW BOARD (DRB): The Design Review Board of the City of Mesa. (2474/Reso. 6188)

DESIGN STORM: The rainfall event of specific frequency and duration which produces the design flow. (2474/Reso. 6188)

DEVELOPMENT MASTER PLAN (DMP): A preliminary master plan for the development of a large or complicated land area, the platting and development of which is expected in progressive stages. (2474/Reso. 6188)

DEVELOPMENT REGULATION: Zoning, subdivision, site plan, official map, floodplain regulation, or other governmental regulation of the use and development of land. (2474/Reso. 6188)

DRAINAGE, LOCAL: Water which accumulates as a result of local storms and flows over land not included in a delineated floodplain. This shall include sheet flow and such flow as may be concentrated in local drainage systems with or without defined channels, excluding delineated floodplains. (2474/Reso. 6188)

DRAINAGE, ONE HUNDRED- (100-) YEAR STORM (PEAK DISCHARGE): Local drainage resulting from a storm which has a one-percent (1%) chance of occurring annually, based upon a "design storm" within a defined area. (2474/Reso. 6188)
DRAINAGE, ONE HUNDRED- (100-) YEAR, TWO- (2-) HOUR STORM (RETENTION/DETENTION): A storm which has one hundred- (100-) year rainfall values shown on the most current precipitation maps for the area, prepared by the National Weather Service (U.S. Weather Bureau) for the Soil Conservation Service. Two- (2-) hour values are extrapolated from twenty-four- (24-) hour and six- (6-) hour values by using the rainfall depth-duration diagram given in Weather Bureau Technical Paper No. 40. (2474/Reso. 6188)

DRAINAGE, OFF-SITE: The storm surface waters emanating from lands outside the limits of the proposed subdivision and draining through the site of the proposed subdivision. (2474/Reso. 6188)

DRAINAGE, DIRECT ON-SITE RUNOFF: That portion of the rainfall which falls within the entire limits of the proposed subdivision and which flows across the land or enters streams promptly after the rainfall. (2474/Reso. 6188)

EASEMENT: A grant by the owner of any parcel of land to a public agency, a corporation, or persons for specific uses and purposes and so designated and recorded. (2474/Reso. 6188)

EASEMENT, AERIAL: A grant by a property owner for the use of a strip of land for the purpose of extending overhead utilities or other similar purposes. (2474/Reso. 6188)

EASEMENT, AVIGATION: A grant by a property owner of an easement for avigation purposes over and across the land in connection with flights of predetermined heights above the surface to an infinite height above the same, which easement shall hold the City, public, and airfield harmless from any damage caused by noise, vibration, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operators of aircraft taking off, landing, or operating above the predetermined minimum height not including the physical impact of aircraft or parts thereof. (2474/Reso. 6188)

EASEMENT, CONTROLLED VEHICULAR ACCESS: An easement limiting vehicular access to a site from a street to those controlled access points approved by the City Council or Traffic Engineer. (2474/Reso. 6188)

EASEMENT, DRAINAGE: An area designed and used for conveyance or retention of runoff in which nothing can be placed which will impede, divert, or cause the runoff to have an adverse effect on adjoining property. (2474/Reso. 6188)

EASEMENT, PUBLIC UTILITY (PUE): An easement for overhead and underground utility facilities provided for the use of the public, including water, storm drainage, sewage, electricity and communication, owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or Utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (4570)

EASEMENT, PUBLIC UTILITY AND FACILITIES (PUFE): An easement for the installation of facilities, underground or overhead, furnished for the use of the public, including electricity, gas, steam, communication, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, street lights, flood control, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by State or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (2474,4570/Reso. 6188)

EASEMENT, USE AND BENEFIT: A grant to an adjacent lot for ingress and egress for the purpose of repair, maintenance, drainage, and improvement of any of the abutting lot owner’s property which is contiguous to the easement area. No structure and/or other permanent improvement of any nature shall be placed, maintained, or permitted to remain on or within the easement area. (2474/Reso. 6188)
EASEMENT, VEHICULAR NON-ACCESS: An easement prohibiting vehicular access from a street or between inappropriate uses (i.e., zoning district boundaries). (4233)

ELECTRIC SERVICE AREA: The area of Mesa, Arizona that receives electric utility service from the City of Mesa, commonly referred to as the City of Mesa Electric Service Area. (5376)

ENCLOSED AREA OF DWELLING UNIT: That portion of the site encompassed by the dwelling unit and all attached roofed structures, including carport and patio ramadas. (2474/Reso. 6188)

ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public improvements, prepared by a civil engineer registered in the state of Arizona, in accordance with the approved preliminary plat and in compliance with standards of design and construction approved by the City Engineering Division. (2474,4570/Reso. 6188)

ENGINEERING PROCEDURE MANUAL: Requirements formulated by the City Engineer and available from the Engineering and Building Safety Divisions for the planning and design of public improvements. (2474,4570/Reso. 6188)

EXCEPTION: Any parcel of land within the boundaries of the subdivision which is not owned by the subdivider. (2474/Reso. 6188)

EXPOSED FILL: All of the face of a fill slope resulting from development, from the toe to the top of the fill, whether the surface treatment is retaining wall, rip-rap, natural vegetation, or other treatment. (2474/Reso. 6188)

FILL: The deposit of soil, rock, or other material placed by man. (2474/Reso. 6188)

FLOOD: A general and temporary overflow of water onto normally dry land areas. (2474/Reso. 6188)

FLOOD, REGULATORY: The one hundred- (100-) year flood as determined by criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOOD, FIFTY- (50-) YEAR: A flood that has a two-percent (2%) chance of occurring annually, based upon the criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOOD, ONE HUNDRED- (100-) YEAR: A flood that has a one-percent (1%) chance of occurring annually, based upon the criteria established by the City Engineering Division. (2474,4570/Reso. 6188)

FLOODPLAIN, DELINEATED: That area delineated and mapped as a floodplain, as approved by the Board and as shown on the National Flood Insurance Program, flood insurance rate maps, and floodway maps. (2474/Reso. 6188)

FLOODPLAIN, REGULATORY: That portion of the natural water course that would be inundated by the regulatory flood and in which land use is regulated by the Floodplain Regulations. (2474/Reso. 6188)

FULL CUTOFF STREETLIGHT FIXTURE: Streetlight fixtures, with either a HPS or LED light source, where no light is emitted by the fixture above an angle of 90 degrees above nadir (no light emitted above the horizontal). (5376)

GENERAL PLAN: A comprehensive plan, or parts thereof, providing for the future growth and improvement of the City of Mesa, including the general location and coordination of streets and highways, schools and recreation areas, public building sites, and other physical development, including general land use patterns. (2474/Reso. 6188)

GRADE: The vertical difference (in feet) between two (2) points on the ground divided by the length of horizontal distance (in feet) between the same two (2) points, multiplied by one hundred (100). (Example: 2'/100 = .02 x 100 = 2% grade.) (2474/Reso. 6188)
GRADING: Any excavating, filling, or combination thereof, including the conditions resulting from any excavation or fill, involving changes to the natural drainage pattern. (2474/Reso. 6188)

GUNITE: Concrete or mortar conveyed through a hose and pneumatically projected at a high velocity onto a surface. (2474/Reso. 6188)

HPS: High Pressure Sodium. (5376)

IRRIGATION FACILITIES: Includes canals, laterals, ditches, conduits, pipes, gates, pumps, and allied equipment necessary for the supply, delivery, and drainage of irrigation water and the construction, operation, and maintenance of such. (2474/Reso. 6188)

LAND SPLIT: The division of property, the boundaries of which have been fixed by a recorded plat into two (2) parcels, or the division of improved or unimproved land into two (2) or three (3) parcels of land for the purpose of sale or lease. (2474/Reso. 6188)

LED: Light Emitting Diode. (5376)

LOT: A piece or parcel of land separated from other pieces or parcels by description, as in a subdivision, or on a record survey map or by metes and bounds for purposes of sale, lease, or separate use. (2474/Reso. 6188)

LOT, CORNER: A lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five degrees (135°). The front property line of a corner lot shall be the shorter of the two (2) lines adjacent to the streets as originally platted or laid out. Where the lines are equal, the front line shall be that line which is obviously the front by reason of the prevailing customs of the other buildings in the block. If such front is not evident, then either may be considered the front of the lot, but not both. (2474/Reso. 6188)

LOT, INTERIOR: A lot having only one (1) side abutting on a street. (2474/Reso. 6188)

LOT, KEY: An interior lot, one (1) side of which is contiguous to the rear line of a corner lot. (2474/Reso. 6188)

LOT, THROUGH: A lot abutting two (2) parallel or approximately parallel streets. (2474/Reso. 6188)

LOT, HILLSIDE: Any lot or portion of a lot where the terrain has a natural slope of fifteen percent (15%) or greater. (2474/Reso. 6188)

LOT LENGTH: (2474/Reso. 6188)

(A) If the side property lines are parallel, the length of the lot shall be determined to be the average length of the two (2) sides. (2474/Reso. 6188)

(B) If the side property lines are not parallel, then a line bisecting the angle formed by the two (2) sides between the front and the rear lot lines shall be determined to be the lot length. (2474/Reso. 6188)

LOT LINES: Those lines, either straight or curved, that define the front, rear, and sides of a lot, parcel, or tract of land. (2474/Reso. 6188)

LOT WIDTH: The width of a lot shall be: (2474/Reso. 6188)
(A) If the side property lines are parallel, the distance between these side lines. (2474/Reso. 6188)

(B) If the side property lines are not parallel, the width of the lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the required front or rear building setback line, whichever is the lesser. The axis of a lot shall be a line generally perpendicular to the fronting street which divides the lot into two (2) equal parts. (2474/Reso. 6188)

MAG: Maricopa Association of Governments; voluntary association of local governments formed to address a variety of issues in Maricopa County, including air quality, transportation, and development standards, among others. (2474/Reso. 6188)

MAXIMUM PILOT LUMEN LEVEL: The illumination level required by Roadway Lighting ANSI/IES RP-8. (5376)

MINIMUM PILOT LUMEN LEVEL: A level not less than thirty-three (33) percent of the illumination levels required by Roadway Lighting ANSI/IES RP-8. (5376, 5473)

MOBILE HOME SUBDIVISION: A residential subdivision designed and approved in accordance with City regulations, together with certain accessory buildings and uses providing for the enjoyment and benefit of the residents of the subdivision, in which individual ownership of a lot is permitted for the placement of a mobile home for dwelling or sleeping purposes. (2474/Reso. 6188)

NATURAL AREA OPEN SPACE (NAOS): Within the Desert Uplands Area, that open space which consists of undisturbed natural area open space and revegetated open space. NAOS shall contain no more than thirty percent (30%) revegetated open space. NAOS shall be located within common tracts controlled by the homeowners' association, land trust, or similar entity created to preserve the NAOS; or may be located on-lot within designated easements. NAOS shall be identified on the subdivision plat and restricted as necessary to preclude future development. Trails or paths for nonmotorized use, such as hiking, equestrian, or mountain biking are permitted. (4233)

NEIGHBORHOOD PLAN: A sketch plan designed by the Department to guide the platting of remaining vacant parcels in a partially built-up neighborhood so as to make reasonable use of all land, coordinate street patterns, and achieve the best possible land use relationships. (2474/Reso. 6188)

OPEN SPACE: Any parcel or area of land or water unimproved or improved and set aside, dedicated, designated, or reserved for the public or private use and enjoyment of owners and occupants of land adjoining or neighboring such open space. (2474/Reso. 6188)

OWNER: The person or persons holding title by deed to land, holding title as vendees under land contract, or holding any other title of record. (2474/Reso. 6188)

PARK: An area dedicated to recreational use and generally characterized by its natural, historic, and landscape features. It is used for both passive and active forms of recreation and is designed to serve the residents and visitors of a neighborhood, community, or city. (2474/Reso. 6188)

PARKWAY LANDSCAPING: Landscaping located in the public right-of-way between the street paving and the right-of-way limit line. (2474/Reso. 6188)

PEAK: A point of maximum elevation on a major or minor hill as indicated by the USGS topographic maps. (2474/Reso. 6188)
PEDESTRIAN/BICYCLE WAY: A public way dedicated entirely through a block from street to street and/or providing access to a school, park, recreation area, shopping center, etc. (2474/Reso. 6188)

PERCENT SLOPE: See Grade. (2474/Reso. 6188)

PILOT STUDY AREAS: The Desert Uplands Area and the Electric Service Area. (5376)

PILOT STUDY PERIOD: from June 1, 2017 to December 31, 2019. (5376)

PLANNED AREA DEVELOPMENT: An area of a minimum contiguous size, as specified by ordinance, to be planned, developed, operated, and maintained as a single entity containing one (1) or more structures to accommodate commercial, office, or residential uses or combination thereof and appurtenant common areas and other uses incidental to the predominant uses. (2474/Reso. 6188)

PLAT: A map of a subdivision. (2474/Reso. 6188)

PLAT, PRELIMINARY: A preliminary map, including supporting data, indicating a proposed subdivision development, prepared in accordance with Section 9-6-2 of these regulations. (2474/Reso. 6188)

PLAT, FINAL: A final map of all or part of a subdivision providing substantial conformance to an approved preliminary plat, prepared by a registered land surveyor in accordance with Section 9-6-2 of these regulations. (2474/Reso. 6188)

PLAT, RECORDED: A final plat bearing all of the certificates of approval required by and duly recorded in the Maricopa County Recorder’s Office. (2474/Reso. 6188)

PRELIMINARY PLAT APPROVAL: Approval of the preliminary plat by the Board as evidenced in its meeting minutes; constitutes authorization to proceed with the technical review stage of land subdivision. (2474/Reso. 6188)

PRESUBMITTAL CONFERENCE: An initial meeting between subdividers and municipal representatives which affords subdividers the opportunity to present their proposals informally. (4233)

PUBLIC IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, and construction of certain public improvements in the City of Mesa, formulated by the City Engineer, the County Health Department, and other City departments. (2474/Reso. 6188)

PUBLIC OPEN SPACE: An open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, state or county agency, or other public body for recreational or conservational uses. (2474/Reso. 6188)

RETAINING WALL: A wall or terraced combination of walls used solely to retain more than eighteen inches (18") of earth, but not to support or to provide footing for a structure. (2474/Reso. 6188)

RETENTION BASIN: A water collection facility designed to collect storm water runoff and release it at a controlled rate after the storm. A retention basin and park may be joined to serve both recreational needs and as a water collection facility. (2474/Reso. 6188)
REVEGETATED OPEN SPACE: Within the Desert Uplands Area, open space disturbed either before or during development that has been revegetated in the following manner: revegetated with plants from the Preferred Desert Uplands Plant List; revegetated with plants that are the same species mix as the adjacent undisturbed area; and revegetated with plants that are at least equal in size and sufficient in number to be at least the same density as the adjacent undisturbed area. The developer should create provisions for maintaining healthy plants until they are established and shall replace any revegetated plants that die within one (1) year of planting. Subdivision improvements such as storm water retention and detention basins, drainage structures, and utility corridors, may be included in this category if revegetated in the approved manner. Excluded from the revegetated open space are those areas revegetated for the utility exception 9-6-5(H)1(e), driveway exception 9-6-5(H)1(d), and the work access areas 9-6-5(H)1(b). (4233)

REVERSE FRONTAGE: A lot having frontage on two (2) nonintersecting streets. The front of the lot shall be considered facing the interior street. (2474/Reso. 6188)

RIDGE: The defined topographical line connecting a series of major and minor hills, peaks, or mountains. (2474/Reso. 6188)

RIDGE LINE: A ground line located at the highest elevation of the ridge running parallel to the long axis of the ridge. (2474/Reso. 6188)

RIGHT-OF-WAY (ROW), PUBLIC: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public rights-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state or municipal regulations. (2474,4570/Reso. 6188)

RIGHT-OF-WAY IMPROVEMENTS: Construction in the public right-of-way or in public easements, including, but not limited to: streets, alleys, medians, bicycle lanes, curbs and gutters, stormwater facilities, water and sewer lines and services, fire hydrants, gas lines and services, sidewalks, driveways, streetlights, traffic control devices, street name signs, landscaping, underground and overhead utilities as required by the City Engineer. Right-of-way improvements do not include right-of-way land dedications. (4570)

SECRETARY OF THE BOARD: The Secretary of the Board is the Planning Director or his designated representative. (2474/Reso. 6188)

SKETCH PLAN: A preliminary presentation and attendant documentation of a proposed subdivision or site plan of sufficient accuracy to be used for the purpose of discussion and classification. (2474/Reso. 6188)

SLOPE: See Grade. (2474/Reso. 6188)

STORM WATER DETENTION: Provision for storage of storm water runoff and the controlled release of such runoff during and after a flood or storm. (2474/Reso. 6188)
STORM WATER RETENTION: Provision for storage of storm water runoff during and after a flood or storm and the controlled release of such runoff after a flood or storm. (2474/Reso. 6188)

STREET: Any public street, avenue, boulevard, road, lane, parkway, place, viaduct, easement for access, or other way which is an existing state, county, or municipal roadway; or a street or way shown in a plat heretofore approved pursuant to law or approved by official action; or a street or way in a plat duly filed and recorded in the County Recorder’s Office. A street includes the land between the right-of-way lines, whether improved or unimproved, and may be comprised of pavement shoulders, curbs, gutter, sidewalks, parking areas, and landscape areas. (2474,4570/Reso. 6188)

STREET, ARTERIAL: A general term including section line and major streets and state or county highways providing a system for citywide through traffic movement. (2474/Reso. 6188)

STREET, COLLECTOR: Provides the traffic movement within neighborhoods of the City, between major streets and local streets, and for direct access to abutting property. (2474/Reso. 6188)

STREET, CUL-DE-SAC: A short local street permanently terminated in a vehicular turnaround; provides direct access to a limited number of adjacent properties. (2474/Reso. 6188)

STREET, FRONTAGE: A local street parallel and adjacent to an arterial route which intercepts minor residential streets and controls access to an arterial route. (2474/Reso. 6188)

STREET, HALF: Any street improved to a width of less than thirty-four feet (34’) or with concrete curb and sidewalk on only one side of said street. (2474/Reso. 6188)

STREET, LOCAL: Provides for direct access to residential, commercial, industrial, or other abutting land; primarily for local traffic movements with connections to collector and/or major streets. (2474/Reso. 6188)

STREETLIGHT LUMEN LEVEL: Standard lumen lighting levels of a streetlight required by Roadway Lighting ANSI/IES RP-8. (5376)

SUBDIVIDER: A subdivider shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust, or other legal entity that files the application and initiates proceedings for the subdivision of land in accordance with the provisions of this regulation; said subdivider need not be the owner of the property as defined by this ordinance. (2474/Reso. 6188)

SUBDIVISION: Subdivision or subdivided land means improved or unimproved land or lands divided or proposed to be divided for the purpose of financing or sale, whether immediate or future, into four (4) or more lots, tracts, or parcels of land; or if a new public street is involved, any such property which is divided into two (2) or more lots, tracts, or parcels of land; or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, townhouse, or similar project containing four (4) or more parcels in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon; however, plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided. (2474/Reso. 6188)

TECHNICAL REVIEW: The detailed review of proposed subdivision plats for compliance with City codes, ordinances, engineering development standards, or conditions of approval by the Board, City Council, or Design Review Board. Other utilities and public agencies are invited to review the plat as it relates to their conditions of service or need. (2474/Reso. 6188)
TECHNICAL REVIEW COMMITTEE: The selected group of technically qualified individuals made up of City staff and other public agency personnel responsible to insure compliance with ordinances, codes, regulations, etc. as they relate to the subdivision process. (2474/Reso. 6188)

UNDISTURBED NATURAL AREA OPEN SPACE: Within the Desert Uplands Area, that open space that is completely undisturbed from its original natural state by any residential development on the site. Any pre-existing damage within such areas, such as old jeep roads, off-road vehicle trails, or dumping sites, shall be restored with plants from the Preferred Desert Uplands Plant List that are the same species mix, that are at least equal in size, and that are sufficient in number to be the same density as the adjacent undisturbed area. Natural features, such as washes, significant rock outcroppings, and concentrations of native vegetation, shall be maintained in their natural state. Trails or paths for nonmotorized use, such as hiking, equestrian, or mountain biking, are permitted. Undisturbed natural areas shall constitute a minimum of seventy percent (70%) of the required natural area open space. This minimum applies to both common tract and on-lot natural area open space. (4233)

USABLE LOT AREA: That portion of a lot usable for or adaptable to the normal uses made of residential property, excluding any areas which may be covered by water, excessively steep, or included in certain types of easements. (2474/Reso. 6188)


YARD: A minimum required open area adjacent to a lot line to be free from any structure, except as specified in Chapter 13 of the City of Mesa Zoning Ordinance. (2474/Reso. 6188)

YARD, FRONT: A yard extending across the front of a lot, parcel, or tract. (2474/Reso. 6188)

YARD, REAR: A yard extending across the rear of a lot, parcel, or tract. (2474/Reso. 6188)

YARD, SIDE: Any yard that lies between a front and a rear yard. (2474/Reso. 6188)

9-6-2: PLATTING PROCEDURES AND REQUIREMENTS:

(A) Outline of Procedures and Requirements. The preparation, submittal, review, and approval of all subdivision plats located inside the limits of the City of Mesa shall proceed through the following progressive stages: (2474/Reso. 6188)

- Stage I - Preapplication Conference (2474/Reso. 6188)
- Stage II - Preliminary Plat Approval (2474/Reso. 6188)
- Stage III - Subdivision Technical Review (2474/Reso. 6188)
- Stage IV - Final Plat (2474/Reso. 6188)

This procedure may be modified by the Planning Director based on unique circumstances. (2474/Reso. 6188)

(B) Stage I - Preapplication Conference. (2474/Reso. 6188)
1. Actions by the Subdivider. (2474,4570/Reso. 6188)

(a) The subdivider shall meet with Development Services Department staff and submit five (5) copies of the proposed "sketch plan" with general information regarding land use, street and lot arrangement, tentative lot sizes, and such additional information as may be required by staff in order to complete the submittal. (2474,4570/Reso. 6188)

(b) Tentative proposals shall be based on information from the Engineering Division or other appropriate agencies regarding water supply, sewage disposal, drainage, retention, and street improvements. Where methods may be considered unconventional or private, these may be indicated by notes. (2474,4570/Reso. 6188)

2. Actions by the Department. The Department shall discuss the proposal with the subdivider in general terms, advising the subdivider of the procedural steps, design and improvement standards, and general plat requirements. Depending on the scope of the proposed development, the Department shall distribute the five (5) "sketch plans" to the following agencies, requesting that the following investigations be made: (2474/Reso. 6188)

(a) Mesa Development Services Department. To check the existing zoning of the tract and to make recommendations if a zoning change is necessary or desirable; to review the proposal and its relationship to adjacent land uses; to determine the need for the preparation and review of a Development Master Plan (DMP) prior to the subsequent consideration of a preliminary plat; and to advise the subdivider if a Development Master Plan is required as per Mesa's Zoning Ordinance. (2474/Reso. 6188,3766)

(b) Mesa Community Services Department. To determine the degree of parks and other public open space requirements for the area; to then determine what space needs shall be reserved or set aside with any special requirements for such site; to determine how such space needs are to be acquired; and to request a meeting with the applicant to resolve potential acquisition. (2474,4570/Reso. 6188,3766)

(c) Public School District. To determine the degree of need for school sites for the area; to determine site size and location; and to request a meeting with the applicant to resolve potential acquisition. (2474/Reso. 6188)

(d) Mesa Engineering Division. To review relationship of property to major streets, utility systems, and any unusual characteristics such as topography, flooding, landscaping, etc. To determine street width and right-of-way requirements, driveway relationships, minimum curve requirements, and other traffic-control related characteristics. (2474/Reso. 6188)

3. Development Master Plan. The Department shall use the following guidelines in establishing the need for a Development Master Plan (DMP): Whether the tract is sufficiently large to comprise an entire neighborhood; whether the tract initially proposed for platting is only a portion of a larger landholding of the subdivider; or whether the tract is a part of a larger land area, the development of which is complicated by unusual topographic, utility, land use, land ownership, or other conditions. The entire land area considered in determining the need for a Development Master Plan need not be under the subdivider's control or ownership (see Figure 2). (2474/Reso. 6188)
(a) Preparation. The DMP shall be prepared to a degree of scale and accuracy commensurate with its purpose and shall include: (2474/Reso. 6188)

i. General street pattern with particular attention to collector streets and future circulation throughout the neighborhood and adjacent areas. (2474/Reso. 6188)

ii. General location and size of school sites, parks, or other public areas. (2474/Reso. 6188)

iii. Location and sizes of various proposed land uses. (2474/Reso. 6188)

iv. Methods proposed for sewage disposal, water supply, and storm drainage. (2474/Reso. 6188)

(b) Approval. Upon acceptance of the general design approach by the Department, the DMP is submitted to the Board and City Council for their consideration. If general approval is given, notice to that effect shall be recorded in the minutes of both bodies and a copy of said decision transmitted to the subdivider for his records. If development is to take place in several phases, the DMP shall be submitted as supporting data for each part. The DMP shall be kept up to date and amended by the subdivider to reflect the Board's approvals or modifications as they occur. (2474/Reso. 6188)

(C) Stage II - Preliminary Plat Approval. The preliminary plat stage of land subdivision involves detailed subdivision planning, including the submittal, review, and approval of the preliminary plat. The subdivider shall provide the Department with all information essential to determine the character and general acceptability of the proposed development. (2474/Reso. 6188)

1. Zoning. The subdivision shall be designed to meet the specific requirements of the zoning district within which it is located. However, in the event that rezoning is deemed necessary, such as in the case of a PAD or a Specific Site Plan approval for office, commercial, or industrial developments, the rezoning or Specific Site Plan approval shall be initiated by the property owner or his authorized agent and heard and considered by the Board, the Design Review Board (DRB), if applicable, and City Council. In any event, any change in zoning or site plan approval required in relation to the preliminary plat shall have been approved by the Board prior to approval of the preliminary plat by the Board. However, the zoning request and the request for preliminary plat approval may be heard simultaneously. The Department shall not proceed with processing of the preliminary plat for technical review prior to Board action on the preliminary plat unless approved by the Planning Director. (2474/Reso. 6188)

2. Sanitary Sewerage and Water Supply. As a prerequisite of preliminary plat approval, the subdivider shall review tentative concepts with the County Health Department and the City Engineering Division for general approval of the preliminary design to be used. (2474,4570/Reso. 6188)

3. Preliminary Plat Submission. (2474/Reso. 6188)

(a) Two (2) full-sized, twenty-four-inch by thirty-six-inch (24" x 36") blue or black line paper prints of the preliminary plat, one (1) eight and one-half-inch by eleven-inch (8.5" x 11") transparency, and one (1) eight and one-half-inch by eleven-inch (8.5" x 11") PMT shall be filed with the Department not less than twenty-four (24) days prior to the Board meeting at which the plat will be considered. (Note: The submittal requirements given herein pertain only to those plats of a conventional nature for which rezoning is not a condition of approval. Consult with the Department staff for complete submittal time requirements and procedures for those subdivisions involving rezoning, PADS, Specific Site Plans, and DMPs.) (2474/Reso. 6188)
(b) The submittal shall be checked by the Department for content. If incomplete, the subdivider will be notified and given the opportunity to comply within five (5) days. If compliance has not been met, the submittal is rejected. (2474/Reso. 6188)

(c) Filing Fee. The filing fee for plats not involving rezoning, site plan approval, site plan modification, and DMP approval. Refer to Chapter 18 of the Zoning Ordinance (Title 11 of the Mesa City Code) for fees involving these processes. (2474,4497,4570/Reso.6188,3818, 4294)

4. Preliminary Plat Approval. (2474/Reso. 6188)

(a) The Board shall consider the preliminary plat and the Department recommendations. If satisfied that all objectives and requirements of this Section have been met, the Board may approve the preliminary plat and the Secretary of the Board shall stamp a notation of approval on the copy retained in the permanent Board file. (2474/Reso. 6188)

(b) If the plat is generally acceptable but requires minor revision before proceeding with the technical review step, the Board may grant conditional approval, and the required revisions will be noted in the minutes of the meeting. At the direction of the Board, the plat may be given approval subject to the revisions in accordance with the stated conditions and reviewed by the Department. (2474/Reso. 6188)

(c) If the Board finds that the plat requires major revision or if a plat is rejected, the application for preliminary plat approval may be continued pending revision or resubmittal for the same tract or any part thereof and shall follow the aforementioned procedure. (2474/Reso. 6188)

5. Significance of Preliminary Approval. Preliminary approval constitutes authorization for the subdivider to proceed with submittal to the Technical Review Committee, prior to preparation of the final plat and the engineering plans and specifications for public improvements. Preliminary approval is based on the following terms: (2474/Reso. 6188)

(a) Subject to the Basic Approval. The basic conditions under which preliminary approval of the Preliminary Plat is granted will not be substantially changed prior to the expiration date. (2474/Reso. 6188)

(b) Twelve- (12-) Month Approval with Extensions. Approval is valid for a period of twelve (12) months from the date of Board approval. Requests can be made for one- (1-) year extensions up to a total of not more than three (3) years from the original date of approval. Extensions of the preliminary plat approval may be granted by the Board upon receipt of a letter from the subdivider prior to the expiration date. (2474/Reso. 6188)

(c) Not Authority to Record. Preliminary approval, in itself, does not assure final approval of the plat nor continuation of the existing zoning requirements for the tract or its environs, nor does it constitute authorization to record the plat. (2474/Reso. 6188)
(D) Stage III - Subdivision Technical Review. (2474/Reso. 6188)

1. Submittal Requirements. The following information is required as part of the technical review submittal and shall be shown graphically, by note or by letter, and may comprise several sheets showing various elements of the required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, adjusted to produce an overall drawing of twenty-four inches by thirty-six inches (24" x 36") and in conformance with requirements contained in the Engineering Procedure Manual. (2474/Reso. 6188)

   (a) The applicant may use more than one (1) sheet if necessary, using one (1) of the standard engineering scales. In cases of multiple residence PADs, the scale shall be not less than one inch (1") = forty feet (40'), providing sufficient detail to illustrate the subdivider’s intent. (2474/Reso. 6188)

   (b) Required copies of the approved site plan and elevations accompanying the submittal shall also comply with the maximum sheet size of twenty-four inches by thirty-six inches (24" x 36"). (2474/Reso. 6188)

2. Twenty (20) copies/sets of the approved preliminary plat are required. In cases of PADs (residential, office, commercial, or industrial) or whenever a DMP or site plan has been reviewed and approved by the Board, the Design Review Board (DRB) and City Council, twenty (20) copies of the approved site plan, typical floor plans, and elevations shall be submitted. (2474/Reso. 6188)

3. Identification and Descriptive Data. (2474/Reso. 6188)

   (a) The proposed subdivision name shall be clearly indicated, including the location by section, township, and range with reference by dimension and bearing to a quarter section corner. The proposed subdivision name shall not duplicate any other recorded plat name within Maricopa County. The subdivision name should be carefully considered as it will become a part of the public record once a preliminary plat has been submitted. (2474/Reso. 6188)

   (b) Subdivider/developer’s firm name, address, phone-number, and name of person to contact. (2474/Reso. 6188)

   (c) Engineering, surveying, land planning, or architectural firm name, address, and phone-number and the name and title of person to contact. (2474/Reso. 6188)

   (d) Scale, north arrow (pointing up or to the right), and date of preparation, including any subsequent revision dates. (2474/Reso. 6188)

   (e) Location map with reference to main arterial streets. (2474/Reso. 6188)

4. Existing Conditions and Data. All subdivision submittals shall provide the following existing information by graphic representation or note: (2474/Reso. 6188)

   (a) Topography by contours and spot elevations as related to U.S.C.&G.S. datum or approved equal. All datum shall be referenced to City datum. Contour intervals shall be shown on the same map as the subdivision layout and shall adequately reflect character and drainage patterns of the land. Spot elevations properly referenced to the above datum may suffice for sites of less than five (5) acres. (2474/Reso. 6188)
(b) Location of fences, existing structures, wells, wind machines, ditches (open or covered), washes, trees, and all other features or characteristics that could have a bearing on the review. (2474/Reso. 6188)

(c) Location, frequency, and extent of areas subject to flooding or storm runoff must be defined. (2474/Reso. 6188)

(d) Location, right-of-way, and names of all platted streets, railroads, and utility rights-of-way of public record which may exist around the perimeter of the site boundaries, through or across it. Show any permanent structures that are to remain, including water wells and municipal or private utility lines within or adjacent to the tract or subdivision. Show all driveways, streets, and median openings within three hundred twenty-five feet (325') of any proposed driveway or street intersection on the opposite side of the perimeter streets. (2474/Reso. 6188)

(e) Name, book, and page number of any recorded subdivision adjacent to or having common boundaries with this plat. (2474/Reso. 6188)

(f) Base zone of the subject and adjacent tract, the zoning case number (e.g., Z90-1), the Design Review Board case number, and any variances that may have been approved by the Board. (2474/Reso. 6188)

(g) Gross acreage of subject tract. Do not include previously dedicated rights-of-way in this figure. (2474/Reso. 6188)

(h) Boundaries and dimensions of the tract to be subdivided shall be fully dimensioned. (2474/Reso. 6188)

5. Proposed Conditions and Data. All subdivision submittals shall provide the following proposed information by graphic representation or note: (2474/Reso. 6188)

(a) Layout of proposed streets and alleys, giving widths, preliminary curve data, curve lengths, and proposed street names based on existing projected alignments wherever possible. (2474/Reso. 6188)

(b) Typical lot dimensions, dimensions of all corner lots, lots on curvilinear sections of streets, and all lots where the number of sides exceed four (4). Number each lot individually and give the total number of lots. Where plats will consist of a number of units/phases, utilizing the same subdivision name, the lot numbering shall be consecutive through the total number of lots in all units. (2474/Reso. 6188)

(c) Designation of all land to be dedicated or reserved for a park, retention basin, school, well site, substation, sewer lift station, reservoir, water pump station, or other public or private uses. (2474/Reso. 6188)

(d) If multiple uses are planned (multiple residential, commercial, industrial, office), such areas shall be clearly designated, together with existing zones and proposed zoning changes, if any. (2474/Reso. 6188)

(e) Building Setback Lines for a Typical Lot. Where there are lots with more than four (4) sides or whose shape may be considered atypical, show all setbacks. (2474/Reso. 6188)


(a) Show method of sewage disposal (a statement as to the type of facilities shall appear on the preliminary plat). Also show the preliminary sewer layout indicating line sizes with invert elevations, manhole locations, cleanouts, slopes, and depths. (2474/Reso. 6188)
(b) The preliminary layout of the water system shall be shown, indicating fire hydrants, valves, meter vaults, water line sizes, and locations. (2474/Reso. 6188)

7. Proposed Drainage and Grading Concepts. (2474/Reso. 6188)

(a) Preliminary calculations and layout of the proposed storm drainage system based on a one-hundred (100-) year storm of two (2) hours' duration. Design shall be such that water from streets, lots, and alleys shall be retained on-site until the peak of the storm passes. Two (2) sets of calculations shall be submitted at the time of technical review for analysis by the Building Safety Division and review by the Flood Control District. Calculations shall be typed on separate letter-sized sheets with any necessary maps attached. (2474,4570/Reso. 6188)

(b) The site cannot be cut or filled in excess of two feet (2') adjacent to any street, canal, or adjoining site, etc. unless otherwise approved. (2474/Reso. 6188)

8. Filing Fee. The subdivider shall, at the time of filing, pay to the Department a filing fee as prescribed in the most recent Mesa Schedule of Fees and Charges. The filing fee shall also cover filing of an amended or revised preliminary plat handled as the same case. If preliminary plat approval expires prior to application for final approval, the plat shall be resubmitted for preliminary plat approval as a new case and the subdivider shall be required to pay a new fee. (3911,4076,4294,4497,4570)

(E) Stage IV - Final Plat. This stage includes the final design of the subdivision, engineering of public improvements, and submittal by the subdivider of improvement plans to the City Engineer or the Building Safety Division for approval, including the submittal of the final plat for review and action by the City Council. (2474,4570/Reso. 6188)

1. Final Plat Preparation. The final plat shall be prepared in accordance with requirements set forth in this Section and shall conform to the approved preliminary plat. (2474/Reso. 6188)

2. Zoning. Zoning of the tract shall permit the proposed use. Any rezoning necessary shall have been adopted by the Council prior to filing of the final plat. (2474/Reso. 6188)

3. Prefinal Review. The subdivider shall file with the Development Services Department two (2) full-size twenty-four-inch by thirty-six-inch (24" x 36") blue or black line copies of the final plat for conventional subdivisions and three (3) copies for PADs and commercial, office, and industrial centers, together with a letter of transmittal, indicating "prefinal review requested." This review can take place anytime following the technical review stage. The Department, upon receipt of the prefinal plat submittal, shall review the plat for conformity to the approved preliminary plat, transferring the second copy to the Building Safety Division for their review and approval for conformance to requirements of the Subdivision Regulations, Technical Review Committee requirements, and the engineering plans. (2474,4570/Reso. 6188,3766)
(a) Discrepancies, errors, and omissions are noted on the prefinal copies and returned to the subdivider or his representative for correction. When corrections are minor, the Department shall give notification of the next City Council meeting date and its associated cutoff date. When corrections or discrepancies are of major importance or of a significant nature, the Department staff may require a second review prior to scheduling the plat for Council action. (2474/Reso. 6188)

(b) The subdivider shall make all required corrections prior to submitting for Council action. The submittal shall include one (1) eight and one-half-inch by eleven-inch (8.5" x 11") PMT of all sheets in the set and one (1) full-sized, twenty-four-inch by thirty-six-inch (24" x 36") set of blue or black line paper prints to the Department, along with a letter of transmittal requesting to be scheduled for Council approval. (2474/Reso. 6188)

(F) Information Required for Final Plat Submittal. (2474/Reso. 6188)

1. Method and Medium of Presentation. The final plat shall be drawn in ink on linen, polyester ("mylar"), or other approved material, measuring twenty-four inches by thirty-six inches (24" x 36") with a left-hand margin of two inches (2") and be drawn to an accurate engineering scale from an accurate survey. In no case shall the scale exceed two hundred feet (200') to the inch. (2474/Reso. 6188)

2. Identification Data Required. (2474/Reso. 6188)

   (a) A title which includes the name of the subdivision and its location by number of section, township, range, and county. (2474/Reso. 6188)

   (b) Name, address, and registration number of the seal of the registered land surveyor preparing the plat. (2474/Reso. 6188)

   (c) Scale, north arrow, and date of plat preparation. (2474/Reso. 6188)

3. Survey Data Required. (2474/Reso. 6188)

   (a) Boundaries of the tract to be subdivided shall be fully balanced and closed, showing all bearings, distances, and mathematical calculations, determined by an accurate survey in the field. The surveyor/engineer of record shall also provide a copy of the computer closure, properly stamped and signed showing registration number. All dimensions shall be expressed in feet and decimals thereof. (2474/Reso. 6188)

   (b) Any excepted parcel(s) within the plat boundaries shall show all bearings and distances, determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof. (2474/Reso. 6188)

   (c) Location and description of cardinal points to which all dimensions, angles, bearings, and similar data on the plat shall be referenced. Each of two (2) corners of the subdivision traverse shall be tied by course and distance to separate section or quarter section corners. (2474/Reso. 6188)

   (d) Location of all physical encroachments upon the boundaries or the tract. (2474/Reso. 6188)
4. Descriptive Data Required. (2474/Reso. 6188)

(a) Name, right-of-way lines, courses, lengths, and width of all public streets, alleys, pedestrian ways, and utility easements; radii, points of tangency, curve lengths, and central angles of all curvilinear streets, alleys, and intersection corners. (2474/Reso. 6188)

(b) All drainageways, earth fissures, or other natural features shall be shown on the plat. The rights-of-way of all major drainageways shall be dedicated drainage easements or rights-of-way as determined by the Engineering Division. (2474,4570/Reso. 6188)

(c) All easements for right-of-way provided for public services or utilities and any limitations of the easements. The following notations shall be placed on all final plats: "Construction within easements, except by public agencies and utility companies, shall be limited to utilities and wood, wire, or removable section-type fencing." (2474/Reso. 6188)

(d) Location, dimensions, and square footage of all lots. (2474/Reso. 6188)

   i. All residential lots shall be numbered by consecutive numbers throughout the plat. "Exceptions," "tracts," and "common open space" shall be so designated, lettered, or named and clearly dimensioned. Ownership and maintenance responsibility for common open space areas shall be indicated on the plat. (2474/Reso. 6188)

   ii. Location, dimensions, bearings, radii, arcs, and central angles of all sites to be dedicated to the City with the use clearly indicated. (2474/Reso. 6188)

   iii. Location of all adjoining subdivisions with date, book, and page number of recordation noted, or if unrecorded or unsubdivided, so noted. (2474/Reso. 6188)

   iv. Any deed restrictions or restrictive covenants required or to be imposed upon the plat or any part or parts thereof pertaining to the intended use of the land shall be submitted as a part of the total recording submittal. (2474/Reso. 6188)

5. Dedication and Acknowledgment. (2474/Reso. 6188)

(a) Where rights-of-way are required to be dedicated under the provisions of Section 9-8-3(D), they shall be made prior to the issuance of a building permit or rights-of-way permit or pursuant to the recording of a subdivision plat. (3105)
(b) Dedication. Statement of dedication of all streets, alleys, drainage retention basins and drainage ways, pedestrian/bicycle ways, and easements for public use, including sanitation, fire, and other emergency-related vehicles, executed by the person holding title of record, by persons holding titles as vendees under land contract, by spouse of said parties, lienholders, and all other parties having an interest in the property. If lands dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall include a written location by section, township, and range of the tract. If the plat contains private streets, the public easement which shall be reserved shall include the right to install and maintain utilities in the private street, including refuse collections, fire, and other emergency services. (2474/Reso. 6188,3105)

(c) Acknowledgment of Dedication. Execution of dedication acknowledged and certified by a notary public. (2474/Reso. 6188,3105)

6. Required Certification. (2474/Reso. 6188)

(a) Certification by the registered land surveyor preparing the plat that the plat is correct and accurate and that the monuments described in it have either been set or located as described. All maps shall contain the seal of a registered land surveyor, as per Arizona Revised Statutes (ARS). (2474/Reso. 6188)

(b) Certification by the City Engineer of plat approval and that the plat lies within the domestic water service area of the City of Mesa, designated as having an assured water supply in accordance with Arizona Revised Statutes, and that all engineering conditions and requirements have been complied with. In cases of private water companies, the owner of the private water company shall sign the assured water supply statement. (2474/Reso. 6188)

(c) Certification by the City Clerk of the date the map was approved by the Council. When the certificate of approval by the Council has been transcribed on the plat, the Engineering Department shall retain the recording copy until the City Engineer certifies that the subdivision has an assured water supply; has been staked; that the engineering plans have been approved; that computer closure of the plat has been received; for residential subdivisions that the off-site letter of assurance or such other security as may be appropriate, along with the Engineer’s estimated cost of said improvements, has been received; and that any drainage or other restrictive covenants have been signed, notarized, and received from the subdivider. (2474,2890,4570)

(d) The City shall then cause the final plat to be recorded in the office of the County Recorder. (2474/Reso. 6188)

(e) Certificate of recordation by the County Recorder is caused to be placed on the recording copies and filed in the office of the County Recorder. (Copies with book and page number can be requested by the subdivider for the County’s standard fee.) (2474/Reso. 6188)

7. Applications for preliminary plats (Subdivision Technical Review) and final plats shall be made in the office of the Development Services Department on a form provided therefore and shall be accompanied by a fee as prescribed in the most recent Mesa Schedule of Fees and Charges. (2765,3766,4570)

The filing fee shall also cover filing of an amended or revised preliminary plat handled as the same case. If preliminary plat approval expires prior to application for final approval, the plat shall be resubmitted for preliminary plat approval as a new case and the subdivider shall be required to pay a new fee. (2765,3766)
9-6-3: SUBDIVISION DESIGN PRINCIPLES AND STANDARDS:

(A) Introduction. Every subdivision shall conform to the requirements and objectives of the General Plan, to the Zoning Ordinance, to other ordinances and regulations of the City, to the Arizona Revised Statutes, and to the Engineering Procedure Manual. (2474/Reso. 6188)

1. Where the tract to be subdivided contains all or any part of the site of a park, school, flood control facility, or other public area as shown on the General Plan or as recommended by the Board, such site should be dedicated to the City or reserved for acquisition by the City within a specified period of time. An agreement should be reached between the subdivider and the appropriate public agency regarding time, method, and cost of such acquisition. (2474/Reso. 6188)

2. Land which is subject to periodic flooding, land which cannot be properly drained, or other land which, in the opinion of the Board, is unsuitable for residential use shall not be subdivided; except that the Board may approve subdivision of such land upon receipt of evidence from the Maricopa County Flood Control District, Maricopa County Health Department and/or the City Engineer that the construction of specific improvements can be expected to render the land suitable; thereafter, construction upon such land shall be prohibited until the specified improvements have been planned and construction guaranteed. (2474,4570/Reso. 6188)

3. Subdivisions shall conform to the requirements of dedications as set forth in 9-8-3(F) rights-of-way dedication table of the Mesa City Code. (4570)

(B) Street Location and Arrangement. (2474/Reso. 6188)

1. Street layout shall provide for the continuation of such streets as the Department may designate. (2474/Reso. 6188)

2. Whenever a tract to be subdivided is located within an area for which a "neighborhood plan" has been approved, the boundaries of the subdivision shall be adjusted, where possible, to avoid the necessity for half-streets while maintaining substantial conformance to said plan. (2474/Reso. 6188)

3. Certain proposed streets, as designated by the Department, shall be extended to the tract boundary to provide future connection with adjoining unplatted lands. (2474/Reso. 6188)

4. Local streets shall be so arranged as to discourage their use by through traffic. (2474/Reso. 6188)

5. Where a proposed subdivision abuts or contains an existing or proposed arterial route, freeway, or expressway, the Board may require frontage streets or reverse frontage with nonaccess easements along the arterial route, freeway, or expressway or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high-volume traffic and to preserve the traffic function of the arterial route, freeway, or expressway. (2474/Reso. 6188)

6. Where a subdivision abuts or contains the right-of-way of a railroad, a limited access highway, or an irrigation canal or abuts a commercial or industrial land use, the subdivider may be required to locate a street approximately parallel to and on each side of such right-of-way at a distance suitable for appropriate use of the intervening land. Such distance shall be determined with due regard for approach grades, drainage, bridges, or future grade separations. (2474/Reso. 6188)
7. Streets shall be so arranged in relation to existing topography as to produce desirable lots of maximum utility, streets of reasonable gradient, and the facilitation of adequate drainage. (2474/Reso. 6188)

8. Alleys are not required in residential subdivisions, except that the Board may require that they be dedicated in certain situations to complete existing patterns or to serve as secondary access to adjacent properties. Alleys may be required in commercial and industrial subdivisions as approved by the Board. (2474/Reso. 6188)

9. Half-streets shall be avoided except where necessary to provide right-of-way required to complete a street pattern already begun. Where it is necessary to develop a half-street, additional right-of-way and street improvements may be required. Where there exists a platted half-street abutting the tract to be subdivided, the remaining half shall be platted within the tract. (2474/Reso. 6188)

10. Where private streets are approved, statements shall be contained on the plat and in both the deed restrictions and the homeowners' association by-laws that those streets are declared private, subject to an easement authorizing use by emergency and public service vehicles, and remain the permanent responsibility of the homeowners' association. (2474/Reso. 6188)

(C) Street Design. (2474/Reso. 6188)

1. The design of streets and alleys shall conform to standards established by the City. (2474/Reso. 6188)

(a) Cul-de-sac streets shall terminate in a circular right-of-way, fifty feet (50') in radius, with an improved traffic turning circle forty-two feet (42') in radius (see Figure 3). The staff may approve an equally effective form of space where extreme or special conditions justify (see Figure 22). (2474/Reso. 6188)

(b) Maximum length of cul-de-sac streets: Four hundred feet (400') measured from the intersection of right-of-way lines to the extreme depth of the turning circle along the street centerline. Exceptions may be made by the Traffic Engineer and the City Engineer where topography, adjacent platting, or other unusual conditions justify (see Figure 3). No exception shall be made merely because the tract has restrictive boundary dimensions wherein provisions should be made for extension of the street pattern to the adjoining unplatted parcel and a temporary turnaround installed (see Figure 22). (2474/Reso. 6188)

(c) Alley intersection and sharp changes in alignment shall be avoided, but where necessary, corners shall be cut off twenty-five feet (25') on each side to permit safe vehicular movement, except a greater distance shall be provided where specified by the City Engineer (see Figure 11). Dead-end alleys are prohibited. (2474/Reso. 6188)

2. Grades. (2474/Reso. 6188)

(a) Maximum. (2474/Reso. 6188)

Arterial routes: As determined by the City Engineer. (2474/Reso. 6188)
Collector Streets: Seven percent (7%). (2474/Reso. 6188)
Local Streets: Nine percent (9%) (up to fifteen percent (15%) in Desert Uplands; see Section 9-6-5). (2474/Reso. 6188)
(b) Minimum grade for all streets shall be two-tenths percent (0.20%). (2474/Reso. 6188)

(c) Exceptions. Where rigid adherence to these standards causes unreasonable or unwarranted hardship in design or cost without commensurate public benefit, exceptions may be made by the City Engineer. (2474/Reso. 6188)

3. Vertical Curves. (2474/Reso. 6188)

(a) Arterial Streets. As determined by the City Engineer. (2474/Reso. 6188)

(b) Collector and Local Streets. Minimum length one hundred feet (100'), except in cases approved by the City Engineer. (2474/Reso. 6188)

4. Horizontal Alignment. (2474/Reso. 6188)

(a) When tangent centerlines deflect from each other more than one degree (1°) and less than ninety degrees (90°), they shall be connected by a curve with a minimum centerline radius of three hundred feet (300') and a minimum centerline length of curve of one hundred feet (100') for local streets (see Figure 6). When tangent centerlines on arterial and collector streets deflect from each other more than one degree (1°) and less than ninety degrees (90°), they shall be connected by a curve with a minimum centerline length of curve based on the data in the Curve Table (see next page). (2474/Reso. 6188)
(b) A tangent is not required between reverse curves on a local street. Between reverse curves on collector and arterial streets, refer to the Curve Table of this Section. (2474/Reso. 6188)

<table>
<thead>
<tr>
<th>Street Type (Width)</th>
<th>Right-of-Way (Width)</th>
<th>Design Speed</th>
<th>Minimum Centrifugal Curve Requirements</th>
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<tr>
<td></td>
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<td>Radius</td>
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<tr>
<td>Local Residential</td>
<td>34'</td>
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<tr>
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</tr>
<tr>
<td></td>
<td>94'</td>
<td>130'</td>
<td></td>
</tr>
</tbody>
</table>

NOTES:
(1) Minimum length of tangent between curves in opposite directions (reverse curves). Reverse curves without tangent sections between the curves are not permitted, except on local streets.
(2) Minimum length of a tangent at an intersection is measured from the right-of-way line of the intersecting street. Tangents approaching an intersection may vary in length with increased design speed.
(3) A four hundred-foot (400') radius permitted on terminating street at "top" intersection only.
Special conditions may warrant the use of other variables subject to review and special approval by the Traffic Engineer and City Engineer.

(c) Streets intersecting an arterial street shall do so at an angle of ninety degrees (90°). Intersections of other streets shall not vary from ninety degrees (90°) unless otherwise approved by the Traffic Engineer and City Engineer. (2474/Reso. 6188)

(d) Street jogs with centerline offsets shall be not less than one hundred twenty-five feet (125') on local and forty-foot- (40'-) wide collector streets. On all other collector streets, offsets shall be not less than two hundred fifty feet (250'). On arterial streets, offsets shall be not less than three hundred twenty-five feet (325'), unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 7). (2474/Reso. 6188)
(e) Local street intersections with four (4) legs and all collector and arterial street intersections shall be designed to comply with the curve and tangent section requirements given in the Curve Table of this Section, unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 6). (2474/Reso. 6188)

(f) Local streets intersecting any street shall have a tangent section of centerline at least two hundred feet (200') in length measured from the right-of-way line of the intersecting street; except that no such tangent is required when the local street curve has a centerline radius of four hundred feet (400') or greater and is the terminating street at a "tee" intersection, with the center located on the intersecting street right-of-way line. Where topographic conditions make necessary other treatment to secure the best overall design, these standards may be modified by the Traffic Engineer and City Engineer (see Figure 6). (2474/Reso. 6188)

(g) Street intersections with more than four (4) legs and Y-type intersections where legs meet at acute angles shall be prohibited. Intersections on the inside of a horizontal curve on arterial, collector, or local streets shall be avoided, unless otherwise approved by the Traffic Engineer and City Engineer (see Figure 9). (2474/Reso. 6188)

(h) At all street intersections, property line corners shall be rounded by a circular arc, said arc having a minimum radius of fifteen feet (15') or by a cutoff whose tangent lengths would be equal to those of a rounded corner (see Figure 5). (2474/Reso. 6188)

(i) All street intersections shall be designed to meet minimum sight distance visibility requirements (refer to Engineering Procedure Manual for specific requirements). (2474, 5395/Reso. 6188)

5. Private Streets. Private streets shall conform to the above-stated design standards. Where site conditions necessitate unique design solutions, modifications may be approved by the City Engineer. (2474/Reso. 6188)

6. Half-streets. Half-streets shall conform to the above-stated design standards. They shall, however, be a minimum of twenty-four feet (24') wide measured from the face of the curb to the edge of the asphaltic pavement. Additional right-of-way in excess of that normally required for one-half (1/2) of a street of that classification may be required as determined by the Traffic Engineer and City Engineer. (2474/Reso. 6188)

(D) Block Design. (2474/Reso. 6188)

1. The maximum length of blocks measured along the centerline of the street and between intersecting street centerlines is one thousand five hundred feet (1,500'); except that in a development with lot areas averaging one-half (1/2) acre or more or where conditions warrant, this maximum may be exceeded by five hundred feet (500'). Blocks shall be as long as reasonably possible under the circumstances within the above maximums in order to achieve depth and possible street economy and to reduce the expense and safety hazard arising from excessive street intersections (see Figure 10). (2474/Reso. 6188)
2. Pedestrian/Bicycle ways: Pedestrian/bicycle ways with right-of-way widths of ten to twelve feet (10'-12') may be required where essential for circulation or access to schools, playgrounds, shopping centers, and transportation and other community facilities. Pedestrian/bicycle ways may also be used for utility and drainage purposes if so noted on the plat and approved by the Engineering Division (see Figure 11). (2474,4570/Reso. 6188)

(E) Lot Planning. (2474/Reso. 6188)

1. Lot width, depth, and area shall comply with the minimum requirements of the Zoning Ordinance and shall be appropriate for the location and character of development proposed and for the type and extent of street and utility improvements being installed. In general, urban densities must have urban street and utility improvements. The term "urban improvements" is interpreted to mean paved and curbed streets, sidewalks, local storm drainage system, public water supply, fire protection, streetlights, and public sanitary sewerage. Where steep topography, unusual soil conditions, drainage problems, abrupt changes in land use, or heavy traffic on adjacent streets prevail, the Board may make special lot width, depth, and area requirements which exceed the minimum requirements of the particular zoning district. (2474/Reso. 6188)

2. Lot depths should be at least ninety-four feet (94') and the depth-to-width ratio of the usable area of the lot not greater than three to one (3:1) (see Figure 12). (2474/Reso. 6188)

3. Side lot lines shall be substantially at right angles or radial to street lines except where other treatment may be justified in the opinion of the Board (see Figure 13). (2474/Reso. 6188)

4. All lots shall have frontage as required by the appropriate zoning district on a fully dedicated public street unless otherwise approved. (2474/Reso. 6188)

5. Single residential lots on curvilinear streets shall have rear lot lines consisting of a series of straight lines with points of deflection occurring only at the junction of side and rear lot lines unless otherwise approved. Curvilinear rear lot lines with a minimum radius of eight hundred feet (800') will be permitted (see Figure 14). (2474/Reso. 6188)

6. The street side rear corner of corner lots adjacent to "key" lots shall be angled to provide a ten-foot by ten-foot (10' x 10') cutoff (see Figure 14). (2474/Reso. 6188)

7. Single residential lots extending through the block and having frontage on two (2) parallel local streets are not permitted. Backing of the lots to collector streets shall be avoided except where necessary in the opinion of the Board to provide for separation of residential development from the collector street; or where expressly permitted in accordance with Subsection (B)6 of this Section (see Figure 15). (2474/Reso. 6188)

(F) Easement Planning. (2474/Reso. 6188)

1. Easements for utilities shall be provided as follows: (2474/Reso. 6188)

   (a) Along both sides of all local streets, minimum eight foot- (8'-) wide public utility and facilities easements ("PUFEs") shall be provided; along arterial, collector, and other major thoroughfares, widths shall be as determined by the Technical Review Committee. (2474,4570/Reso. 6188)

   (b) In Planned Area Developments (PADs), commercial and industrial centers, and other similarly developed projects, easement location and widths other than those along public streets will be determined by the Technical Review Committee. (2474/Reso. 6188)
(c) Other easements deemed necessary to provide utility or other services shall be provided as required by the Technical Review Committee. (2474/Reso. 6188)

2. For lots facing on curvilinear streets, utility easements shall consist of a curved line parallel to the front property line and a series of straight line segments or a curved line parallel to the rear property lines as may be required to complete an existing easement system. (2474/Reso. 6188)

3. Where a stream or important surface drainage course abuts or crosses the tract, dedication of a drainage easement of a width sufficient to permit widening, deepening, relocating, or protecting and maintaining said water course shall be required. (2474/Reso. 6188)

4. Land within a major drainage, flood, or transmission easement shall not be considered a part of the minimum required lot area except where lots exceed one-half (1/2) acre in area (see Figure 16). (2474/Reso. 6188)

5. Where alleys and/or eight-foot (8') PUFEs exist in adjacent subdivisions, this pattern shall be continued unless otherwise approved by the Technical Review Committee (see Figure 17). (2474/Reso. 6188)

6. Where alleys are provided in multiple-residence or commercial areas, a refuse container easement may be required of sufficient size as determined by the present City standards (see Figure 18). (2474/Reso. 6188)

(G) Street Naming. (2474/Reso. 6188)

1. The subdivider shall indicate the street name for public streets on the preliminary plat by projecting existing north-south and east-west street names that fall in alignment. When no current streets are in alignment, the subdivider may propose a name based on the City of Mesa Address and Street Name Assignment Policy. All names are subject to final approval by City staff at the technical review stage. (2474/Reso. 6188,3324/Reso. 7038, Reso. 10116)

2. Private streets within PAD detached single-residence subdivisions will be assigned public street names in accordance with the City of Mesa Address and Street Name Assignment Policy. (2474/ Reso. 6188,3324 /Reso. 7038, Reso. 10116)

3. Private drives and aisles in PAD manufactured home and recreational vehicle subdivisions and townhome or condominium subdivisions shall not be named or numbered. The site will receive a single master address based on the public street on which it fronts. Lots, buildings, and dwelling units within the project will be assigned lot numbers, unit numbers, and building numbers by the City staff for mail delivery, emergency, or other service needs. (3324/Reso. 7038, Reso. 10116)

9-6-4: PUBLIC IMPROVEMENT REQUIREMENTS:

(A) Purpose. It is the purpose of this Section to outline the minimum acceptable standards for improvement of public streets and utilities as well as certain private street improvements; define the responsibility of the subdivider in the planning, constructing, and financing of public improvements; and to establish procedures for review and approval of engineering plans. All improvements required in streets, alleys, or easements that are required as a condition of plat approval shall be the responsibility of the subdivider. They may be allowed to meet the requirements by participation in an improvement district if approved by the City. (2474/Reso. 6188)
(B) Engineering Plans. (2474/Reso. 6188)

1. A complete set of engineering plans for construction of all required improvements shall be prepared by an engineer registered in Arizona. Such plans shall be based on the technical review of the preliminary plat and be prepared in conjunction with the final plat. (Refer to Engineering Procedure Manual for more specific and detailed requirements for this Section.) (2474/Reso. 6188)

2. No plat shall be recorded until the engineering plans have been approved by the City. (2474/Reso. 6188)

(C) Construction and Inspection. (2474/Reso. 6188)

1. All improvements in the public right-of-way or in public easements shall be constructed under the inspection and approval of the City Engineer. Construction shall not commence until a permit has been issued for such construction. Work shall not be discontinued or suspended unless first approved by the City Engineer and it shall not be resumed prior to notification and approval of the Engineering Department. (2474/Reso. 6188)

2. All underground utilities to be installed in streets and alleys shall be constructed, inspected, and approved prior to the surfacing of such streets and alleys. (2474/Reso. 6188)

(D) Public Improvements. The City Engineer is hereby delegated authority to develop and apply such engineering standards, specifications, and procedures for the design and construction of public improvements as are in harmony with the objectives of this Section and necessary or appropriate to protect the public health, safety, and welfare. (2474/Reso. 6188)

1. Streets. All streets within the subdivision, including perimeter streets or half-streets, shall be paved including concrete curbs installed to lines, grades, and dimensions approved by the City Engineer and in conformance with City standards. When a major collector or arterial street is included within the subdivision or is a perimeter street, the City may pay for such extra width paving as may be deemed appropriate by the City. (2474/Reso. 6188)

2. Alleys. All alleys within the subdivision, including perimeter alleys and partial alleys, shall be surfaced with granite or Aggregate Base Course (ABC) to grades and dimensions approved by the City Engineer in conformance with City standards. Alleys to be used for primary vehicular access as defined under Section 9-5-1 of the City Code shall be improved as required by said Section and in conformance with City standards. (2474/Reso. 6188)

3. Sidewalks. Concrete sidewalks shall be constructed along both sides of all streets within the subdivision and along one side of perimeter streets to a width and to lines and grades approved by the City Engineer and in conformance with City standards. (2474/Reso. 6188)
4. Water and Sewer Lines and Services. Water and sewer lines shall be installed within the subdivision, and all adjoining streets, to lines and grades and of such sizes and lengths as approved by the City Engineer and in conformance with City standards. Water and sewer service lines of sizes and at locations approved by the City Engineer and in conformance with City standards shall be installed for each lot within the subdivision prior to paving the street and improving the alleys. Service stubs to platted lots and tracts within the subdivision for underground utilities shall be placed to such length and size so as not to necessitate disturbance of street and utility improvements when future service connections are made. Where it is necessary to extend a water or sewer main from an existing adequate main to the subdivision, the subdivider will be required to pay the full cost of the line extension. However, if so requested, the City may participate in the oversize cost or enter into a "private line agreement" with the subdivider requiring the subsequent users to pay a share of the cost of the line extension at such time as they take service from the line extension if such service is taken during the term of the agreement. (2474, 4570/Reso. 6188)

5. Fire Hydrants. Fire hydrants shall be installed within and along perimeter streets of the subdivision at locations and to lines and grades approved by the City Engineer and Fire Department and in conformance with City standards. (2474/Reso. 6188)

6. Gas. Gas service may be furnished according to current available supplies as determined by the City or other franchised supplier for that area. (2474/Reso. 6188)

7. Irrigation Lines and Ditches. All irrigation and other ditches within the subdivision or within perimeter half-streets or alleys or easements shall be tiled or abandoned in accordance with plans and specifications as approved by the City Engineer and/or the respective irrigation district. (2474/Reso. 6188)

8. Storm Water Retention. The subdivider shall make provisions for the retention and subsequent bleedoff of all storm water within the proposed subdivision in accordance with plans approved by the City Engineer and in conformance with City standards. The plans shall show the type, extent, location, and capacity of existing and proposed drainage and retention that may affect the subdivision. Complete hydrology and hydraulic design computations shall accompany the plans and shall be approved prior to the recordation of the final plat. The design shall be based on the following: (3868)

   Citywide: one hundred- (100-) year, two- (2-) hour storm. (3868)

   Downtown Redevelopment Area: Two-thirds (2/3) of the volume of a one hundred- (100-) year, two- (2-) hour storm. (3868)

Once constructed and approved by the City, the drainage facilities shall not be modified unless such modification is approved by the City Engineer. (2474/Reso. 6188)

9. Retention Basins. Public retention basins are encouraged to provide additional land area (up to twenty-five percent [25%] of the basin size) above the minimum land area calculated to retain their specified volume of water to help insure that public basins provide usable "flat" areas for recreational purposes. The design, amount, and location of the additional area which could be provided should be considered in the initial design of the project. The need for additional open space and the design of the basin will be reviewed by the staff on a project-by-project basis to help insure that adequate recreational facilities are provided to serve the needs of the future residents of the proposed subdivision. Multiple small retention basins are not acceptable for either public or private developments unless otherwise approved by the City Engineer and in conformance with City standards. Upon completion of an approved maintenance period for a public retention basin that will be maintained by the City, the subdivider shall provide at no cost to the City a clear title to the public retention basin. Once constructed and approved by the City, the retention facilities shall not be modified unless such modification is approved by the City Engineer. (2474/Reso. 6188)
10. Streetlights. Streetlights shall be installed along all streets within the subdivision and along all perimeter streets developed in conjunction with the subdivision. Streetlights shall be LED or HPS and shall be installed by the subdivider in accordance with plans approved by the City and in conformance with City standards. Street light illumination levels shall comply with the Streetlight Lumen Level and City Engineering standards. LED lights shall have a color temperature/kelvin rating as approved by the Transportation Department Director. For a single parcel development with less than one hundred fifty feet (150') of street frontage, the City Engineer may waive the required streetlight installation. If installation is waived, prior to the issuance of a building permit, the subdivider shall pay an amount determined by the City based on the street frontage to pay for the future installation of streetlights by the City or others. (2474/Reso. 6188, 5376)

(a) Pilot Program. During the Pilot Study Period and within the Pilot Study Areas, the City’s Transportation Department Director, or his designee, may reduce and vary the streetlighting lumen levels (including from week-to-week, day-to-day, or within a single night or with the use of a time-of-night dimming schedule) so long as the lumen level is not lower than the Minimum Pilot Lumen Level or greater than the Maximum Pilot Lumen Level. (5376)

i. Within ninety days after the Pilot Study Period, the illumination levels that were reduced under the Pilot Study shall be brought into conformance with the Streetlight Lumen Level. (5376)

ii. The Pilot Program shall not apply to new streetlights installed in connection with City capital improvement projects or non-City projects except as may be approved by the Transportation Department Director with a dimming system that complies with the Pilot Program requirements in Subsection 9-6-4(D)(10)(a). (5376)

11. Traffic Control Devices. Traffic control devices shall be provided or existing control devices shall be modified in conjunction with the development in accordance with designs approved by the Development Services Department, where required in accordance with the Mesa Transportation Division. The Transportation Division may defer the installation of required traffic control devices. (4570)

When the installation of required traffic control devices is deferred, the owner/developer shall pay the City a payment in-lieu of causing the actual design, installation, and/or construction of the devices. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (4570)

12. Street Name Signs. Street name signs shall be placed in all street intersections. The subdivider shall install signposts and signs per Mesa Standard Details with designs approved by the City Traffic Engineer. (2474,4570,5395/Reso. 6188)

13. Survey Monuments. Survey monuments conforming to City standards shall be installed at all corners, angle points, and points of curves and at all street intersections for streets within and around the perimeter of the subdivision and at such other locations as may be required by the City Engineer. After all improvements have been installed, the subdivider’s registered land surveyor shall check the location of the monuments and mark the brass cap. (2474,4570/Reso. 6188)

14. Lot Corners. Iron pipe or round reinforced steel bars not less than one-half inch (1/2") in diameter shall be set at all corners, angle points, and points of curve for each lot within the subdivision prior to the recording of the plat, except that the City Engineer may approve a temporary delay where topographic conditions make it necessary. (2474,4570/Reso. 6188)
15. Parkway Landscaping. Parkway areas along arterial streets and other streets, as deemed necessary by the City Engineer, shall be landscaped in accordance with approved plans and standards set by the City Engineer. In PADs, a statement shall be contained in both the deed restrictions and the owners' association by-laws that all landscaping, including that within the public right-of-way adjacent to the site, shall remain the responsibility of the owners' association to maintain in perpetuity. (2474, 4570/Reso. 6188)

16. Underground Utilities. Electric lines and communication lines shall be constructed underground as required by the Arizona Corporation Commission. City ordinance also requires cable TV to utilize a common trench for undergrounding their facilities in new developments, and the subdivider must provide backfill under the same conditions as are extended to other trench users; e.g., electric, telephone, and communications. (2474, 4570/Reso. 6188)

17. Construction Certification. Upon completion of development, the subdivider’s engineer shall provide as-built certification to the City Engineering Inspector that all required improvements in dedicated City rights-of-way or public utility easements were constructed according to approved plans and conform to City standards. The subdivider’s engineer or surveyor shall also certify the as-built volume of all retention facilities. All certifications shall be signed by the engineer or surveyor and stamped with a professional seal. (2474, 4570/Reso. 6188)

(E) Schedule of Improvements by Zoning Classification. Specific standards of improvements to be installed in a subdivision shall be related to the location of the subdivision and type of development proposed therein, as outlined in the following schedule of improvement requirements. (2474/Reso. 6188)

1. Urban Developments (R1-35, R1-15, R1-9, R1-7, R1-6, R-2, R-3, and R-4 Zoning Districts). (2474/Reso. 6188)

   (a) Description. Single-residence development with lot widths less than one hundred thirty feet (130') and lot areas less than forty three thousand five hundred sixty (43,560) square feet (one acre) and multiple-residential development regardless of site area or density. (2474/Reso. 6188)

   (b) Requirements. (2474/Reso. 6188)

      i. All streets shall include pavement, concrete curb, and sidewalks on both sides. (2474/Reso. 6188)

      ii. Alleys, where required for single residential development, shall have a sixteen-foot (16') right-of-way completely surfaced with approved material to an approved width. Multiple-residential development shall have a twenty-four-foot (24') right-of-way completely surfaced to an approved width. (2474/Reso. 6188)

      iii. Public water supply in accordance with Subsection (D)4 of this Section, including mains and fire hydrants for fire protection. (2474/Reso. 6188)

      iv. Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

      v. Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

      vi. Public sewer in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

      vii. Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

      viii. Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)
ix. Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474/Reso. 6188)

x. Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

xi. Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)

2. Suburban Developments (R1-90 and R1-43 Zoning Districts). (2474/Reso. 6188)

(a) Description. Single-residence development with minimum lot widths of one hundred thirty feet (130') and minimum lot areas of forty-three thousand five hundred sixty (43,560) square feet (one acre). (2474/Reso. 6188)

(b) Requirements. (2474/Reso. 6188)

i. All streets shall include pavement and concrete curbs. Sidewalks shall be included if so required by the City Engineer. (2474/Reso. 6188)

ii. Alleys, where required to complete an existing system, shall have a sixteen-foot (16') right-of-way completely surfaced with approved material to an approved width. (2474/Reso. 6188)

iii. Public water supply systems, including mains and fire hydrants, for fire protection in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

iv. Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

v. Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

vi. Public sewer is required in accordance with Subsection (D)4 of this Section unless waived by both the Maricopa County Health Department and the City Engineer. (2474,4570/Reso. 6188)

vii. Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

viii. Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)

ix. Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474,4570/Reso. 6188)

x. Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

xi. Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)
3. Office, Commercial and Industrial (O-S, C-1, C-2, C-3, M-1, M-2, and PEP Zoning Districts). (2474/Reso. 6188)

(a) All streets shall include pavement, concrete curb, and sidewalks on both sides; for "Industrial" districts (M-1, M-2, PEP), the sidewalk requirements may be waived on one (1) or both sides by the City Engineer should land use, building occupancy, location, or other factors so indicate. (2474/Reso. 6188)

(b) Alleys, where required, shall have a twenty-four-foot (24') right-of-way completely surfaced with approved material to an approved width. (2474/Reso. 6188)

(c) Public water supply in accordance with Subsection (D)4 of this Section, including mains and fire hydrants for fire protection. (2474/Reso. 6188)

(d) Storm drainage in accordance with Subsection (D)8 of this Section. (2474/Reso. 6188)

(e) Retention basin in accordance with Subsection (D)9 of this Section. (2474/Reso. 6188)

(f) Public sewer in accordance with Subsection (D)4 of this Section. (2474/Reso. 6188)

(g) Streetlights in accordance with Subsection (D)10 of this Section. (2474/Reso. 6188)

(h) Street name signs in accordance with Subsection (D)12 of this Section. (2474,4570/Reso. 6188)

(i) Parkway landscaping in accordance with Subsection (D)15 of this Section. (2474,4570/Reso. 6188)

(j) Perimeter streets in accordance with Subsection (D)1 of this Section. (2474/Reso. 6188)

(k) Undergrounding of existing overhead electrical services in accordance with current City of Mesa policy. (4570)

(F) Oversize of Required Public Improvements. The developer may be required to oversize certain public street and utility improvements for the purpose of ensuring that the City of Mesa's public improvement standards for transportation, utility service, and infrastructure are maintained. The City of Mesa may participate in the increased costs of oversize improvements when approved by the Development Services Manager. The City's commitment to participate in these increased costs may be formalized in a development agreement limited to those improvements specifically identified as oversize and executed by the developer and the Development Services Manager. (2907,3766)

(G) In order to allow flexibility in lighting design to create a variety of unique neighborhoods and environments across the Mesa Proving Grounds Project, streetlighting on public local streets within the Mesa Proving Grounds located in the area north of Williams Field Road, west of Signal Butte Road, south of Elliot Road and east of Ellsworth Road shall be provided as specified below. (4894)

1. In land use groups V-Village and D-District where continuous sidewalk and landscape/hardscape lighting are provided, and in land use groups OS-Open Space, CS Civic Space, E-Estate, R-Retreat and in service lanes irrespective of sidewalk and landscape/hardscape lighting, streetlighting shall be provided at locations specified below to the light level required by City Standards as set forth in 9-6-4(D)(10) and City of Mesa Engineering and Design Standards:

(a) At all public street intersections and all locations where private commercial driveways with heavy nighttime use as determined by the City Traffic Engineer, multi-family driveways serving twenty (20) or more units, or service lanes intersect a public street. (4894)
(b) At all marked and unmarked pedestrian crosswalks. (4894)

(c) At all marked and unmarked pedestrian, bicycle, equestrian or multi-use pathway crossings. (4894)

(d) At the end of a cul-de-sac or hammerhead. (4894)

(e) At all driveway entrances to schools or civic buildings. (4894)

(f) Continuously along streets where adjacent major nighttime gathering locations are brightly lighted and there is no fence or other physical barrier between the street and the outdoor facility that limits pedestrian access to specific crossing points, as determined by the City Traffic Engineer. (4894)

(g) At other locations specified by the City based on roadway design characteristics, land use or anticipated public use. (4894)

(h) In service lanes, additional privately owned and maintained lighting shall be provided as specified at the Development Unit Plan level. (4894)

2. In all other land use groups continuous streetlighting shall be provided in accordance with subsection 9-6-4(D)(10) and City of Mesa Engineering and Design Standards. (4894)

(H) In order to provide for creation of a unique neighborhood environment based on the agricultural heritage of the southeast valley and to provide consistency throughout a 2,000 acre master planned community on the former Morrison Ranch properties, streetlighting on public local streets within the area south of Guadalupe Road, north of the power line easement approximately one-half mile south of Guadalupe Road, west of Sossaman Road, and east of the East Maricopa Floodway shall be provided as specified below. (5108)

1. A minimum of one streetlight shall be placed at each intersection and at the end of each cul-de-sac that is more than two hundred feet (200') long. (5108)

2. A minimum of one streetlight shall be placed at each marked and unmarked pedestrian crosswalk, and at each marked and unmarked pedestrian, bicycle, equestrian or multi-use pathway crossing unless such crosswalk or pathway crossing will be lighted by a streetlight at an intersection pursuant to Subsection (H)(1) above. (5108)

3. On street sections longer than four-hundred-feet (400'), streetlights shall be placed at a maximum spacing of four-hundred-feet (400'). (5108)

4. Streetlights may consist of decorative poles and decorative post top mounted fixtures as approved by the City Traffic Engineer, with a typical mounting height of approximately sixteen-feet (16'), but in no case lower than sixteen feet (16') or higher than twenty-five feet (25'). (5108)

5. Continuous lighting along sections of streets adjacent to school sites, public parks, or activity centers shall be provided in accordance with Subsection 9-6-4 (D)(10) and City of Mesa Engineering and Design Standards. (5108)

(I) In order to provide for creation of a unique neighborhood environment based on early American neighborhood character throughout the 484 acre Pacific Proving Ground North development, streetlighting on public local streets within the area south of Ray Road, and east of Ellsworth road shall be provided as specified below. (5251)

1. All local public street intersections shall be illuminated per the city standards. (5251)
2. One light shall be installed at each elbow intersection. (5251)

3. Lights shall be installed at all marked or un-marked pedestrian, bicycle, equestrian or multi-use pathway street crossings (crosswalks) to meet city light level standards. (5251)

4. One light shall be installed at all public driveway entrances to schools. (5251)

5. Continuous lighting along sections of streets adjacent to school sites, parks, or activity centers shall be provided in accordance with Subsection 9-6-4(D)(10) and City of Mesa engineering and design standards. (5251)

6. One light shall be installed at the end of each cul-de-sac that is longer than 200 feet as measured from the centerline of the intersection at the beginning of the cul-de-sac to the face of curb at the farthest point of the cul-de-sac. (5251)

7. Street lights may be decorative post top style fixtures, as approved by the City Traffic Engineer, to meet the theme of the community. Light source shall be either HPS (High Pressure Sodium) or LED (Light Emitting Diode). (5251)

8. Street lights will have an approximate 15’ to 25’ mounting height. (5251)

(J) In order to provide for creation of a unique neighborhood environment based on early American neighborhood character throughout the 172.5 acre Mulberry Development located north of Guadalupe Road and west of Signal Butte Road, streetlighting on public local streets within phases one, two, three and four of Mulberry shall be provided as specified below. (5257)

1. All local public street intersections shall be illuminated per the city standards. (5257)

2. One light shall be installed at each elbow intersection. (5257)

3. Lights shall be installed at all marked or un-marked pedestrian, bicycle, equestrian or multi-use pathway street crossings (crosswalks) to meet city light level standards. (5257)

4. One light shall be installed at all public driveway entrances to schools. (5257)

5. Continuous lighting along sections of streets adjacent to school sites, parks, or activity centers shall be provided in accordance with Subsection 9-6-4(D)(10) and City of Mesa engineering and design standards. (5257)

6. One light shall be installed at the end of each cul-de-sac that is longer than 200 feet as measured from the centerline of the intersection at the beginning of the cul-de-sac to the face of curb at the farthest point of the cul-de-sac. (5257)

9-6-5: DESERT UPLANDS DEVELOPMENT STANDARDS:

(A) Purpose and Intent. The purpose of these standards is to minimize hillside disturbance and encourage preservation of the natural character and aesthetic value of the desert within the Desert Uplands Area by allowing the flexibility necessary to produce unique, environmentally sensitive projects. It is the intent of these standards to encourage development of subdivisions with a distinctive southwest desert design theme. The requirements of this Section 9-6-5 apply only to the Desert Uplands Area. (2474/Reso. 6188, 5376)
All present City design standards may not be applicable to desert preservation-oriented development. Due to the anticipated vehicular and pedestrian volumes normally associated with higher residential densities, developments within the R1-15 zone and higher-density residential and nonresidential uses shall generally comply with present City of Mesa ordinance requirements. Standard City requirements for subdivision design, stormwater retention, right-of-way, pavement width, and street design shall apply except in the following areas where alternatives may be permitted to maintain the natural desert character of the area. (2474/Reso. 6188)

1. PADs and nonresidential developments will be reviewed at the time of zoning approval or building permit application review for compliance with applicable Desert Uplands Standards and for a southwestern design theme. (2474/Reso. 6188)

2. In lower-density residential areas (R1-35 and lower), development standards similar to those for suburban areas may be approved. (2474/Reso. 6188)

3. Prior to any development, a Grading Permit shall be obtained in accordance with the Mesa City Code. (3693)

(B) Local Streets. Local street standards may be modified to encourage better adjustment to the topography of the area. Existing significant topographical features, such as washes, hillsides, boulders, and rock outcroppings, and established stands of native vegetation which cannot be revegetated may warrant the approval of alternative engineering designs. Modifications would be considered on an individual basis, with approval by the Mesa Planning Director, City Engineer, and Traffic Engineer. The following are requirements and design alternatives for street construction in the Desert Uplands Area. (2474/Reso. 6188)

1. Local Residential Streets - Public. (4233)

The chart below specifies the local residential public street standards for each residential zoning district. (4233)
### 9-6-5(B) Local Residential Streets - Public

<table>
<thead>
<tr>
<th>DIST.</th>
<th>LOT SIZE, SF</th>
<th>R.O.W.</th>
<th>CL TO BC</th>
<th>PARKING</th>
<th>CURB</th>
<th>SIDEWALK</th>
<th>WATER MAIN</th>
<th>STREETLIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1-6 to R1-9</td>
<td>6,000+ to 9,000+</td>
<td>53'</td>
<td>17.5'</td>
<td>Both Sides</td>
<td>2' Roll</td>
<td>5' Width, Attached 5&quot;</td>
<td>1' Behind Curb</td>
<td>4' Behind Curb</td>
</tr>
<tr>
<td>R1-15</td>
<td>15,000+</td>
<td>47'</td>
<td>14.5'</td>
<td>One Side Only</td>
<td>2' Roll</td>
<td>5' Width, Attached 5&quot;</td>
<td>1' Behind Curb</td>
<td>4' Behind Curb</td>
</tr>
<tr>
<td>R1-35</td>
<td>35,000+</td>
<td>43'</td>
<td>12.5'</td>
<td>None</td>
<td>2' Roll</td>
<td>5' Width, Attached</td>
<td>1' Behind Curb</td>
<td>6' Behind Curb</td>
</tr>
<tr>
<td>R1-43 to R1-90</td>
<td>43,560+</td>
<td>30'</td>
<td>12.0'</td>
<td>None</td>
<td>3' Ribbon</td>
<td>None</td>
<td>1' Behind Curb</td>
<td>None</td>
</tr>
</tbody>
</table>

*Landscaping shall consist of trees with limited canopies and shrubs selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section. Fifty percent (50%) of the trees are to be twenty-four-inch (24") box (new or salvage), within the five-foot (5') landscape strip between the curb and sidewalk.

**Certain streets may have a reduced or no streetlighting requirement pursuant to 9-6-5(D).
4. Landscape medians are recommended at subdivision entrances and adjacent to open spaces. Landscape islands are recommended within cul-de-sacs. Landscape plans for the medians and islands shall utilize plants salvaged from the site, or selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section. Medians and islands cannot obstruct access to lots, impair visibility at sight triangles, or obstruct drainage, and are to be located pursuant to Fire Department and Development Services Department access requirements. Integral colored concrete and alternative sidewalk and pavement materials are encouraged subject to City review and approval. Homeowners' associations are to own the medians and islands, and be responsible for landscape, special concrete, and pavement section maintenance. (4233)

5. Maximum street grades may be increased, provided adequate visibility and access for fire protection and refuse collection vehicles is maintained. Local street grades should not exceed fifteen percent (15%), and streets exceeding twelve percent (12%) should have a maximum length of four hundred feet (400'). Exceptions require approval of the Traffic Engineer and City Engineer (see Figure 26). (2474/Reso. 6188,4233)

6. Where scarring occurs as a result of street or utility construction, revegetation and restoration shall be required of the subdivider. Restored areas shall be graded and landscaped to blend with the natural vegetation and terrain and stabilized to control erosion. Landscape plans for the areas to be restored shall utilize plants salvaged from the site or selected from the Preferred Desert Uplands Plant List. The plants shall be of the same species mix, and equivalent in size and density to the surrounding undisturbed area. Landscaping and stabilization shall occur concurrently with construction. (2474/Reso. 6188,4233)

7. Grade changes that require retaining walls may be used only with the approval of the City Engineer. Where approved for use, vertical retaining walls shall have a maximum height of five feet (5'). For grade changes of more than five feet (5'), the use of multiple walls in a series of terraces is required. Each terrace shall have a four-foot (4') minimum width and shall be landscaped. There shall be a four-foot (4') landscaped strip between the top terrace and any freestanding enclosure wall used. The finished surfaces of retaining walls shall blend into the natural setting by such means as texturing and the use of earth tone coloring. The use of native stone as a veneer is also possible (see Figure 27). (2474/Reso. 6188,4233)

For slopes of sixty degrees (60°) and less, mortar-free stone retaining walls using irregularly shaped native boulders may be used, subject to structural and slope stability design considerations. Landscaping of the slope shall be provided to produce a more natural appearance (see Figure 27). Modifications to these standards may be considered on an individual basis where unusual topographical conditions, parcel configurations, or other relevant factors are present. (2474/Reso. 6188,4233)

8. All excess excavated material shall be removed or incorporated as an integral part of the site development so that a natural look is maintained. (2474/Reso. 6188,4233)

9. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

(a) Where drainageways cross streets, culverts shall be installed to convey ten- (10-) year frequency storm flows under the pavement, with higher- volume storm flows being allowed to flow over the pavement in dip sections (see Figures 29 and 30). (2474/Reso. 6188,4233)

For washes with low flows, deletion of the culvert may be permitted where a concrete dip section is provided when approved by the City Engineer. (2474/Reso. 6188,4233)

(b) With approval of the City Engineer, the use of three-foot (3') to five-foot (5') roadside drainage swales with appropriate erosion protection to provide a natural appearance will be permitted. (see Figure 28). (2474/Reso. 6188,4233)

(c) The use of integral colored concrete for ribbon curbing is encouraged (see Figure 26). (2474/Reso. 6188,4233)
(C) Collector Street - Public. Where no lot/home access is provided along a collector street, and the area served by the collector is not so large as to require a wider street, the collector street may be as follows: eighty feet (80') right-of-way, thirty-four-foot (34') face-of-curb to face-of-curb, no on-street parking, and five-foot (5') sidewalks detached a minimum of four feet (4'). At intersections with major streets and adjacent to school sites, parks, or activity centers, the face-of-curb width shall be increased to forty-six feet (46'). (4233)

(D) Streetlights. (2474/Reso. 6188,4233,5376)

1. Full cutoff streetlight fixtures shall be required in the Desert Uplands Area. Fixtures may be HPS or LED. (5376)

2. Streetlights on major streets and collector streets shall comply with City standard illumination and spacing requirements except as specified in Subsections (D)(3), (D)(6), and (D)(7) of this Section and Section 9-6-4(D)(10). Streetlights shall not be installed in medians except as may be approved by the Transportation Department Director after considering potential light pollution impacts on adjacent residential property. Mounting height shall be thirty-five feet (35') to forty feet (40'). (2474/Reso. 6188,4513,4233,4766,5376)

3. On collector streets as permitted under Subsection (C) of this Section, street lighting shall use poles with a thirty-foot (30') or thirty-five foot (35') maximum mounting height and an average 0.37 footcandle light level with a six-to-one (6:1) average-to-minimum ratio. Lighting along the forty-six-foot- (46') wide sections of these streets adjacent to school sites, parks, or activity centers shall comply with City standard illumination and spacing requirements for collector streets. (4233,5376)

4. Streetlights on local streets shall be placed at all intersections and at the end of cul-de-sacs that are more than two hundred feet (200') long except as specified in Subsection (D)(6) and Subsection (D)(7). On straight sections of roadway, spacing between streetlights may not exceed four hundred-foot (400'). However, other factors must also be evaluated; e.g., horizontal and vertical alignment. Topographical conditions may require additional lighting. Mounting height on local streets shall be twenty-five feet (25') with a fixture that emits between 2,900 and 4,000 lumens. (2474/Reso. 6188,4513,4570,4233,4766,5376)

5. Pull box spacing for streetlighting shall not exceed two hundred feet (200'). (2474/Reso. 6188,4233,5376)

6. For the area north of McDowell Road and east of Hawes Road and west of Usery Mountain Regional Park along public streets (inclusive of McDowell Road and Hawes Road, but exclusive of Ellsworth Road), no lighting on the public street shall be required. The developer shall provide an area light with a light pole no less than eight (8) feet in height and no greater than sixteen (16) feet in height with a fixture that emits between 2,900 and 4,000 lumens. The type of area light fixture and pole shall be installed at each entrance to a multi-unit subdivision. The area light fixture and pole shall be owned, operated and maintained by the owners of the property, where the area light is installed; the City shall not be deemed to own, operate, maintain, or otherwise be responsible for such area light fixtures and poles. The area light fixture and pole shall be installed outside of the City right-of-way or public utilities and facilities easement and shall be installed adjacent to the edge of the driveway approach. (4513,5376)

7. Streetlighting on public collector and local streets located in the area north of McLellan Road, west of Ellsworth Road/92nd Street alignment, south of McKellips Road and east of a north/south line one-quarter mile west of Hawes Road, and for the area north of McKellips Road, west of Ellsworth Road/92nd Street alignment, south of Hermosa Vista Drive, and east of Hawes Road, shall be provided at locations specified below to the light level required by City standards as set forth in 9-6-4(D)10 and City of Mesa Engineering and Design Standards: (5376)

(a) At all public street intersections and all locations where private driveways intersect a public street. (4766,5376)

(b) At all marked and unmarked pedestrian crosswalks. (4766,5376)

(c) At all pedestrian crossing points adjacent to parks or other activity centers. (4766,5376)
(d) At all pedestrian, bike, equestrian, or joint use pathway crossings where pathway lighting is provided.

(4766,5376)

(e) At locations adjacent to parks or other outdoor activity centers continuous streetlighting shall be provided where such locations provide lighting for nighttime use and there is no fence or other physical barrier between the street and park or outdoor facility that limits pedestrian access to specific crossing points.

(5376)

(f) At the end of a cul-de-sac. (5376)

8. Streetlighting in the Desert Uplands Area is subject to the requirements, provisions, and modifications in Subsection 9-6-4(D)(10), except as specified in Subsections (D)(3), (D)(4), (D)(6), and (D)(7) of this Section, and is subject to the Pilot Program in Subsection 9-6-4(D)(10)(a). (5376)

(E) On-Site Street Name Signs (Public Streets). (2474/Reso. 6188,4233)

1. Street name signs and posts shall be standard (green reflectorized sign with white reflectorized lettering and a steel pole) unless the applicant receives approval of a modification from the Traffic Engineer. (2474/Reso. 6188,4233)

2. Any approval of nonstandard street sign materials shall be conditional upon the development’s homeowners' association assuming responsibility for the installation, future maintenance, and liability relating to the signs. (2474/Reso. 6188,4233)

3. Nonstandard street name signs which are installed and maintained by a homeowners' association shall have reflective letters and background. (2474/Reso. 6188,4233)

(F) Walls and Fences. (2474/Reso. 6188,4233)

1. Perimeter subdivision walls shall be designed to reflect a southwestern design theme and be constructed to reflect changes in the topography (see Figures 31 and 32). (2474/Reso. 6188,4233)

2. Perimeter subdivision walls shall be designed and constructed in a height and style which preserves desert vistas and environment to the extent possible. Perimeter walls along arterial or collector streets should not extend over two hundred fifty (250) linear feet without a one-foot (1') vertical or three-foot (3') horizontal variation. Walls shall include clear ground-level openings no smaller than eighteen inches (18") high to permit wildlife passage. (see Figure 32). (2474/Reso. 6188,4233)

3. The height of walls shall be measured from the original grade. (4233)

4. Walls or fences on individual lots which are visible from the street shall be designed to match the character and appearance of the home (see Figure 26). (2474/Reso. 6188,3693,4233)

5. The use of chain link as a permanent fencing material is prohibited in the Desert Uplands Area. (2474/Reso. 6188,4233)

6. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

(a) As a means of preserving the natural desert character, views, wildlife corridors, and habitat, developers of low-density residential subdivisions are encouraged to only utilize entry features and not utilize subdivision perimeter walls. (4233)
(b) In larger-lot subdivisions, the subdivider shall confine fencing to the residential private activity areas on each lot, with the balance of the lot to remain open and unwalled. (2474/Reso. 6188,3693,4233)

(c) Walls on individual lots shall be designed to match the character and appearance of the home (see Figure 26). (2474/Reso. 6188,3693,4233)

(G) Native Plant Preservation. (2474/Reso. 6188,3693,4233)

The Desert Uplands Area is an Upper Sonoran Desert community with unique plants, washes, and land forms which create its own identity and character. To preserve and maintain its unique character, proposed developments shall have two (2) major categories of landscaping: (3693,4233)

1. RETAINED DESERT: Natural, undisturbed open spaces, common areas, and washes which should be subject to no grading and no additional plant materials, except where stabilization of washes is needed to accommodate flows. (3693,4233)

2. REVEGETATED DESERT: Reconstructed desert landscaping, including both retained and revegetated plant materials, shall be in accordance with the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section, and are to be of the same species mix, and equivalent in size and density to the surrounding undisturbed area. (3693,4233)

3. A minimum of fifty percent (50%) of the plant material used for common area, parkway, and median landscaping shall be selected from the Preferred Desert Uplands Plant List, and the remainder selected from the Acceptable Desert Uplands Plant List. Subdividers are encouraged to select at least ninety percent (90%) of the plant material used for common area, parkway, and median landscaping from the Preferred Desert Uplands Plant List. (4233)

4. The use of turf is discouraged in order to retain the desert character and to conserve water resources. (4233)

5. Front and Rear Private Yards/Gardens. Plant materials for this area are left to the choice of the individual homeowners and their homeowners' association. Homeowners are encouraged to use plants from the Preferred Desert Uplands Plant List. (3693,4233)

6. Retained or transplanted cactus and ocotillo may be substituted to achieve up to fifty percent (50%) of the required number of trees to be planted in the street right-of-way. (2474/Reso. 6188,3693,4233)

7. Thorny plants, cactus, and ocotillo must maintain a minimum setback of seven feet (7') from sidewalks and/or vehicular roadways. Such plants will be allowed in a curbed median island, provided a minimum of three feet (3') is maintained from curbs as a clear zone (measured from the nearest part of the plant) (see Figures 33 and 34). (2474/Reso. 6188,3693,4233)

8. Boulders and large-diameter trees may be placed in large-width median islands as design elements if berming is provided for protection (see Figure 34). (2474/Reso. 6188,3693,4233)
9. Thorny plants, cactus, and ocotillo shall have a minimum of three (3) buffer shrubs in front of such plants (pedestrian/street side) (see Figures 33 and 34). Examples of buffer shrubs are creosote, chuparosa, fairy duster, and desert lavender. (2474/Reso. 6188,3693,4233)

10. Transplanted native plants that die within one (1) year are to be replaced within thirty (30) days of written notification by the City. Replacements are to be indigenous plant material selected from the Preferred Desert Uplands Plant List. A bubbler or emitter irrigation system shall be extended to new or transplanted plants. (2474/Reso. 6188,3693,4233)

11. Existing healthy trees (4" caliper and larger) and all healthy cacti in common open space areas shall be preserved in place where possible. When retention of trees and cacti is not possible due to lot sizes or location, removal and replanting on other areas of the site is required. (2474/Reso. 6188,3693,4233)

12. Vegetation shall be re-established by the subdivider on all graded areas and exposed cut and fill slopes. Desert grasses, shrubs, trees, and cacti from the Preferred Desert Uplands Plant List shall be used to prevent erosion and permit natural revegetation. (2474/Reso. 6188,3693,4233)

13. Low-Density Development Standards. One (1) dwelling unit per acre (R1-35) or less: Existing healthy trees (4" caliper and larger) and all healthy cacti shall be preserved in place where possible. When retention of healthy trees and cacti is not possible due to building site location, removal and replanting on other areas of the site or lot is required. (2474/Reso. 6188,3693,4233)

(H) Lot Development. The following are low-density development standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

1. Building Envelope Requirements. All improvements shall be located within a building envelope, occupying not more than fifty percent (50%) of the total lot area. The building envelope is the specified area on a lot within which all areas of disturbance, including structures, driveways, walkways, patios, pools, walls, construction work access, grading, slopes, and riprap are located. (4233)

(a) Protective Fencing. A building envelope protective fencing permit shall be obtained prior to any plant removal or disturbance activities. The building envelope protective fencing shall be installed on the disturbance line as identified on the approved plans. The building envelope fence line shall be established and staked by an Arizona registered engineer or land surveyor. The fencing is to display appropriate warning signs posted every one hundred (100) linear feet in English and Spanish, indicating "Protected Area - Do Not Remove Fence." A zoning inspection is required to ensure compliance with the fencing permit, and shall occur prior to the issuance of the building/grading permit for the lot. The fencing and signage shall be maintained in place throughout the grading/construction process and shall only be removed after a final inspection is approved. Failure to maintain the fencing as permitted may result in stop work orders or other penalties as provided in this Chapter and Title 4 of this Code. The Planning Director may authorize the partial or total removal of the temporary fence to facilitate final grading, revegetation, and installation of site flat work or hardscape. (4233)

(b) Work Access Areas. To accommodate the redirection of existing drainage/washes around structures and to provide area for sufficient work access during construction, the maximum disturbed area may be increased, subject to plan approval, to sixty percent (60%) of the total lot area. All disturbed areas beyond the fifty-percent (50%) building envelope shall be enclosed within the protective fencing during construction and shall be fully revegetated using plant material salvaged from the same lot, which if necessary may be supplemented with plants from the Preferred Desert Uplands Plant List. The revegetation plan shall provide plant materials designed to blend with or exceed the existing surrounding plant densities. (4233)
### PREFERRED DESERT UPLANDS PLANT LIST

#### RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS

<table>
<thead>
<tr>
<th>BOTANICAL NAME</th>
<th>COMMON NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ACACIA CONSTRICTA</td>
<td>WHITETHORN ACACIA</td>
</tr>
<tr>
<td>2 ACACIA GREGGII</td>
<td>CATCLAW ACACIA</td>
</tr>
<tr>
<td>3 ACACIA FARNESIANA (SYN. ACACIA SMALLII AND SYM. ACACIA MINUTA)</td>
<td>SWEET ACACIA</td>
</tr>
<tr>
<td>4 BURSERA MICROPHYLLA</td>
<td>ELEPHANT TREE</td>
</tr>
<tr>
<td>5 CANOTIA HOLACANTHA</td>
<td>CRUCIFIXION THORN</td>
</tr>
<tr>
<td>6 CELTIS PALLIDA</td>
<td>DESERT HACKBERRY</td>
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<tr>
<td>7 CELTIS RETICULATA</td>
<td>NETLEAF HACKBERRY</td>
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<td>8 PARKINSONIA FLORIDA</td>
<td>BLUE PALO VERDE</td>
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<td>9 PARKINSONIA MICROPHYLLA</td>
<td>FOOTHILL PALO VERDE</td>
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<tr>
<td>10 CHILOPSIS LINEARIS</td>
<td>DESERT WILLOW</td>
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<tr>
<td>11 OLNEYA TESOTA</td>
<td>IRONWOOD</td>
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<tr>
<td>12 PROSOPIS VELUTINA (SYN. PROSOPIS JULIFLORA)</td>
<td>VELVET MESQUITE</td>
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<tr>
<td>13 PROSOPIS PUBESCENTS</td>
<td>SCREWBEAN MESQUITE</td>
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<td>14 QUERCUS TURBINELLA</td>
<td>SCRUB OAK</td>
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<tr>
<td>15 FRANGULA CALIFORNICA (SYN. RHAMNUS CALIFORNICA)</td>
<td>CALIFORNIA BUCKTHORN</td>
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<tr>
<td>16 RHAMNUS CROCEA</td>
<td>HOLLYLEAF BUCKTHORN</td>
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<tr>
<td>17 RHUS OVATA</td>
<td>SUGAR SUMAC</td>
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<tr>
<td>18 VAUQUELINIA CALIFORNICA</td>
<td>ARIZONA ROSEWOOD</td>
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### ACCEPTABLE DESERT UPLANDS PLANT LIST

#### ALLOWABLE DROUGHT-TOLERANT PLANTS - NOT NATIVE TO LOCAL AREA

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<tr>
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<td>ABYSSINIAN ACACIA</td>
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<td>2 ACACIA ANEURA</td>
<td>MULGA</td>
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<tr>
<td>3 ACACIA CAVENA</td>
<td>CAVEN'S ACACIA</td>
</tr>
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<td>CATCLAW ACACIA</td>
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### PREFERRED DESERT UPLANDS PLANT LIST

#### RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS

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### ACCEPTABLE DESERT UPLANDS PLANT LIST

#### ALLOWABLE DROUGHT-TOLERANT PLANTS - NOT NATIVE TO LOCAL AREA

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### PREFERRED DESERT UPLANDS PLANT LIST

#### RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS

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### PREFERRED DESERT UPLANDS PLANT LIST
RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS
ANNUALS, PERENNIALS, GROUNDCOVERS, WILDFLOWERS

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<td>23 MENTZELIA INVOLUCRATA</td>
<td>BLAZING STAR</td>
<td>48 THYMOPHYLLA PENTACHAETA</td>
<td>GOLDEN DOGWEED</td>
</tr>
<tr>
<td>24 MIMULUS CARDINALS</td>
<td>SCARLET MONKEY FLOWER</td>
<td>49 ZAUSCHNERIA LATIFOLIA</td>
<td>HUMMINGBIRD FLOWER</td>
</tr>
<tr>
<td>25 MIMULUS GUTTATUS</td>
<td>YELLOW MONKEY FLOWER</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(4233)
### ACCEPTABLE DESERT UPLANDS PLANT LIST

**ALLOWABLE DROUGHT-TOLERANT PLANTS - NOT NATIVE TO LOCAL AREA**

<table>
<thead>
<tr>
<th>BOGICAL NAME</th>
<th>COMMON NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 BAHIA ABSINTHIFOLIA</td>
<td>BAHIA</td>
</tr>
<tr>
<td>2 SWAINSONA FORMOSA</td>
<td>STURT'S DESERT PEA</td>
</tr>
<tr>
<td>3 DYSSODIA PENTACHAETA</td>
<td>GOLDEN DYSSODIA</td>
</tr>
<tr>
<td>4 ERODIUM TEXANUM</td>
<td>FILLAREE</td>
</tr>
<tr>
<td>5 NOLINA BIGELOVII</td>
<td>BIGELOW NOLINA</td>
</tr>
<tr>
<td>6 PENSTEMON SPECIES</td>
<td>PENSTEMON</td>
</tr>
<tr>
<td>7 PLANTAGO INSULARIS</td>
<td>INDIAN WHEAT</td>
</tr>
<tr>
<td>8 VERBENA SPECIES</td>
<td>VERBENA</td>
</tr>
<tr>
<td>9 ZINNIA ACEROSA</td>
<td>DESERT ZINNIA</td>
</tr>
</tbody>
</table>

### PREFERRED DESERT UPLANDS PLANT LIST

**RECOMMENDED LOCAL SONORAN DESERT NATIVE PLANTS**

<table>
<thead>
<tr>
<th>BOGICAL NAME</th>
<th>COMMON NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ARISTIDA PURPUREA</td>
<td>PURPLE THREEAWN</td>
</tr>
<tr>
<td>2 MUHLENBERGIA DUMOSA</td>
<td>BAMBOO-MUHLY</td>
</tr>
<tr>
<td>3 MUHLENBERGIA RIGENS</td>
<td>DEER GRASS</td>
</tr>
<tr>
<td>4 BOUTEOUA CURTIPENDULA</td>
<td>SIDE OATS GRAMA</td>
</tr>
<tr>
<td>5 MUHLENBERGIA PORTERI</td>
<td>BUSH MUHLY</td>
</tr>
</tbody>
</table>

### PROHIBITED PLANT LIST

<table>
<thead>
<tr>
<th>BOGICAL NAME</th>
<th>COMMON NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 PALMAE</td>
<td>ALL PALMS</td>
</tr>
<tr>
<td>2 PINUS</td>
<td>ALL PINES</td>
</tr>
<tr>
<td>3 CUPRESSUS</td>
<td>CYPRESS</td>
</tr>
<tr>
<td>4 CHAMAECYPARIS</td>
<td>FALSE CYPRESS</td>
</tr>
<tr>
<td>5 JUNIPERUS</td>
<td>JUNIPER</td>
</tr>
<tr>
<td>6 CEDRUS</td>
<td>CEDAR</td>
</tr>
<tr>
<td>7 OLEA EUROPAEA</td>
<td>OLIVE TREES</td>
</tr>
<tr>
<td>8 NERIUM OLEANDER</td>
<td>OLEANDERS</td>
</tr>
<tr>
<td>9 THEVETIA SPECIES</td>
<td>THEVETIA</td>
</tr>
<tr>
<td>10 PENNISETUM SETACEUM</td>
<td>FOUNTAIN GRASS</td>
</tr>
<tr>
<td>11 CITRUS</td>
<td>CITRUS</td>
</tr>
</tbody>
</table>

**NOTE:** Protected Native Plants: The Arizona Department of Agriculture Plants Services Division has formulated a policy concerning protected native plants. A permit is required for the removal and transportation of protected native plants. All protected native plants shall be tagged by the Arizona Department of Agriculture. (3693,4233)
(c) Minimum Setback. There shall be a minimum ten-foot (10') setback from any property line for the building envelope that shall remain undisturbed except for the allowed driveway, utility trenching, approved drainage improvements, and approved work access area. (4233)

(d) Driveway Exception. The area of a single-access driveway extending beyond the first thirty feet (30') of lot depth may be excluded from the building envelope disturbance calculation provided that the driveway is a maximum width of sixteen feet (16'), that all disturbance associated with the construction of the driveway is minimized to the greatest extent possible, and that all disturbed area resulting from the driveway construction is fully revegetated using plant material salvaged from the same lot or supplemented with plants from the Preferred Desert Uplands Plant List. (4233)

(e) Utility Exception. The area for utility trenching may be excluded from the building envelope disturbance calculation provided that disturbance associated with the installation of utilities is minimized to the greatest extent possible, that all disturbance as a result of the trenching is fully revegetated using plant material salvaged from the same lot or supplemented with plants from the Preferred Desert Uplands Plant List, and that the utility trench is located adjacent to or under the driveway or at alternative locations as approved by the Planning Director or designee. (4233)

(f) Limitation on Driveway and Utility Exceptions. The building envelope exclusions relating to driveways and utility trenches are limited to a combined, maximum exclusion of ten percent (10%) of the total lot area. (4233)

(g) Compliance. Occupancy or other utilization of any structure shall not commence until all requirements of the Desert Uplands Development Standards and the requirements of Title 4 of this Code have been fulfilled and a final inspection has been completed. (4233)

2. Building Envelopes With Natural Area Open Space Preservation. Variations to the building envelopes may be approved as part of an approved Planned Area Development (PAD) that preserves Natural Area Open Space (NAOS) in compliance with the following requirements: (4233)

(a) Intent. This Subsection is intended to allow variations to the building envelope requirements in 9-6-5(H)1 with the approval of a PAD when NAOS is preserved in common tract and on-lot areas. (4233)

(b) The location of NAOS on a preliminary subdivision plat shall be based on the following considerations: preservation of natural washes; preservation of significant features and vegetation, including rock outcroppings and significant concentrations of native vegetation in relation to the surrounding development project; continuity of open space within the development project and with adjacent developments; continuity of on-lot open spaces on adjoining lots; provision for unimpeded wildlife access and movement between open space areas. (4233)

(c) Natural Area Open Space shall be designed to preserve environmental features with consideration of the surrounding environment in order to connect with existing or planned open space of adjacent lots or common areas so that continuous areas of meaningful Natural Area Open Space are formed. The minimum contiguous area for NAOS shall be four thousand (4,000) square feet with a minimum horizontal dimension of thirty feet (30'), except along roadways, where the minimum shall be twenty feet (20'). (4233)

(d) Natural Area Open Space shall be undisturbed areas or a combination of undisturbed and revegetated areas. Subdivisions designed with a combination of undisturbed Natural Area Open Space and revegetated open space shall have at least seventy percent (70%) of the required Natural Area Open Space as undisturbed Natural Area Open Space. This minimum applies to both common tract and on-lot Natural Area Open Space. Revegetated areas shall not exceed thirty percent (30%) of the Natural Area Open Space. (4233)
(e) The fifty-percent (50%) building envelope limitation, 9-6-5(H)1, may be increased in direct proportion to the percentage of Natural Area Open Space preserved within common tracts controlled by a homeowners' association, land trust, or similar entity; or located on-lot within designated easements, as indicated in the following chart: (4233)

<table>
<thead>
<tr>
<th>NATURAL AREA OPEN SPACE PRESERVED IN THE SUBDIVISION WITHIN HOA/TRUST-OWNED AND-MAINTAINED AREAS AND ON-LOT EASEMENTS</th>
<th>MAXIMUM BUILDING ENVELOPE PER LOT BASED UPON NATURAL AREA OPEN SPACE PRESERVED WITHIN THE SUBDIVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 10%</td>
<td>50 - 60%</td>
</tr>
<tr>
<td>10 - 25%</td>
<td>60 - 75%</td>
</tr>
<tr>
<td>25 - 35%</td>
<td>75 - 85%</td>
</tr>
<tr>
<td>35 - 49%</td>
<td>85 - 99%</td>
</tr>
<tr>
<td>50% and Above</td>
<td>100% Subject to Envelopes or Easements That May Be Required to Preserve Environmental Features Identified on the Preliminary Subdivision Plat</td>
</tr>
</tbody>
</table>

Example 1: If 25% of the overall subdivision were preserved as NAOS, then building envelopes could be increased by 25% to a maximum of 75% per lot.

Example 2: If 32% of the overall subdivision were preserved as NAOS, then building envelopes could be increased by 32% to a maximum of 82% per lot.

(f) Natural Area Open Space shall be identified on the preliminary and final plat. (4233)

(g) The driveway and utility trench exceptions specified in 9-6-5(H)1(d) and (e) are not permitted if increased building envelopes are approved as part of a Planned Area Development with Natural Area Open Space. The work access area exception specified in 9-6-5(H)1(b) is permitted as part of a Planned Area Development with Natural Area Open Space. (4233)

5. If any part of the approved building pad is to be built above natural mean grade, the property owner or designee shall provide a PAD height certification statement that is prepared, stamped, and signed by an Arizona registered engineer or land surveyor. The PAD certification statement shall be submitted prior to the approval of the footing inspection. (4233)

6. Easements for NAOS, open space, or drainage shall be provided for those lot areas with slopes of fifteen percent (15%) or greater or natural area washes that carry significant drainage as determined by the City Engineer. (2474/Reso. 6188,3693,4233)

7. Where easements are provided, the balance of the lot or the "buildable area" must have a usable shape and size and provide adequate street access. (2474/Reso. 6188,4233)

(I) Building Height/Density. (2474/Reso. 6188,4233)
1. Densities shall be determined by the underlying zoning district. (2474/Reso. 6188, 4233)

2. Building height shall be limited to two (2) stories or thirty feet (30'), whichever is the lesser; or the maximum height permitted by the underlying zoning district; or Site Plan Approval as approved by the City Council. (2474/Reso. 6188, 4233)

3. Building height for flat roof buildings shall be measured as the vertical distance from the natural mean ground elevation of the lot to the top of the parapet. Building heights for all other roofs shall be measured as the vertical distance from the natural mean ground elevation of the lot to the mean height between the plate line and the ridge, excluding embellishment. (4233)

4. All buildings shall be located below the ridge line (see Figure 26). (2474/Reso. 6188, 4233)

(J) Fifteen Percent (15%) Slope/Open Space. (2474/Reso. 6188, 4233)

1. Slopes of fifteen percent (15%) or greater shall remain in undeveloped natural open space. (2474/Reso. 6188, 3693, 4233)

2. The open space within the lots, common open space areas with slopes of fifteen percent (15%) or greater, or natural area washes that carry significant drainage as determined by the City Engineer shall be identified and secured by an open space and/or drainage easement and be maintained by the lot owner or homeowners' association. (2474/Reso. 6188, 3693, 4233)

3. Preserved natural washes, undisturbed Natural Area Open Space, and sensitive areas as identified in approved preliminary and final plats, and construction drawings are required to be fenced prior to and during construction. Fencing is to be installed and inspected prior to any site preparation, grading, plant removal, or construction. Fencing is to display signage indicating, "Protected Area - No Access." (4233)

4. Ridge lines shall remain as undeveloped natural open space. (2474/Reso. 6188, 3693, 4233)

(K) Washes/Drainage. (2474/Reso. 6188, 4233)

1. Retained washes and new drainage channels shall maintain a "natural" desert character. Requirements include landscaping with native rock and plant materials, use of integral colored alternative material, contouring and preservation of existing natural features (see Figure 35). (2474/Reso. 6188, 3693, 4233)

2. Man-made channels and existing natural washes conveying flows from adjacent properties shall remain separate from retention basins storing on-site drainage. (4233)

3. To preserve riparian zones, undisturbed areas shall extend, as determined by the City, beyond the banks of significant washes, including those regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. (4233)

4. Natural drainage patterns shall be maintained onto and off development sites, as determined by the City Engineer, in such a manner that existing vegetation along natural washes continues to receive runoff water. Water collection structures and retention basins shall be installed so that water from significant storm events flows into the same offsite downstream flow paths that existed prior to development, as determined by the City Engineer. (4233)
5. Storm water retention basin design layouts shall be incorporated with the overall site landscaping plan including amenities, access, and plantings. Landscaping shall be provided in all areas of the basin (slope, top, and bottom). A transitional area shall be introduced between the top of the retention basin slope and the edge of sidewalks, street curbs, parking spaces, driveways, or parking screen walls. A variety of side slopes and contouring shall be utilized, and radii shall be varied between top and bottom of slope for a smooth transition. Incorporate major horizontal and/or vertical slope changes every one hundred feet (100') of linear slope length. (4233)

6. Where retention basins occur along arterial streets, berms shall be along fifty percent (50%) of the basin frontage. Berms shall be four-to-one (4:1) (horizontal-to-vertical) maximum slope, and no more than two feet (2') high above adjacent street grade. (4233)

7. With approval of the City Engineer, basin side slopes which are adjacent to streets (public or private) and pedestrian walkways, may be steeper than a six-to-one (6:1) slope if a five-foot (5') transition area, no steeper than a six-to-one (6:1) slope, is provided. Side slopes over five feet (5') away from the street/walkway may be permitted as steep as four-to-one (4:1). (4233)

8. Vertical walls will be considered subject to aesthetic and engineering review and may be used for up to twenty-five percent (25%) of the perimeter of the basin. Walls retaining over two feet (2') of soil require structural design. Walls with over two feet (2') of drop-off require railing. Walls retaining water require waterproof design. (4233)

9. Storm water retention basins shall be landscaped/revegetated with existing or salvage vegetation and native plant materials selected from the Preferred Desert Uplands Plant List in accordance with Subsection (G)3 of this Section. (2474/Reso. 6188,4233)

10. Random-sized rock (six inches [6"] and larger) may be utilized to create a natural-appearing desert wash within the basin bottom. Basins are encouraged to provide up to twenty-five percent (25%) more land area than the minimum area necessary to retain their specified volume of water in order to allow for the creation of peninsulas, more "natural" contouring, and the placement of boulders and rock outcroppings. (2474/Reso. 6188,4233)

11. Native materials shall be utilized in the construction of headwalls, flow-retardant structures and devices, culverts, and drainage channel bottoms in the Desert Uplands Area (see Figure 30). Headwall designs are required to blend in color, surface treatment, and shape with surrounding landscaping. Headwalls shall be flared or sloped to follow the contours of the basin or channel. (2474/Reso. 6188,3693,4233)

12. Safety rails shall utilize alternative designs such as wrought iron to match theme walls, boulders, and pilasters and shall be a minimum forty-two inches (42") high. Inlet/outlet grates or gates utilizing alternative designs are required on twenty-four-inch (24") and larger diameter pipes. (4233)

13. Low-Density Development Standards: One (1) dwelling unit per acre (R1-35) or less. (2474/Reso. 6188,4233)

   (a) Nonturfed drainage swales are encouraged in the Desert Uplands Area. (2474/Reso. 6188,4233)

   (b) Erosion protection of drainage swales will be encouraged through the use of native rocks and native plant materials. Where runoff velocities necessitate additional erosion protection, the use of integral colored gunite or alternative material may be approved by the City Engineer. (2474/Reso. 6188,4233)
LAND SPLITS:

(A) Purpose and Intent. This Subsection is intended to implement procedures whereby property owners may split parcels of land in compliance with the following objectives: (2474/Reso. 6188)

1. To protect and promote the public health, safety, convenience, and welfare. (2474/Reso. 6188)

2. To implement the City of Mesa General Plan and elements contained therein. (2474/Reso. 6188)

3. To provide building sites of sufficient size and appropriate design for the purposes for which they are to be used. (2474/Reso. 6188)

4. To provide adequate pedestrian and vehicular access for individual lots. (2474/Reso. 6188)

5. To provide for water supply, sewage disposal, drainage, dust control, and other requirements necessary to protect the environment and to promote the aesthetics of the City. (2474/Reso. 6188)

6. To allow the further intensification of land uses through the land split process only in areas that are improved with public facilities and provided with public services so that negative or undesirable impacts to the public are minimized. (2474/Reso. 6188)

(B) Applicability. The regulations contained in this Section shall apply to all divisions of land made within the corporate limits of the City of Mesa since January 1, 1974 or other divisions determined by the Planning Director to be a land split. (2474/Reso. 6188)

It shall be unlawful for any person, partnership, or other legal entity to sell or offer a contract to sell any parcel that is subject to the requirements of this regulation until an approved land split map complying with the provisions of this regulation has been filed with the Development Services Department and approval given by the Planning Director. (2474/Reso. 6188,3766)

The division of any property into four (4) or more parcels or the division of any property involving a new street shall proceed through the subdivision process. The division of any property, the boundaries of which have been fixed by a recorded plat into more than two (2) parcels, shall proceed through the subdivision process unless waived by the Planning Director. (2474/Reso. 6188)

The creation of two (2), three (3), or more units having the right of exclusive occupancy coupled with an undivided interest in the land, such as in a condominium, horizontal property regime, cooperative, community apartment, townhouse, or similar project, shall proceed through the subdivision process. (2474/Reso. 6188)

These regulations may be modified by the Planning Director when the division of land involves two (2) or more separately owned parcels which cannot be subdivided into lots in accordance with the standards and procedures set forth in Section 9-6-2 of this regulation and with the zoning regulations of the zoning district in which they are located. All affected property owners must agree to the following: (2474/Reso. 6188)

1. To follow a "Neighborhood Plan" ("NP") prepared either by the Department or others. (2474/Reso. 6188)

2. To dedicate their portion of any public street shown on the approved "Neighborhood Plan" ("NP") at the time at least two (2) key parcels desire to subdivide as determined by the City Engineer and the Planning Director. (2474/Reso. 6188)
3. To provide the minimum standards for dust-proofing and road base support in accordance with Development Services and Fire Department standards necessary to support the vehicles that will serve this area. (2474/Reso. 6188, 3766)

4. To participate in any improvement district(s) initiated by the City or the property owners to provide water and sewer and other public street improvements. (2474/Reso. 6188)

5. To participate in any necessary land acquisitions to provide required drainage retention facilities to control flooding. (2474/Reso. 6188)

Boundary adjustment plats and deeds, where land taken from one (1) parcel is added to an adjacent parcel, shall not be considered to be a land split under the terms of this Section, provided that the proposed adjustment does not: 1) create any new lots; 2) render any existing lot substandard in size or shape; 3) render substandard the setbacks to existing development on the affected property; and 4) impair any existing access, easement, or public improvement. (2474/Reso. 6188)

(C) Relationship to Other Regulations. (2474/Reso. 6188)

1. A land split shall conform to all applicable policies of the General Plan. (2474/Reso. 6188)

2. A land split map shall conform to all applicable regulations of the Zoning Ordinance. (2474/Reso. 6188)

3. A land split map shall conform to the adopted street details and standards. (2474/Reso. 6188)

4. All public improvements required under this regulation shall conform to the development regulations of Section 9-6-4. (2474/Reso. 6188)

5. A land split shall conform to the requirements for dedications as set forth in Section 9-8-3(F) Rights-of-Way Dedication table of the Mesa City Code. (4570)

(D) Application and Approval Procedures. (2474/Reso. 6188)

1. The division of land into two (2) or three (3) parcels and under those special conditions described in Subsection (B) of this Section requires the approval of a land split map. The purpose of the land split map review is to determine the appropriateness of the access and lot design with respect to the contours of the land, to determine if the setbacks of existing development on the site(s) are being rendered to be in violation with the creation of new lot lines, to determine if a subdivision is being created, and to determine the conformity of the proposed land split to City policies and ordinances. Land splits shall proceed through the required approval process. Anyone requesting land split map approval shall submit the following to the Development Services Department: (2474/Reso. 6188, 3766)

(a) A completed application form. (2474/Reso. 6188)

(b) A fee as established in the most recent Mesa Schedule of Fees and Charges. (3911, 4076, 4497, 4570)

(c) A list of real property owners with addresses adjacent to the parcel proposed to be split, as determined from the latest equalized assessment roll of the County Assessor’s Office. (2474/Reso. 6188, 3911)

(d) A chain of title or a history of the ownership of the parcel proposed to be split, dating back to January 1, 1974, furnished by a recognized title company. Such information shall be presented so that it may be determined if the proposed land split does or does not constitute a subdivision. (2474/Reso. 6188, 3911)
2. The information required for the land split map shall be shown graphically or by note on plans at a standard engineering scale large enough to show all details clearly. The size of the map shall be either eighteen inches by twenty-four inches (18" x 24") or twenty-four inches by thirty-six inches (24" x 36") and shall contain the following information: (2474/Reso. 6188)

(a) Name, address, and telephone number of the property owner(s). (2474/Reso. 6188)

(b) Name, address, and telephone number of the engineer or land surveyor preparing the map, including professional seal and signature. (2474/Reso. 6188)

(c) Graphic and written scale, north indicator (up or to the right), and date of preparation. (2474/Reso. 6188)

(d) Legal description of the property. (2474/Reso. 6188)

(e) The General Plan designation for the subject site. (2474/Reso. 6188)

(f) The existing zoning classification of the subject site and adjacent properties. (2474/Reso. 6188)

(g) The topography of the site shown at one-foot (1') contour intervals if the site slopes less than five percent (5%); two-foot (2') contour intervals if the site slopes up to twenty percent (20%); and five-foot (5') contour intervals if the site slopes more than twenty percent (20%). (This requirement may be waived by the Planning Director upon documentation or good cause.) (2474/Reso. 6188)

(h) The property boundaries of the existing site and of all property within one hundred fifty feet (150'). (2474/Reso. 6188)

(i) The parcel boundaries of the proposed parcels to be created and the net area (the area exclusive of roadways dedicated to the public) in square feet of each parcel. (2474/Reso. 6188)

(j) The location of existing streets and rights-of-way proposed to be dedicated with all dimensions. (2474/Reso. 6188)

(k) The locations of existing structures, fences, walls, etc. (2474/Reso. 6188)

(l) Any additional pertinent information as required by the staff, such as copies of current "Covenants, Conditions, and Restrictions" ("C.C.&R.s"), in the case of land splits in recorded subdivisions. (2474/Reso. 6188)
3. Development Services staff shall review the application and the proposed land split map for completeness and accuracy. When deficiencies are determined, these shall be noted and relayed to the applicant. No decision shall be rendered until the application is determined to be complete. Department staff, in evaluating and making decisions on land split proposals, shall consider the following criteria: (2474/Reso. 6188,3766)

(a) Consistency of the proposed land split with the General Plan. (2474/Reso. 6188)

(b) Conformity of the proposed land split to the Zoning Ordinance. (2474/Reso. 6188)

(c) Conformity of the proposed land split to Section 9-6-3 (Subdivision Design Principles and Standards) and other applicable sections of the Subdivision Regulations. (2474/Reso. 6188)

(d) Conformity of the proposed land split with the City’s existing street patterns and details. (2474/Reso. 6188)

(e) Lot size and design results from the proposed land split in relation to the site’s topography. (2474/Reso. 6188)

(f) Determination from the title information and lot/street design that a subdivision is not being created. (2474/Reso. 6188)

(g) Other pertinent criteria. (2474/Reso. 6188)

4. An improper land split renders the property involved unsuitable for building and not entitled to a construction permit. (2474/Reso. 6188)

9-6-7: MODIFICATIONS: (2474/RESO. 6188,3105,4606,4771)

(A) Where an individualized assessment reveals the existence of special conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for subdivision or land split improvements associated with the proposed development, the City Manager or designee may eliminate, reduce, defer, or approve alternatives to the requirements and specifications contained in this Chapter based upon a finding that such conditions or factors exist and that the elimination, reduction, deferral, or alternative: (3105,3766,4606,4771,4777)

1. Is consistent with the intent of these regulations; (3105)

2. Will result in improvements that are adequate to meet the City's needs; (3105,4606)

3. Does not constitute a grant of special privilege; and (3105)

4. Is not contrary to the public interest. (3105)

(B) Where an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for the dedication of rights-of-way for land splits, the City Manager or designee may eliminate, reduce or approve alternatives to the dedication of rights-of-way requirements for land splits contained in this chapter upon finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (4570,4606,4771)
(C) With the approval of, or amendment to, a rezoning to PC District, the City Council may approve modifications to the requirements and specifications required by this Chapter if the City Engineer or City Traffic Engineer recommends approval of the modification. The City Engineer or City Traffic Engineer, in consultation with the Planning Director, may recommend the elimination, reduction, or approval of alternatives to the requirements and specification required by this Chapter. If the City Engineer or City Traffic Engineer recommends approval of such a modification, the recommendation, which may be subject to conditions or stipulations, shall be forwarded to the City Council with the PC District. City Council may approve the modification as recommended. The City Engineer's or City Traffic Engineer's recommendation shall be based upon a finding that the modification:

1. Is consistent with the intent of these regulations; (4771)
2. Will result in an equivalent level of service for health, safety and welfare to the General public; (4771)
3. Will result in improvements that are adequate and meet the City's needs; (4771)
4. Furthers the purposes of the PC District; and (4771)
5. Is not contrary to the public interest. (4771)

(D) To ensure compliance with any elimination, modification, deferral, or alternative, the City Manager or designee may require certain provisions, such as protective covenants, bonds, and development agreements. Such provisions may be recorded against the property being developed. (3105,3766,4570,4771,4777)

1. When the deferral of certain right-of-way improvement requirements is authorized by the City Manager or designee for a specific development project, the owner and/or developer shall remit to the City of Mesa a payment in lieu of causing the actual design, installation, and/or construction of said required public improvements. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (3881,4570,4771)
2. The obligation to construct right-of-way improvements or make an in-lieu payment prior to the issuance of permits, including the determination of the amount of the in-lieu payment required, may be deferred to a future date if the developer provides financial assurances acceptable to the City Engineer and the City Attorney, the developer and City enter into a development agreement that provides adequate financial assurance for the future construction of the improvements and/or the future payment of an in-lieu amount, and the City Manager or designee finds that such deferral meets all of the following criteria:

(a) The development is non-residential; and (4777)
(b) The property is zoned as a commercial or industrial district; and (4777)
(c) The deferred right-of-way improvements are not included in this City's Capital Improvement Plan for construction within five (5) years of the deferral; and (4777)
(d) The deferral is in the best interest of the City of Mesa. (4777)
9-6-8: APPEALS:

(A) Discretionary decisions of the Planning Director and Development Services Manager may be appealed to the Hearing Officer, who shall be appointed by the City Manager, when such decisions involve one (1) or more of the following: (3105,3766)

1. Any requirement that exceeds or is in addition to the minimum development requirements as defined in this Chapter. (3105)

2. Any requirement not specified in the Mesa City Code or other legislative act of the City of Mesa. (3105)

3. Any requirement resulting from a discretionary act of an administrative official of the City of Mesa. (3105)

(B) Appeals to the Hearing Officer may be submitted by the developer or owner of the property proposed for development which is affected by a discretionary decision of the Planning Director or Development Services Manager. The appeal shall be submitted within thirty (30) days of such decision by filing with the Planning Director or Development Services Manager a notice of appeal on a form provided therefor. No fee is required for this appeal. The Planning Director and Development Services Manager shall transmit to the Hearing Officer all the papers constituting the records upon which the decision appealed was taken. (3105,3766)

(C) The Hearing Officer shall schedule a time for the appeal to be heard, which shall be no later than thirty (30) days from receipt of the appeal. The appellant shall be given at least ten (10) days' prior notice of the date and time set for the hearing. The Hearing Officer shall decide the appeal within five (5) working days from the date the appeal hearing concludes. (3105)

(D) For determination of the appeal, it shall be the responsibility of the City to establish that there is a nexus between the requirement and a legitimate governmental interest and that the requirement is roughly proportional to the impact of the proposed use, improvement, or development. If more than a single parcel is involved, this requirement applies to the entire property that is subject to the approval. (3105)

(E) If the appeal is upheld, the Hearing Officer shall modify or delete the requirement. If the appeal is denied, the appellant may at any time within thirty (30) days of the decision of the Hearing Office file a complaint for a trial de novo in the Superior Court on the facts and the law regarding the issues of the requirement. (3105)

9-6-9: PENALTIES:

(A) It is unlawful to develop land contrary to or in violation of any provisions of this Chapter or of any provisions designated as a condition of approval either by the plan review process or through an amendment, variance, or appeal by an office, board, commission, or the City Council as established by this Chapter.

(B) Any person, firm, or corporation violating any provision of this Chapter and any amendment to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (3105)
Actions by Staff, Boards, and Council

1. Preapplication Conference

Subdivider meets with Staff and submits five (5) copies of proposed "sketch plan." Plan is distributed to determine if Zoning/Site Plan/DMP approval is required and to determine need for park and school sites.

2. Technical Review

These requirements can occur simultaneously; however, approvals shall be final or be scheduled for final approval by City Council and/or for Design Review Board prior to Technical Review meeting.

3. Preliminary Plat Approval

DMP/Rezoning and Site Plan approvals must occur at this stage.

4. Technical Review Meeting

(Engineering/Building Inspections Staff) Review and approval of engineering, architectural, landscaping, and site plans occurs during this time. Plans must be approved prior to plat recording.

5. Prefinal Review

Prefinal review of plat and City Council approval of final plat can occur anytime after Technical Review.

6. Council Approval

7. Recordation of Plat

8. Permit Stage

FIGURE 1
FIGURE 2
If, due to special conditions, the City approves a variance to the maximum cul-de-sac length, then the cul-de-sac radius will increase to 55' with an improved turning radius of 50'.

FIGURE 3
CUL-DE-SACS FOR LOCAL STREETS

Intersections on inside curves are undesirable and will require special staff approval.

CUL-DE-SACs should be used to serve irregular areas of a tract that would otherwise be inaccessible. CUL-DE-SACs should not be used excessively nor as a primary design feature.
Avoid acute angle intersections with rear lot lines.

Side lot lines should be perpendicular or radial to r/w lines.

Corner lots should be 10% - 20% wider than interior lots.

When req'd, provide adequate access to alley.

Provide radius on corner lots.

FIGURE 5
CURVE DATA FOR LOCAL STREETS

REVERSE CURVES

SINGLE CURVE

REQUIRED

NOTE: CENTERLINE CURVE LENGTHS CANNOT BE LESS THAN 100' FEET LONG.

* Terminating street at "tee" intersection only.
MINIMUM CENTERLINE OFFSETS FOR LOCAL, COLLECTOR, AND ARTERIAL STREETS

MIN. OFFSET FOR LOCAL & 40' COLLECTOR STREETS.

MIN. OFFSET FOR ALL OTHER COLLECTOR STREETS.

ARTERIAL TO ARTERIAL STREET INTERSECTIONS MUST ALIGN.

FIGURE 7
ILLUSTRATION #1
UNACCEPTABLE DESIGN
INTERSECTIONS ARE TOO CLOSE AND EXCESSIVE.

INTERSECTIONS WITH ARTERIAL STREETS SHOULD BE LIMITED TO QUARTER MILE INTERVALS. HOWEVER, SHOULD MORE FREQUENT INTERSECTIONS BE NECESSARY, THEY SHOULD BE 'T' TYPE INTERSECTIONS AS ILLUSTRATED IN ILLUSTRATION 2 & 3.

ILLUSTRATION #2
PREFERRED DESIGNS

ILLUSTRATION #3
'T' TYPE INTERSECTIONS
PROHIBITED INTERSECTIONS

ILLUSTRATION #1
MULTIPLE LEGS-
IN EXCESS OF FOUR (4).

ILLUSTRATION #2
ACUTE ANGLE OR Y-TYPE
INTERSECTIONS,
(LESS THAN 90°).

ILLUSTRATION #3
INSIDE OF A CURVE

FIGURE 9
Maximum Block Lengths

Blocks shall be as long as reasonably possible in order to achieve adequate street length, reduce expense and safety hazards arising from excessive street intersections, yet still provide necessary interior circulation between adjacent subdivisions and neighborhoods.

Lots under one half acre, 1500' maximum block length.
Lots of one half acre or greater, 2000' is the maximum block length.

Figure 10
ILLUSTRATION #1
PEDESTRIAN/BICYCLE WAY REQUIRED UNDER SPECIAL CONDITIONS FOR ACCESS TO SCHOOLS, PARKS, SHOPPING CENTERS, ETC.

ILLUSTRATION #2

FIGURE 11
LOT DESIGN
(DEPTH & WIDTH RATIO AND LOT ACCESS)

The depth-to-width ratio of the usable area of the lot shall not be greater than three (3) to one (1).

Note: Every lot shall have frontage on a fully dedicated public street. The zoning district determines the minimum frontage in order to obtain a building permit.

Unacceptable lot access.
NOTE: LOTS MAY BE DESIGNED WHICH MEET ALL CODE MINIMUMS, YET WILL NOT ACCOMMODATE A BUILDERS PRODUCT. SUCH LOTS ARE UNACCEPTABLE AND WILL NOT BE APPROVED. ADEQUATE BUILDING AREAS MUST BE PROVIDED.

SPECIAL LOT TYPES WILL RECEIVE SPECIAL CONSIDERATION WHEN DETERMINING LOT WIDTHS AND DEPTHS.

THE LOT WIDTH IS DETERMINED BY THE LENGTH OF A LINE PERPENDICULAR TO THE AXIS OF THE LOT TAKEN AT THE NARROWER OF EITHER THE FRONT OR REAR BUILDING SETBACK LINE. SPECIAL CONSIDERATION IS GIVEN ON UNUSUALLY DEEP AND NARROWER LOTS.

FIGURE 13
REAR LOT LINES SHALL BE A SERIES OF STRAIGHT LINE SEGMENTS OCCURRING AT JUNCTIONS OF SIDE AND REAR LOT LINES.

ILLUSTRATION #1

ILLUSTRATION #2

CURVED REAR LOT LINES WILL BE PERMITTED IF CURVE RADIUS IS 800 OR GREATER.

MINIMIZE THE NUMBER OF 'KEY' LOTS WHENEVER POSSIBLE.
RESIDENTIAL LOT BACKUP AND CORNER LOTS

TYPICALS

MINIMUM 35' REAR YARDS ADJACENT TO ARTERIAL STREETS (ALL SINGLE RESIDENCE DISTRICTS).

ILLUSTRATION #1
THROUGH LOT REQUIREMENTS ADJACENT TO ARTERIAL STREETS.

ILLUSTRATION #2
CORNER LOT EXAMPLES.

FIGURE 15
ILLUSTRATION #1

AERIAL OVERHEAD EASEMENTS, WHEN REQ'D, SHALL BE COVERED IN THE FLAT DEDICATION STATEMENT ONLY.

ILLUSTRATION #2

STANDARDS FOR FRONT, REAR & SIDE RUFE'S AND GUY & ANCHOR EASEMENT DESIGNS... (SOME VARIATIONS IN SIZE MAY OCCUR AS CONDITIONS VARY... UTILITY COMPANIES WILL PROVIDE FINAL LOCATIONS DURING THE TECHNICAL REVIEW PROCESS.)
PUBLIC ALLEY REQUIREMENTS
WIDTHS, PAVING, PARKING, AND DUMPSTER EASEMENTS

ILLUSTRATION #1
DEAD END ALLEYS PROHIBITED.

COMMERCIAL ALLEY, ASPHALTIC PAVING WITH A 2' CONCRETE VALLEY GUTTER.

ILLUSTRATION #2
RESIDENTIAL ALLEY (SECONDARY ACCESS)
4" ABC OR GRANITE TO CITY SPCS.

ILLUSTRATION #3
(REFER TO MESA STANDARD DETAILS)
MAX. 30" TO SANITATION TRUCK DIRECTION OF TRAVEL.

ILLUSTRATION #4
COMMERCIAL & MULTI-RESIDENTIAL ALLEY (PRIMARY ACCESS)

ILLUSTRATION #5
REQUIRED GUARD RAIL TO PROTECT FENCES ETC. WHEN VEHICLES BACK INTO ALLEY. INSTALL TO CITY SPCS.

NOTE: WIDE (G) WISHES IS MAXIMUM THAT CAN BACK INTO A PUBLIC ALLEY, 56(G) OR MORE MUST ENTER AND EXIT IN A FORWARD MOTION TO ANY PUBLIC WAY.

FIGURE 18
HALF-STREET PAVING REQUIREMENTS

**FIGURE 19**

- Developer may need to acquire additional R/W for compliance with 24' minimum half-street requirements. (Refer to Mesa standard details.)

- Note: Half streets prohibit on-street parking. A variance must be obtained to construct homes on less than a fully dedicated street.
SIGHT DISTANCE REQUIREMENTS

REFER TO ENGINEERING PROCEDURE MANUAL FOR SPECIFIC REQUIREMENTS
(Ord #5395)
"EYEBROW" DESIGNS FOR LOCAL STREETS

NOTE: EYEBROW DESIGNS SHOULD NOT BE USED ON COLLECTOR OR ARTERIAL STREETS.

EYEBROW DESIGN PROVIDES NECESSARY FRONTAGE FOR ADDITIONAL LOTS; HELPS TO BALANCE LOT SIZE AND CREATE SAFETY ZONES IN THE DEEPER PORTIONS OF A BLOCK THAT RESULT FROM CURVILINEAR STREET PATTERNS.

ON VERY SHORT CUL-DE-SACS, EITHER DESIGN IS ACCEPTABLE.

ILLUSTRATION #1

ILLUSTRATION #2

ILLUSTRATION #3

FIGURE 21
TEMPORARY TURNAROUND

ALTERNATE TURNAROUNDS FOR DIFFICULT SITES

ILLUSTRATION #1

FUTURE DEVELOPMENT

ILLUSTRATION 2

PROVIDE TEMPORARY EASEMENT AND ASPHALT TURN-AROUND ABLE TO SUPPORT FIRE DEPARTMENT VEHICLES.

ILLUSTRATION 3

ILLUSTRATION 4

FIGURE 22
FRONTAGE STREET DESIGN STANDARDS
(REQUIRES SPECIAL APPROVAL BY BOARD AND COUNCIL)

NOTE: DUE TO EXCESSIVE COSTS, FRONTAGE STREETS ARE PERMITTED ONLY WITH SPECIAL APPROVAL BY THE BOARD AND COUNCIL.

FIGURE 23
STREETS SHOULD BE SO DESIGNED AND ARRANGED IN RELATION TO EXISTING TOPOGRAPHY AS TO FACILITATE DRAINAGE. PROPER DESIGN WILL ELIMINATE EXCESSIVE CUTS AND FILLS AND UNNECESSARY DRAINAGEWAYS BETWEEN LOTS.

POOR
(DRAINAGE EASEMENT & PIPES THROUGH LOTS).

GOOD

ILLUSTRATION #1

ILLUSTRATION #2

FIGURE 24a
STREETS SHOULD BE SO DESIGNED AND ARRANGED IN RELATION TO EXISTING TOPOGRAPHY AS TO FACILITATE DRAINAGE. PROPER DESIGN WILL ELIMINATE EXCESSIVE CUTS AND FILLS AND UNNECESSARY DRAINAGE WAYS BETWEEN LOTS.

ILLUSTRATION #1

ILLUSTRATION #2

FIGURE 24b
ILLUSTRATION #1

FACE OF CURB

PAVEMENT NOT LESS THAN 24' FOR HALF STREETS.

WIDTH VARIES - 46'/48'

1' MIN.

LANDSCAPE STRIP.

SEWER

P.U.E. (WIDTH MAY VARY).

OPTIONS FOR INTERIOR STREETS IN BUSINESS & INDUSTRIAL PARKS

(FINAL DETERMINATION RESTS WITH CITY ENGINEER)

ILLUSTRATION #2

SIDEWALK

WIDTH VARIES - 46'/48'

UTILITY

SEWER.

RIGHT-OF-WAY VARIES - 60'MIN.

LANDSCAPE STRIP.

SIDEWALK MAY BE REQUIRED - (LAND USE, BUILDING OCCUPANCY, LOCATION & OTHER FACTORS WILL INDICATE SIDEWALK NEED. SIDEWALK ON ONE SIDE MAY BE ADEQUATE).

FIGURE 25
ALL BUILDINGS SHALL BE LOCATED BELOW RIDGE LINE.

WALLS TO MATCH CHARACTER AND APPEARANCE OF HOME.

GRADES UP TO 12% (12% TO 15% UP TO 400' LONG, WITH APPROVAL).

RIBBON CURB (INTEGRAL COLORING ENCOURAGED).

REDUCED CENTERLINE RADIUS AND CURVE LENGTHS WITH APPROVAL.

FIGURE 26
ILLUSTRATION #1

TERRACED VERTICAL RETAINING WALLS.

TERRACES TO BE LANDSCAPED

ENCLOSURE WALL

MINIMUM.

SIZE DETERMINED BY STRUCTURAL CALCULATIONS, SOIL STABILITY, SLOPE.

MORTAR-FREE RETAINING WALL WITH PLANTING SUBJECT TO STRUCTURAL AND SLOPE STABILITY DESIGN CONSIDERATIONS.

E/W

MINIMUM.

R/W

NON-COMPACTED SOIL

COMPACTED SOIL

60° OR LESS

ILLUSTRATION #2.
DRAINAGEWAY CROSSING
CULVERT AND DIP SECTION

CULVERT SIZED TO CARRY 10 YEAR FREQUENCY STORM.

DELETION OF CULVERT FOR LOW FLOWS POSSIBLE WITH ONLY A DIP SECTION PROVIDED (WITH APPROVAL).

DIP SECTIONS FOR LARGER STORMS REQUIRE CITY ENGINEERS APPROVAL.

NATIVE STONE HEADWALLS, NOT IN RIGHT-OF-WAY, STONES SHALL BE PERMANENTLY HELD IN PLACE MECHANICLLY BY CEMENTATION OR SOME OTHER APPROVED METHOD.

FIGURE 29
MULTIPLE CULVERTS FOR LARGER DRAINAGEWAYS

ROADWAY

MUTLIPLE CULVERTS SUGGESTED FOR SHALLOW WASHES, SUBJECT TO HYDRAULIC REQUIREMENTS, TO CARRY 10 YEAR STORM.

CULVERTS

NATIVE STONE HEADWALLS, NOT IN RIGHT-OF-WAY, STONES SHALL BE PERMANENTLY HELD IN PLACE MECHANICALLY BY CEMENTATION OR SOME OTHER APPROVED METHOD.

FIGURE 30
"SHOEBOX" STREETLIGHT

REFER TO ENGINEERING PROCEDURE MANUAL & MESA STANDARD DETAILS FOR SPECIFIC REQUIREMENTS

FIGURE 31
DESERt UPLANDS AREA
PERIMETER WALLS

ILLUSTRATION #1

WALL HEIGHTS TO RESPOND TO TOPOGRAPHIC CHANGES TO PRESERVE DESERT VISTAS.

ILLUSTRATION #2

IN LARGER SUBDIVISIONS, FENCING ENCOURAGED TO BE CONTAINED TO PRIVATE ACTIVITY AREAS.

FIGURE 32
THORNY PLANT BUFFERING REQUIREMENTS

- 7' MIN. SETBACK, SIDEWALK OR CURB TO NEAREST THORNY PLANT (BASED ON FULL GROWTH).

- ROADWAY

- RETENTION BASIN

- STREET

- CROSS-SECTION

- BUFFER THORNY PLANTS FROM TRAFFIC SIDE WITH NON-THORNY PLANTS

- EXAMPLE: HITEX ANGUS CASTUS PURPLE CASTLE TREE (MULCH - BRANCH)

- HEADWALL

- PLAN VIEW

- GUARD RAIL PAINTED TO BLEND WITH ENVIRONMENT (LT. GREEN OR TAN PER EXAMPLE)

■ TO LARGE MASH OR RETENTION BASIN

FIGURE 33
BOULDERS, TREES, & THORNY PLANTS IN LARGE-WIDTH MEDIANS

FIGURE 34
LANDSCAPING WITH ROCK, NATIVE PLANT MATERIALS, INTEGRAL COLORED GUNNITE SIDES AND BOTTOM.
NATIVE PLANT PRESERVATION IN DESERT UPLANDS AREA
CHAPTER 7

COMMUNITY ANTENNA TELEVISION SYSTEMS

SECTION: (1947)

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9-7-23: AMENDMENTS
9-7-24: SEVERABILITY

9-7-1: DEFINITIONS:
For the purposes of this Chapter, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein unless they are defined differently in a license, in which case for that license the definition set forth therein shall apply, or unless a license specifies that the definitions set forth herein in whole or in part do not apply to such license, in which case they do not apply to such license (in whole or in part, as the case may be). 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. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in the Federal Cable Communications Policy Act of 1984 and in the Federal Communications Commission (FCC) rules and regulations shall apply. (972,1947,4110)

APPLICANT: Any person that applies for a license. (972,1974)

APPLICATION: Licensee’s proposal and all additional representations to the City, both written and oral, the latter when electronically recorded. (1947)

CABLECASTING: Programming (exclusive of broadcast signals) and/or all other forms of information, whether audio, video, facsimile, data, or of any other form carried on a cable television system, whether originated by the cable operator or by any other party. (1947)
CABLE TELEVISION SYSTEM OR CABLE COMMUNICATION SYSTEM OR CATV OR SYSTEM: A system, under common ownership and control, of antennas, cables, fiber optics, wires, lines, towers, waveguides, or other conductors, converters, equipment, or transmission paths designed and constructed for the purpose of generating, producing, receiving, transmitting, amplifying, and distributing and controlling audio, video, and other forms of electronic or electrical signals. Said definition shall not include any facility that serves or will serve only subscribers in one or more multiple dwellings under common ownership, control, or management and which does not use City rights-of-way. (1947)

CHANNEL: Unless otherwise defined, a six (6) megahertz (MHz) frequency band which is capable of carrying either one (1) standard video signal or a combination of nonstandard signals. (1947)

CHIEF ADMINISTRATIVE OFFICER: The City Manager of the City of Mesa, Arizona, or his designee appointed to act on his behalf in cable television matters. (1947)

CITY: The City of Mesa, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form. (1947)

COUNCIL: The City Council of the City of Mesa, Arizona, or its designee appointed to act on its behalf in cable television matters. (1947)

CONVERTER: An electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver. (1947)

EDUCATIONAL ACCESS CHANNEL or EDUCATIONAL CHANNEL: Any channel where educational institutions are the sole programmers and exercise editorial control over the programming and other information transmitted over that channel. (1947)

EQUIPMENT, APPARATUS, AND APPURTENANCES: Any manholes, underground conduits, poles, cables, boxes, pedestals, wire fixtures, conductors, or other facilities necessary, essential, used, or useful to and operated by the cable television system. (1947)

FCC: The Federal Communications Commission, its designated representative, or its lawful successor. (1947)

GOVERNMENT ACCESS CHANNEL OR LOCAL GOVERNMENT ACCESS CHANNEL: Any channel where governmental institutions, bodies, or agencies are the sole programmers and exercise editorial control over the programming and other information transmitted over the channel. (1947)

GROSS SUBSCRIBER REVENUES: Any and all compensation and other consideration received directly or indirectly, in payments or lump sum, by the licensee from subscribers in providing subscriber services. (1947)
INSTALLATION: The connection of the system from activated feeder line(s) to subscribers’ terminals for the reception of cable service. (1947)

INSTITUTIONAL NETWORK, INSTITUTIONAL LOOP, OR I-NET: Video, audio, digital, videotext, data, and/or any other one-way or two-way transmission or reception services provided to institutional users on an individual, private-channel basis, not normally accessible to regular subscribers, but which may include signals among institutional users or to and/or from institutional users to regular subscribers. (1947)

INTERCONNECT or INTERCONNECTION OF FACILITIES: Connection of one (1) or more channels of licensee’s system with other cable systems by direct cable, microwave link, satellite, or other appropriate methods. (1947)

LEASED ACCESS CHANNEL: Any channel available for lease and programming by persons or entities other than and not affiliated with the licensee, including those portions of the other access channels not in use by their designated programmers, and over which channels the lessee(s) shall exercise editorial control. (1947)

LICENSE: The nonexclusive right and authority to construct, maintain, and operate a cable television system through use of the public streets, public utility easements, other public rights-of-way, or public places in the City. (972,1947)

LICENSEE: The person granted a license by the Council and the lawful successor, transferee, or assignee of said person. (972,1947)

LICENSOR: The City of Mesa as represented by the Council, City Manager, or their designee(s) acting within the scope of their authority. (1947)

LOCAL ORIGINATION CHANNEL: Any channel where the licensee is the programmer and provides video programs of local origination and interest and/or other cablecast signals to subscribers. (1947)

NONEXCLUSIVE: That more than one (1) license may be granted by the City at any time for any area of the City to any qualified applicant. (1947)

PERSON: Any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies, or any other legal entity. (972,1947)

PROPERTY OF LICENSEE: All property owned, installed, or used within the City by a licensee in the conduct of its cable television system business. (972,1947)

PROPOSAL: Licensee’s written response to the City’s request for proposals to provide cable communications services to the City. (1947)

PROGRAMMER: Any person or entity who or which produces or otherwise provides program material or information for transmission to subscribers by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, by means of the cable television system. (1947)
PUBLIC ACCESS CHANNEL, COMMUNITY ACCESS CHANNEL, OR COMMUNITY CHANNEL: Any channel upon which any member of the public or any noncommercial organization may become a programmer on a first-come, first-served, nondiscriminatory basis. (1947)

RESIDENT: Any person residing in the specified license area of the City or as otherwise defined by applicable law. (1947)

SECTION: Any section, subsection, or provision of this Chapter. (1947)

STREET: The surface, the air space above the surface, and the area below the surface of any public street, other public right-of-way, or public place, including public utility easements. (972,1947)

SUBSCRIBER: Any person receiving for any purpose any service of the licensee’s cable television system including, but not limited to, the redistribution of broadcast television signals; radio signals; licensee’s original cablecasting; local government, education, and public access channels; and other services including, but not limited to, leased channels, data and facsimile distribution, pay or premium channels, and emergency or nonemergency public service communications. (972,1947)

TOTAL GROSS RECEIPTS OR TOTAL GROSS REVENUES: Any and all compensation and other consideration collected or received or in any manner gained or derived by licensee from the operation of its cable system within the corporate limits of the City as they now exist or as they may be established hereafter. (972,1947)

TWO-WAY CAPABILITY OR BI-DIRECTIONAL CAPABILITY: The technical capacity for the transmission of telecommunications signals of any type or form from subscriber locations or other points throughout the system back to the system’s control center or to other points on the system, as well as transmission of signals from the system’s control center or another point on the system to any and/or all subscriber locations. (1947)

UNDERGROUND: Cable and appurtenances are either directly buried or placed in an underground conduit system. (1947)

USER: A party utilizing a cable television system channel for purposes of production or transmission of material to subscriber, as contrasted with receipt thereof in a subscriber capacity. (1947)

9-7-2: AUTHORITY TO GRANT LICENSE:

(A) A nonexclusive license to install, construct, operate, and maintain a cable television system on streets, public utility easements, other public rights-of-way, or public places within the City may be granted by the Council pursuant to three (3) separate and distinct sources of authority. The first source of authority is that conveyed to the City by its Charter. The second source of authority is that conveyed by the State of Arizona pursuant to Arizona Revised Statutes 9-505 et seq as it presently exists and as it hereafter may be amended. The third source of authority is that found in common law pursuant to the City’s ownership of the fee simple title to the streets and alleys of the City as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use. (972,1947)

(B) No provision of this Chapter may be deemed or construed to require the granting of a license. (972,1947)
9-7-3: LICENSE REQUIRED:

(A) It shall be unlawful for any person to establish or operate within the corporate limits of the City a cable system as defined in this Chapter and in Section 9-505, Arizona Revised Statutes, unless a license therefor has first been obtained pursuant to the provisions of this Chapter and unless such license is in full force and effect. (972,1947)

(B) Any cable system operating in an unincorporated area which is annexed by the City shall have sixty (60) days from the date the annexation is effective to apply for a license to operate in the City. Failure to do so will constitute a violation of this Chapter and shall be cause for termination of said system’s operation inside the corporate limits of Mesa by order of the Mesa City Council and following ten (10) days’ written notice to the cable system operator. (1947)

(C) Any cable system not currently operating in the City which desires to do so shall apply for a license pursuant to the provisions and requirements of this Chapter. (1947)

9-7-4: LICENSE APPLICATION PROCEDURE:

(A) Each application for a license to construct, operate, and/or maintain any cable television system in the City shall be filed with the City Manager’s office, shall be subject in whole or in part to Council approval, and shall contain, as a minimum, the following: (972,1947)

1. The name and both the home and business addresses and telephone numbers of the applicant. If the applicant is a partnership, the main home and business addresses of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and home and business addresses of its directors, officers, major stockholders (any person controlling more than five percent (5%) of the ownership of the applicant), and associates, and the names and business addresses of parent and subsidiary companies. (972,1947)

2. A statement setting forth in its entirety any and all agreements and understandings, whether formal or informal, written, oral or implied, existing or proposed to exist, between the applicant and any person who proposes to have an ownership interest with respect to the proposed license or to the proposed cable television operation. If a license is granted to a person acting as a representative of another person and such information is not disclosed in the original application, such license shall be deemed void and of no force and effect whatsoever. (72,1947)

3. Financial statements, as may be determined by the City, prepared by a certified public accountant or person otherwise satisfactory to the City, showing applicant’s financial status and financial ability to complete construction and installation of the proposed cable system. (972,1947)

4. A map satisfactory to the City indicating the proposed initial area of the City that will be served with cable television. (972,1947)

5. A general five- (5-) year plan for the proposed expansion of licensee’s cable service area within the City. (972,1947)
6. A proposed time schedule for the installation of all equipment necessary to become operational throughout the initial area to be serviced. The proposed schedule shall meet minimum FCC construction requirements. (972,1947)

7. A statement or schedule setting forth the programming and other services to be offered initially and the rates and charges to be made against subscribers for them, including installation and service charges. (972,1947)

8. A statement or schedule setting forth the number of channels and all the television or radio stations and/or other communication services initially proposed to be received, distributed, relayed, or otherwise conveyed over the cable system. (972,1947)

9. A statement describing the cable system and specifying the type and capacity of the cable system proposed to be constructed, installed, maintained, or operated by the applicant and the proposed location of the cable system headend, microwave dishes, towers and antennas, access facilities, and local business offices. (972,1947)

10. A detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields. (972,1947)

11. Any other details, statements, information, or references pertinent to this application which shall be required or requested by the City or by any provision of any other enactment of the City. (972,1947)

(B) Prior to the issuance of a license, the City shall hold a public hearing, following reasonable notice to the public, at which every applicant and its proposals shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published not less than fourteen (14) days before the day of such hearing. (972,1947)

(C) In making any determination as to any application, the Council may give due consideration to the quality of the service proposed; experience, character, background, and financial responsibility of any applicant and its management and owners; technical and performance quality of equipment; willingness and ability to meet construction and physical requirements and to utilize technological advances to better its system; and any other considerations deemed pertinent by the Council for safeguarding the interest of the City and the public. The Council, in its discretion, shall determine the award of any license on the basis of such considerations and without competitive bidding. (972,1947)

9-7-5: ACCEPTANCE OF LICENSE:

(A) No license shall become effective for any purpose unless written acceptance thereof shall have been received by the City Manager. Written acceptance, which shall be addressed to the Council and shall be in a form and of a substance approved by the City Attorney, shall also be and operate as an acceptance of each and every term, condition, and/or limitation contained in this Chapter or otherwise specified as herein provided. (972,1947)
(B) Pending litigation against the licensee shall not excuse the licensee from the performance of its obligations under the license. Failure of the licensee to perform such obligations because of pending litigation may result in penalties, forfeiture, revocation, or liquidated damages pursuant to the provisions of the license. (1947)

(C) The written acceptance shall be received by the City Manager not later than one minute after twelve (12:01) P.M. of the thirtieth (30th) day next following the effective date of granting of such license. If written acceptance is not received within such time period, the licensee shall be deemed to have rejected the license, and thereafter the acceptance of the licensee shall not be received by the City Manager. The licensee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received, and then upon such terms and conditions as the Council may impose. (972,1947)

(D) Neither the granting of any license nor any of the provisions contained herein shall be construed to prevent the City from granting any license to any other person. (972,1947)

9-7-6: DURATION OF LICENSE:

(A) The rights, obligations, privileges, and authority contained herein shall take effect upon acceptance of the license and final execution of a license agreement as provided for in Section 9-7-5 of this Chapter, provided licensee has obtained all necessary permits, licenses, and authorizations and has complied with all other applicable provisions of this Chapter to that date. (972,1947)

(B) Unless otherwise provided in a license, the term of any license granted under this Chapter shall be fifteen (15) years, commencing on the effective date as provided for in Subsection (A) of this Section. (972,1947,4110)

(C) Neither the granting of any license nor any of the provisions contained herein or in any other license shall be construed to prevent the City from granting any license to any other person. (1947)

9-7-7: LIMITATIONS OF LICENSE:

(A) No privilege or exemption shall be granted or conferred by any license pursuant to this Chapter except those specifically provided for herein. (972,1947)

(B) Any privilege granted under any such license to use any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property. (972,1947)

(C) Unless specifically provided otherwise in a license, any such license granted shall not relieve the licensee of complying with any rule or regulation of the City. (972,1947,4110)

(D) The provisions in this Subsection (D) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. Any such license shall be a privilege granted only to the original licensee. Such license cannot be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation, or otherwise, excepting a transaction between a wholly owned subsidiary and its parent company, without prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Manager within thirty (30) days after such transfer or assignment. The proposed assignee must show financial responsibility to the satisfaction of the Council and must agree to comply with all provisions of this Chapter and meet, if the assignee acquires the entire cable television system, all of the qualifications that must be met by an original licensee; and provided further that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed fifty percent (50%) of the market value of the property used by the licensee in the conduct of the cable television system, prior consent of the Council shall be required for such encumbrance. (972,1947,4110)
(E) The provisions in this Subsection (E) of this Section shall apply to all licenses and licensees unless otherwise provided in a license. In the event that licensee is a corporation, prior approval of the Council, expressed by resolution, which shall not be unreasonably withheld, shall be required where there is change in control or where ownership of more than fifty percent (50%) of the voting stock of the licensee is acquired by a person or group of persons acting in concert, singly or collectively. Any such acquisition occurring without prior approval of the Council shall constitute a failure to comply with this Chapter. (972,1947,4110)

(F) Unless otherwise provided in a license, every licensee shall be subject to any tax or fee now or hereafter imposed by the City on all businesses of the same or similar class. (972,1947,4110)

(G) Unless otherwise provided in a license, every licensee’s service policies shall show no preferential or discriminatory practices and shall be on file with the City Manager. (972,1947,4110)

(H) Unless otherwise provided in a license, time shall be of the essence in complying with the requirements of any license granted hereunder. No licensee shall be relieved of its obligation to comply promptly with any of the provisions of this Chapter by failure of the City to enforce prompt compliance. (972,1947,4110)

(I) Unless specifically provided otherwise in a license, no licensee shall have recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Chapter or of any license issued hereunder or because of its proper enforcement. (972,1947,4110)

(J) Unless otherwise provided in a license, licensee shall be subject to all requirements of the law, rules, regulations, and specifications heretofore or hereafter enacted or established by the City. (972,1947,4110)

(K) Every licensee shall at all times comply with all laws and regulations of the State and Federal governments or any administrative agencies thereof with authority over it. If any such State or Federal law or regulation shall require a licensee to perform any service or shall permit a licensee to perform any service or shall prohibit a licensee from performing any service in conflict with the terms of its license under this Chapter or under any law or regulation of the City, then as soon as possible following knowledge thereof, such licensee shall notify the City of the point of conflict believed to exist. (1947)

(L) If the City determines that a material provision of a licensee’s license issued under this Chapter is affected by any subsequent action of the State or Federal government, the City shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter and any licenses issued under it. (1947)

9-7-8: PERFORMANCE REVIEW AND LICENSE RENEGOTIATION SESSIONS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Performance review sessions between the City and each licensee under this Chapter shall be held within six (6) months of the effective date of each new license and once every twelve (12) months thereafter. (1947)

(B) Such sessions may be held at any other time during the term of a license at the request of the Council, the City Manager, or the licensee. (1947)
(C) The licensee and the City shall hold scheduled renegotiation sessions every three (3) years from the effective date of any license unless both the licensee and the City agree to a waiver of such renegotiation session. The topics of discussion may include anything but the term of the license. (972, 1947)

Special renegotiation sessions may be held at any time during the term of any license, provided that both the licensee and the City shall mutually agree on the time, the place, and the topics to be renegotiated. (972, 1947)

9-7-9: **PERFORMANCE BOND OR CERTIFICATE OF DEPOSIT:**

Unless otherwise provided in a license, every licensee shall file with the City Manager and shall thereafter, annually, during the entire term of such license, maintain in full force and effect a corporate surety bond or other adequate surety agreement in a company and in such amount as shall have been approved by the Council in the license. The bond or agreement shall be so conditioned that in the event that licensee shall fail to comply with one (1) or more of the provisions of this Chapter or of the license, there shall be recoverable jointly and severally from the principal and surety any damages or loss or costs suffered or incurred by the City as a result thereof, including attorneys’ fees and costs of any action or any action proceeding, and including the full amount of any compensation, indemnification, cost, or removal or abandonment of any property or other cost which may be in default, up to the full principal amount of such bond. Said condition shall be a continuing obligation during the entire term of such license and any renewal thereof and thereafter until the licensee shall have satisfied in full any and all obligations to the City which arise out of or pertain to said license. Neither the provisions of this Section nor any bond accepted by the City pursuant hereto nor any damages recovered by the City thereunder shall be construed to exercise faithful performance by the licensee or limit the liability of the licensee under any license issued pursuant to this Chapter or for damages either to the full amount of the bond or otherwise. (972, 1220, 1947, 4110)

9-7-10: **LICENSE FEE:**

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall pay to the City during the life of such license, on a quarterly basis, a sum no less than five percent (5%) of the total gross revenues from all sources received from the operation of a cable system within the City. (972, 1947)

(B) Payments due the City under this provision shall be computed quarterly for the quarters ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report showing the basis for the computation. (972, 1947)

(C) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Section. All amounts paid shall be subject to audit and recomputation by the City. (972, 1947)

9-7-11: **EXTENSION OF SERVICE:** (972)

The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) When there is only one (1) active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C) for areas not covered under Subsection (B). (2273)

When there is more than one active Citywide license in effect under this Chapter, that licensee shall comply with the service line extension requirements set forth in Subsection (B) below and that licensee is also subject to the petitioning provisions of Subsection (C). (2273)

Licensees who do not have a Citywide license shall comply with the provisions of Subsections (B) and (C) within their designated service area. (2273)

(B) When there is only one (1) active Citywide license that is in effect under this Chapter, that licensee shall provide cable television service to any resident(s), residence(s), or other person(s) or facility(ies) in areas containing not less than seventy-five (75) dwelling units per trench mile (underground construction) and/or not less than fifty (50) dwelling units per strand mile (aerial construction) and not currently served by any licensee within the corporate limits of the City as now established and as may be expanded or extended at any time hereafter. (2273)

1. For purposes of this Section, "provide cable television service" shall mean having all cable plants including trunk feeder and drop lines and other necessary electronics in place and activated. (1947, 2273)

2. When fifty percent (50%) of all dwelling units passed by the licensee’s cable system inside the corporate limits of the City subscribe to the licensee’s cable television service, that is, when the licensee’s penetration rate reaches fifty percent (50%), then the residential density requirement for service under Subsection (B) of this Section shall be forty (40) dwelling units per strand and/or trench mile, without regard for method of construction. (1947, 2273)

3. For purposes of this Section, "dwelling units" shall be defined as single-family residences and all multiple-family residences, with the exceptions that: (1947, 2273)

   (a) Multiple-family residences such as, but not limited to, condominiums, townhouses, apartments, and other multiple-unit dwellings, excluding duplexes, triplexes, and fourplexes, which shall be counted as single-family residences, shall be counted as one-half (1/2) a dwelling unit under this Section. (1947, 2273)

   (b) Mobile home parks and recreational vehicle parks which allow for rental space by a majority of their tenants/lessees for periods of less than six (6) months shall be excluded from this definition of dwelling units under this Section. (1947, 2273)

   (c) Multiple-unit dwellings served by satellite master antenna television (SMATV) shall be excluded from the definition of dwelling units in this Section. (1947, 2273)

4. In the case of new development, a licensee, if refused access to an open or joint trench, or in the case of multiple-unit dwellings, to a construction site, in order to prewire those units for receipt of cable service, may exclude said development from consideration for the licensee’s cable service under this Section for a period of five (5) years. (1947, 2273)

   (a) For purposes of this Section, "new development" is defined as a development in which an open trench, and in the case of multiple-unit dwellings, in which access to the site, for prewiring is provided by the developer during the initial construction period. (1947, 2273)

   (b) Refusal by a developer or owner shall be demonstrated by the licensee. (1947, 2273)
(C) When there is more than one active Citywide license that is in effect under this Chapter or in areas not covered under Subsection (B) of this Section, for extension of service, residents may petition any licensee for service. Petitions for service may be filed as follows: (1947,2273)

1. If fifty-one percent (51%) of the persons residing in a specific area of the City not covered under Subsection (B) of this Section and not served by any licensee petition, in writing, one (1) or more licensees for service, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving services or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

2. If fifty-one percent (51%) of the subscribers in a specific area of the City containing not less than fifty (50) dwelling units per street mile and currently availing themselves of the services of a licensee petition, in writing, other licensees under this Chapter to provide service to them in the event that said subscribers allege and believe that service provided by their current cable operator is unacceptable to them, the licensee(s) so petitioned must respond to the petitioners within sixty (60) days of receipt of said petitions, indicating that service can and will be provided and outlining procedures, fees, and timetables for receiving service or indicating that service cannot be provided and thoroughly documenting the reasons why it is not economically feasible to do so. (1947,2273)

3. For purposes of this Section, "economically feasible" shall mean that the additional incremental revenues that may reasonably be generated by extending service to a specific area will equal or exceed the additional incremental costs incurred in furnishing service to that specific area in an amount sufficient to provide the licensee(s) with a reasonable Internal Rate of Return (IRR). (1947,2273)

4. Licensees must extend and make cable television service available at the standard connection charge to any resident(s) isolated from a standard residential area who requests connection, provided the isolated residence is passed by existing cable, if the connection to the isolated resident(s) would require no more than a standard one hundred fifty-foot (150') drop. (1947,2273)

Licensees must extend and make cable television service available to any isolated resident(s) requesting it, provided the isolated residence is passed by existing cable, even if the connection would require more than a one hundred fifty-foot (150') drop, at a charge not to exceed the actual installation costs incurred by the licensee for the distance exceeding one hundred fifty feet (150'). (1947,2273)

5. Licensee shall keep a record for at least three (3) years of all petitions and requests for service received pursuant to this Section. (1947,2273)

(D) Nothing herein shall be construed to prevent any Citywide licensee from serving more areas and residents of the City than is required by this Section. Conversely, if any licensee shall determine that the provisions under Subsection (B) of this Section under particular circumstances combine to work a severe economic hardship on him/her, the licensee shall have the right of appeal to the City Manager for a waiver of the performance required by that portion of said Subsection (B) of this Section. (1947, 2273)

(E) A licensee intending to overbuild another licensee under this Section shall obtain all applicable permits from the City to do so and shall be obligated by this Section to notify, in writing, the licensee to be overbuilt no less than ten (10) days prior to the start of construction. (1947,2273)

(F) All licensees under this Chapter shall be required to provide, upon request, current and accurate maps showing the full extent of the licensee's system both inside the corporate limits of the City and in other incorporated and unincorporated areas outside the City. (1947,2273)
9-7-12: SYSTEM CONSTRUCTION AND MAINTENANCE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) New licensees or licensees proceeding with reconstruction of an existing system under this Chapter shall establish and file with the City Manager a construction plan, including maps showing construction locations, and a timetable for buildout and activation of cable lines. (1947)

(B) After acceptance of a license in the City, any licensee shall proceed with diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or associated microwave transmission facilities. (972, 1947)

(C) Copies of all petitions, applications, and reports submitted by the licensee to the Federal Communications Commission with respect to any matters affecting the licensee’s cable television operations under the license shall be available for inspection by the City Manager. A copy of any agreement covering the licensed area between the applicant and any public utility providing for the use of any facilities of the public utility, including but not limited to, poles, lines, or conduits, shall also be available for inspection by the City Manager. (972, 1947)

(D) All lines, equipment, and connections in, over, under, and upon the streets and public ways in the City, wherever situated or located, shall at all times be maintained in a safe and suitable condition and in good order and repair. (972, 1947)

(E) The licensee shall repair the streets and public ways. (972, 1947)

1. Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction of the cable television system shall be promptly repaired by the licensee at its expense and to the satisfaction of the City Manager. (972, 1947)

2. Upon the failure, refusal, or neglect of the licensee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street or other public place within any time prescribed therefor or upon notice given when no time is prescribed, the City Manager may cause such work or other activity to be completed in whole or in part to his satisfaction and upon so doing, shall submit to licensee an itemized statement of the cost thereof. The licensee shall, upon thirty (30) days after receipt of such statement, pay to the City the entire amount thereof. (972, 1947)

(F) No licensee shall erect any pole on or along any street or public way of the City except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems, and only with the approval of the City Manager. Nothing in this provision shall be construed to prohibit the use of existing poles provided that satisfactory use agreements are entered into between the licensee and the owners of said poles. (972, 1947)

(G) In those areas and portions of the City where the transmission or distribution facilities of the utility providing telephone service or those of the utility providing electric service are underground or hereafter may be placed underground, then the licensee shall likewise construct, operate, and maintain all of its transmission and distribution facilities or other means of transmitting signals underground. The City shall not be responsible for any costs incurred by the licensee in placing the licensee’s facilities underground. (972, 1947)
(H) Every licensee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of the public or private property by any person. In the event of such interference, the City Manager may require the removal of licensee’s lines, cables, and appurtenances. (972,1947)

(I) Every licensee or its designated contractors or subcontractors, when constructing or installing cable equipment of any kind in public right-of-way and/or easements on private property, shall fully and completely restore any and all such property to its original condition. (1947)

9-7-13: COMMON TRENCH AND CABLE PROTECTION REQUIREMENTS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Cable television shall utilize common or joint trench with telephone and/or utilities for undergrounding where a developer provides a trench for undergrounding by negotiating a joint trench agreement with those entities. Where a developer provides a trench for undergrounding in a new development, the developer must allow any licensee to utilize this trench and provide backfill under the same conditions as are extended to other trench users. (972,1947)

(B) When a licensee will be affected thereby, such licensee’s representative shall be notified of and be present at subdivision reviews and other City meetings where location of cable and utilities are discussed prior to the start of particular construction projects. (1947)

(C) All licensees shall become members of the Blue Stake program and shall be notified at the same time and in the same manner as telephone and utility companies before developers/excavators break ground. (1947)

Developers, contractors, subcontractors, excavators, or others subsequently damaging or breaking cable which has been properly laid and marked shall be liable for its immediate repair or replacement. (1947)

(D) Any licensee shall be relieved of the responsibility to build out and/or activate cable in an area where properly laid and marked cable has been damaged or destroyed until such time as said cable is repaired or replaced by the responsible parties in accordance with original system specifications. (1947)

Subsection (D) of this Section shall not apply when damage or destruction is done by a licensee or its agents, contractors, or subcontractors or when damage or destruction is the result of negligence on the part of a licensee. (1947)

(E) Every licensee shall, upon request of the City, interconnect the public, educational, and government access channels in its system with any and/or all other cable systems licensed in the City and, when economically feasible, with any and/or all other cable systems licensed in adjoining or adjacent incorporated communities or unincorporated County areas. (1947)

1. Upon receiving an interconnect request, a licensee shall initiate and pursue with all reasonable diligence negotiations with other affected cable systems so that interconnection construction and operations costs may be shared equitably among all systems affected. (1947)

2. A licensee, upon receiving an interconnect request, must establish a timetable, approved by the City, for completion of said interconnect and must adhere to that schedule unless an extension or waiver is granted by the City. (1947)
9-7-14: TECHNICAL AND SAFETY STANDARDS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall construct, operate, maintain, and reconstruct the cable system in accordance with the most recent technical performance standards of the FCC; shall have no greater obligation to maintain or reconstruct than that imposed by the FCC but may voluntarily agree to exceed said standards as part of the license. (1947)

(B) Every licensee shall deliver signals to subscribers which are not degraded in appearance or sound as perceived by the human eye or ear from those signals which are available at the licensee’s receiving site. (972, 1947)

Upon reasonable request by the City Manager, every licensee shall make a demonstration satisfactory to the City Manager that a signal is being delivered to any designated area which is of sufficient strength and quality to meet the standards set forth in the regulations of the FCC and in this Chapter. (1947)

(C) Every licensee shall place all cable and appurtenances underground to the maximum extent possible, in particular where utilities are located underground. Existing technology may preclude the placing of some appurtenances underground; any such appurtenances placed above ground shall be located so as to be as unobtrusive as possible, consistent with the design of the cable system. As new technology and economic feasibility allow, appurtenances associated with future lines shall be placed underground. Every licensee shall install cable underground in all areas where all existing utilities are underground. Underground cable shall also be installed in all new developments. Previously installed aerial cable shall be underground with adjacent utilities when they are placed underground. (1947)

(D) Every licensee shall construct, install, operate, and maintain its system at its own cost in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, a licensee shall provide the City Manager with a written report, including a layman’s interpretation of results, of the results of the licensee’s annual proof-of-performance tests conducted pursuant to FCC standards and requirements. The City Council may, at City cost, require that said performance tests be monitored and interpreted by a professional engineer not on the permanent staff of the licensee. (1947)

(E) Every licensee shall have the right and privilege of construction throughout the term of this license; however, should improvements in the technology cause FCC performance standards to become outdated or to exceed those of the licensee, then the licensee’s performance standards shall be updated, amended, or otherwise revised to reflect changed conditions and technology. Said updated, revised, or amended standards shall apply immediately to all construction begun after the effective date of said updates, amendments, or revisions. (972, 1947)

(F) Every licensee shall construct, install, and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee’s employees, the employees of utilities, and all other property affected by the licensee’s construction shall be a primary objective whenever or wherever a licensee operates in the license area or in other areas where the licensee may locate equipment. (1974)
(G) Every licensee shall be solely and completely responsible for the actions taken by any contractor, journeyman, consultant, or any other person employed by the licensee to place, remove, maintain, repair, or relocate any of the licensee’s facilities on public or private rights-of-way or easements as well as in or on public or private buildings or structures. (1947)

(H) Every licensee shall have available at all hours of every day personnel to locate its underground and buried facilities as the result of emergency conditions requiring immediate repair to any facilities owned by the State, County, or City or the gas, electric, and telephone utilities as well as pipe line companies or similar industries. Every licensee shall respond to normal location requests as required by the Blue Stake program. (1947)

(I) All working facilities and conditions used during construction, installation, and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration. (1947)

(J) Every licensee shall maintain equipment capable of providing standby power for the headend for a minimum of three (3) hours. Every licensee shall install uninterrupted power sources capable of providing retention of data stored in the memories of the cable system’s various computer systems at the point of origination of transmission. (1947)

9-7-15: OPERATION OF SYSTEM:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall put, keep, and maintain all parts of the licensee’s system in good condition throughout the entire license period. (972,1947)

(B) Every licensee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use. (972,1947)

(C) No licensee shall allow its cable or other operations to unreasonably interfere with television reception of persons not served by the licensee, nor shall the system interfere with, obstruct, or hinder in any manner the operation of the various utilities serving the residents within the City. (1947)

(D) Every licensee shall continue, through the term of this license, to maintain the technical standards and quality of service set forth in this Chapter and in its license. Should the City find that the licensee has failed to maintain these technical standards and quality of service, the Council, by resolution, may specifically enumerate improvements to be made. Failure of a licensee to make such improvements within the time frame specified in such resolution shall constitute a violation of this Chapter for which damages may be assessed by the City. (1947)

9-7-16: ACCESS, SERVICE, AND REPORTING REQUIREMENTS:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee shall provide such public, education, and government access and local origination services and such access equipment, facilities, and public training as are required by and enumerated in its license or in any subsequent amendments to that license. (972,1947)

(B) Every licensee shall provide the City, upon request and at no cost to the City, up-to-date as-built maps of a suitable scale showing all transmitting and receiving pickup locations and the location of all amplifiers and all trunk and distribution feeder lines. Additional current maps shall be provided to the City at no cost to the City upon request. (972,1947)

(C) Every licensee shall submit an annual report to the City Manager no later than ninety (90) days after the close of the licensee’s fiscal year. Said report shall be specific to Mesa and to the licensee’s operation of its system in Mesa, separate and apart from any corporate annual report compiled and provided by a licensee’s parent company, and shall include, but not be limited to: (972,1947)

1. A fully-audited and certified statement of revenues for the previous calendar or fiscal year, including gross revenues from all sources and gross subscriber revenues from each category of service. (972,1947)

2. A summary of the previous year’s activities including, but not limited to: services begun and/or dropped, subscribers gained and/or lost and year-end totals, service area at beginning and end of year (map and text), revenues collected, license fees paid to the City, plant miles constructed, plant miles activated, changes in local management and staff, rate structure and changes during the year, new services offered, programming changes, changes in service policies and/or procedures, and system technical changes. (972,1947)

3. A summary of complaints received, by type, and how they were handled. (972,1947)

(D) Every licensee shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property as may be reasonably necessary and appropriate for the evaluation of the licensee’s performance under this Chapter and its license. (1947)

(E) Every licensee shall maintain an office in the City or in an unincorporated area of Maricopa County immediately adjacent to the City limits which shall be open during all usual business hours with a local telephone number listed in directories of the telephone company serving the City and shall be so operated that requests for repairs and service adjustments can be received at any time day or night (twenty-four (24) hours a day), seven (7) days a week. (972,1947)

(F) Every licensee shall maintain adequate office and service personnel at its Mesa or Mesa-area location to properly answer telephones, service walk-in customers, and dispatch service and repair personnel in a timely manner to all portions of its Mesa service area. (1947)

9-7-17: SUBSCRIBER SERVICE REQUEST AND COMPLAINT PROCEDURE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Every licensee, when required by the City and to the extent required by the City, shall establish and maintain a subscriber service request and complaint procedure satisfactory to the City. For the purposes of this Section, "service request" shall mean an initial request by a subscriber for service related to the installation, operation, performance, and/or quality of a licensee’s cable television service as provided to the subscriber’s residence. "Complaint" shall mean a service request not resolved to the satisfaction of the subscriber on initial contact, requiring further action by the licensee. The service request and complaint procedure established by the licensee shall include, but not be limited to: (972,1947)

Maintenance of an accurate and complete written record listing, as a minimum, times and dates of customer service requests and complaints, identifying customers by name, address, and telephone number, describing the nature of the requests and/or complaints, and indicating when and what action was taken by licensee in response thereto. Said record shall be kept at the licensee’s local office and shall be available for inspection by the City Manager and the public during regular business hours. (972,1947)

(B) Every licensee shall provide each subscriber annually with a written statement describing in full the process for submitting a service request or complaint. (972,1947)

(C) Every licensee shall provide, in writing, upon request of the City Manager, a detailed description of any complaint and the manner in which it has been resolved. (972,1947)

9-7-18: GENERAL REQUIREMENTS AND REGULATION OF SERVICE:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) The City shall not regulate subscriber rates and charges for services provided by a licensee. However, every licensee shall provide the City with a listing of all current subscriber rates and charges for services and an updated listing of these rates and charges on each occasion when these are changed in any way. (972,1947)

(B) Every licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, of the Federal Cable Communications Policy Act of 1984, and of all other applicable Federal, State, and local laws and executive and administrative orders relating to nondiscrimination. (972,1947)

(C) No cable, line, wire, amplifier, converter, or other piece of equipment owned by a licensee may be installed in a public or private easement or in the public right-of-way on public or private property without first notifying the occupants of the property and securing from the City or the owner of the private property involved, as the case may be, all necessary permits, authorizations, and permissions to do so. (972,1947)

(D) Neither a licensee nor any other person shall monitor or arrange for the monitoring of any cable, line, signal input device, or subscriber outlet or receiver for the purposes of determining viewing habits, except for such generalized monitoring as is necessary to insure accurate billing, prevention of theft of service, and maintenance of system integrity without first securing the written permission of the subscriber. (972,1947)

(E) No licensee shall sell or otherwise make available the lists of the names and addresses of its subscribers to any person not connected with the licensee’s system or the City without first securing the written permission of the subscriber. (972,1947)
1. Every licensee shall provide to each subscriber annually a separate written notice which clearly advises said subscribers of the personally identifiable information collected or to be collected by licensee as provided for in Section 631 of the Federal Communications Policy Act of 1984 and amendments thereto. (1947)

2. Every licensee shall conform to all other protection of subscriber privacy provisions of Section 631 of the Federal Cable Communications Policy Act of 1984 and amendments thereto. (1947)

(F) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, electronically, inductively, or otherwise, with any part of a licensed cable system within the City for the purpose of enabling himself/herself or others to receive any television or radio signals, pictures, programs, or sound without payment to the owner of said cable system. (972,1947)

1. Every licensee, at the time of installation of service to any subscriber, shall have available and shall install all necessary parts and equipment to insure that said subscriber receives only the cable services contracted for and does not for any reason receive extra services not desired and/or not reflected in the subscriber’s agreement with the licensee. (1947)

2. It shall be unlawful for any person, without the consent of the cable system owner, to willfully tamper with, remove, injure, or destroy any cable wires or other equipment used for distribution of television and/or radio signals, pictures, programs, or sound. (972,1947)

3. Any person who shall violate this Section (F) or its subparts may be prosecuted under all applicable local, State, and Federal laws including, but not limited to, those provisions found in Section 633 of the Cable Communications Policy Act of 1984, but shall specifically in the City be guilty of a misdemeanor and upon conviction thereof individuals shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period of time not to exceed six (6) months, or by both such fine and imprisonment, and firms or corporations shall be punished by a fine not to exceed twenty thousand dollars ($20,000.00). Each day a violation continues shall be a separate offense, punishable as described. (1947,2466,4110)

(G) Every licensee shall wholly comply with Sections 612(h) and 639 of the Federal Communications Policy Act of 1984 related to the prohibition of obscene programming and shall not offer such programming on the Mesa system. (1947)

Every licensee shall provide, free of charge or by sale or lease, a lockbox device by which a subscriber can prohibit the viewing of a particular cable service during periods selected by that subscriber as provided for in Section 624(d)(2)(A) of the Cable Communications Policy Act of 1984. (1947)

(H) Every licensee shall provide to the City, in times of emergency, the right and the capability to override, by remote control, the audio of all channels simultaneously. Said override system shall be placed under City control and shall be activated from a location or locations as reasonably determined by the City Manager. (1947)

Additionally, every licensee, in consultation with the City, shall designate and make available the government access channel which can be used for emergency broadcasts of both audio and video. Every licensee shall, upon request, provide at no cost to the City the equipment and facilities necessary to do so. (1947)
LIABILITY AND INDEMNIFICATION:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including, but not limited to, damages to City property and damages arising out of copyright infringements; damages arising out of any failure by licensee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the licensee’s cable television system; and libel judgments for programming), costs, or liabilities (including costs or liabilities of the City with respect to its employees) of every kind and nature whatsoever including, but not limited to, damages for injury or death or damage to person or property regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise of the enjoyment of any license hereunder by a licensee or the granting thereof by the City. (972,1947)

(B) Every licensee shall, at the sole risk and expense of the licensee, upon demand of the City, made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees and arising out of or pertaining to the exercise or the enjoyment of such license or the granting thereof by the City. (972,1947)

Every licensee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against the licensee, the City, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue with reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder or otherwise; provided that neither a licensee nor the City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding without first obtaining the written consent of the other. (972,1947)

(C) Any licensee shall, concurrently with the filing of an acceptance of award of any license granted, furnish to the City and file with the City Manager, and at all times during the existence of any license granted hereunder maintain in full force and effect, a general comprehensive liability insurance policy in a company approved by the City Manager and a form satisfactory to the City Attorney, protecting the City, its officers, boards, commissions, agents, and employees against liability for loss or damage for bodily injury, death, and property damage resulting from the installation, development, maintenance, or expansion of the cable system. The Council, in the license, shall set the insurance amounts to be maintained by the licensee. The City shall be named on such policy as a coinsured or added thereon by endorsement as a named insured. A certificate of the insurance required herein, as well as a copy of the policy, shall be filed with the City Manager. The certificate shall provide that if the policy is cancelled by the insurance company or the licensee during the term of the license, ten (10) days’ written notice shall be given to the City Manager prior to the effective date of such cancellation. (972,1947)
9-7-20: **TERMINATION OF LICENSE:**
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Any license granted may be terminated prior to its date of expiration by the Council in the event that the Council finds that: (972, 1947)

1. The licensee has failed to comply with any material provision of this Chapter. (972, 1947)

2. The licensee has, by act or omission, violated any material term or condition of any license issued. (972, 1947)

3. The licensee has failed to comply with any material rule or regulation of the Council or City Manager validly adopted pursuant to this Chapter. (972, 1947)

4. The licensee has failed to comply with any rule, regulation, or order of the FCC or rule or regulation contained in the Cable Communications Policy Act of 1984 as now constituted or as it may hereafter be amended. (972, 1947)

5. Upon the request of the licensee and upon the approval of the Council. (972, 1947)

(B) The City Manager may make written demand that the licensee comply with any requirements, limitations, terms, conditions, rules, or regulations. If the failure, neglect, or refusal of the licensee continues for a period of thirty (30) days following such written demand, the City Manager may place his request for termination of the license upon the next regular Council meeting agenda. The City Manager shall cause to be served upon such licensee, at least ten (10) days prior to the date of such Council meeting, a written notice of his intent to request such termination and the time and place of the meeting, notice of which shall be published by the City at least ten (10) days before such meeting. (972, 1947)

(C) The Council shall consider the request of the City Manager, shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by the licensee was with just cause. (972, 1947)

(D) If such failure, refusal, or neglect by the licensee was with just cause, the Council shall direct the licensee to comply within such time and matter and upon such terms and conditions as are reasonable. (972, 1947)

(E) If the Council shall determine such failure, refusal, or neglect by the licensee was without just cause, then the Council may, by resolution, declare that the license of such licensee shall be terminated and forfeited unless there be compliancy by the licensee within such period as the Council may fix. (972, 1947)

9-7-21: **OPTIONS UPON EXPIRATION OR TERMINATION OF LICENSE:**
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)
(A) Upon expiration of the initial term of any license granted hereunder, any license may be renewed by the Council upon application of the licensee. The terms of the renewal shall be in accordance with the existing rules of the FCC, as provided for under the Cable Communications Policy Act of 1984 and amendments thereto, and as determined by the Council. Renewal considerations shall include, but not be limited to, the City and the licensee reports prepared throughout the life of the license, the cable system’s technical performance, the development of cable services, the quality of all services to the subscribers, the demonstrated ability of the licensee to properly service the area of the City for which its license is granted, and the cooperation exhibited by the licensee with the City and its residents throughout the license period. Nothing herein shall be construed to require such renewal. (972,1947)

Each application for a renewal of any license shall be accompanied by an application fee in an amount determined by the Council. (972,1947)

(B) In the event that the Council and any licensee are unable to reach an accord on the renewal of any license, the Council may elect to invite additional proposals for the operation of one (1) or more cable television systems. Such cable system or cable systems may either replace an existing cable system or systems or be in addition to it/Them. (972,1947)

(C) In the event of expiration of the initial term without renewal or of termination for any cause of any license, the City shall have the right of first refusal to purchase the affected cable television system or systems at a price not to exceed its/their then fair market value. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow, and other factors, may be considered. However, under no circumstances shall any valuation be made for any right or privilege granted to any license. (972,1947)

(D) In the event that the City elects to purchase the cable system or systems or the license is awarded to a new licensee upon expiration without renewal or termination of the term of any license, the current licensee shall sell the cable system to the City or to the new licensee, whichever is applicable. The price for such sale shall be the fair market value of the cable system, as defined above. (972,1947)

(E) It shall be the continuing right of all subscribers to receive all available services during the term of the license insofar as their financial and other obligations to the licensee are honored by them. In the event of expiration of the initial term of the license, regardless of whether it is intended that the license be renewed or not or in the event of termination for cause of any license, every licensee shall continue all services to subscribers and shall fulfill all of the obligations required by the license and this Chapter until twelve o'clock (12:00) midnight of the day of such expiration of final termination. (972,1947)

9-7-22: REMOVAL OR ABANDONMENT OF PROPERTY:
The provisions of this Section, from (A) to the end, shall apply unless otherwise provided in a license. (4110)

(A) Every licensee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City Manager by reason of traffic conditions; public safety; street vacation; freeway or street construction; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structure; or improvements by public agencies. Nothing required herein shall be deemed a taking of the property of a licensee, and the licensee shall be entitled to no surcharge by reason of anything required herein. (972,1947)
(B) Removal or abandonment shall apply in the event that: (972,1947)

1. The use of any part of the cable system of a licensee, excepting unactivated cable installed in joint trench, is discontinued for any reason for a continuous period of thirty (30) days without prior written notice to and approval of the City; or (972,1947)

2. Any part of such system has been installed in any street or other area without complying with the requirements thereof; or (972,1947)

3. This license shall be terminated or shall expire without renewal. Then the licensee shall promptly, upon request and ten (10) days' written notice by the City Manager, remove from the streets or public places, at the expense of the licensee and at no expense to the City, all such property and poles of such system in place, other than any which the Council may permit to be abandoned. In the event of such removal, the licensee shall properly restore the street or other area from which such property has been removed to such condition as the City Manager shall approve. (972,1947)

(C) The Council may, upon written application by a licensee, approve the abandonment of any property in place by a licensee and under such terms and conditions as the Council may prescribe. Upon abandonment of any property of the licensee in place, the property shall become that of the City, and the licensee shall submit to the City Manager an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. (972,1947)

(D) Any property of the licensee remaining in place one hundred eighty (180) days after the cancellation, termination, or expiration of the license shall be considered permanently abandoned. The Council may extend such time not to exceed thirty (30) days. (972,1947)

9-7-23: **AMENDMENTS:**

Unless specifically provided otherwise in a license, there is hereby reserved to the City the right and authority to amend any section of this Chapter so as to require additional or greater standards of construction, operation, maintenance, or otherwise on the part of the licensee to reflect technical and economic changes occurring during the license term and to enable the City and the licensee to take advantage of new developments in the cable television industry so as to more effectively, efficiently, and economically serve the public. Such additional or greater standards may be imposed by the City if not prohibited by the FCC or the Cable Communications Policy Act of 1984 and amendments thereto. (972,1947,4110)

9-7-24: **SEVERABILITY:**

(A) If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. (1947)

(B) In the event any future law, rule, or regulation adopted by the Federal government makes it necessary or desirable to amend or change any of the terms or conditions of this Chapter or of any license issued hereunder, the City reserves the right to renegotiate the terms and conditions of this Chapter and/or such license(s). (972,1947)
8-8-1: PURPOSE AND INTENT

The purpose of these regulations is to provide for the orderly growth and harmonious development of the City of Mesa; to insure that proper off-site facilities are constructed in conjunction with the development of unsubdivided land for commercial, industrial, and multiple-residential uses, and single residential uses not in a subdivision, where no subdivision of land is required; to provide for public dedication of such rights-of-way as streets or easements as are reasonably required by or related to the effect of the proposed use; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements as part of the development. In its interpretation and application, the provisions of these regulations are intended to provide a common ground of understanding and equitable working relationship between public and private interests to the end that both independent and mutual objectives can be achieved in the development of land where no subdivision is required. (1095,4570)

8-8-2: DEFINITIONS:

COUNCIL: The City Council of the City of Mesa. (1095)

DEVELOPER: A developer shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust, or other legal entity that initiates the development of land for commercial, industrial, multifamily purposes or single residential uses not in a subdivision in accordance with the provisions of this Ordinance; and said developer need not be the owner of the property as defined by this Chapter. (1095,4570)

EASEMENT: A grant by the owner of the use of a strip of land by the public, a corporation, or persons for specific uses and purposes, and so designated. (1095)

EASEMENT, PUBLIC UTILITY (PUE): An easement for overhead and underground utility facilities provided for the use of the public, including water, storm drainage, sewage, electricity and communication, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards. (4570)

EASEMENT, PUBLIC UTILITY AND FACILITIES (PUFE): An easement for the installation of facilities, underground or overhead, furnished for the use of the public, including electricity, gas, steam, communication, water, storm drainage, sewage, sidewalks, landscaping, traffic control devices, street lights, flood control, etc., owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments or boards. (4570)
ENGINEERING PLANS: Plans, profiles, cross sections, and other required details for the construction of public improvements, prepared by a civil engineer registered in the State of Arizona in accordance with the approved preliminary plat and in compliance with City of Mesa standards of design and construction approved by the City Engineering Division. (1095, 4570)

IRRIGATION FACILITIES: Includes canals, laterals, ditches, conduits, gates, pumps, and allied equipment necessary for the supply, delivery, and drainage of irrigation water and the construction, operation, and maintenance of such. (1095)

OWNER: The person or persons holding title by deed to land or holding title as vendees under land contract or holding any other title of record. (1095)

PUBLIC IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, and instructions to be followed in the planning, design, and construction of certain public improvements in the City of Mesa, formulated by the City Engineer, the County Health Department, and other City departments. (1095)

RIGHT-OF-WAY IMPROVEMENTS: Construction in the public right-of-way and public easements, including, but not limited to: Streets, alleys, medians, bicycle lanes, curbs and gutters, stormwater facilities, water and sewer lines and services, fire hydrants, gas lines and services, sidewalks, driveways, streetlights, traffic control devices, street name signs, landscaping, underground and overhead utilities as required by the City Engineer. Right-of-way improvements do not include right-of-way land dedications. (4570)

RIGHT-OF-WAY, PUBLIC: An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for public purposes including, but not limited to: Street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public rights-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state or municipal regulations. (1095, 4570)

STREET: Any street, avenue, boulevard, road, lane, parkway, place, viaduct, easement for access, or other way which is an existing state, county, or municipal roadway, or which is dedicated as such by the owner, or a street or way in a plat duly filed and recorded in the County Recorder's office. A street includes land between the right-of-way lines, whether improved or unimproved, and may comprise pavement, shoulders, curbs, gutters, sidewalks, parking areas, and landscape areas. (1095, 4570)

ARTERIAL STREET: A general term including freeways, expressways, and major arterial streets and interstate, state, or county highways having regional continuity. (1095)

COLLECTOR STREET: Provides the traffic movement within neighborhoods of the City and between major streets and local streets and for direct access to abutting property. (1095)

LOCAL STREET: Provides for direct access to residential, commercial, industrial, or other abutting land or for local traffic movements and connects to collector and/or major streets. (1095)
ALLEY: A public service way used to provide secondary vehicular access to properties otherwise abutting upon a street. (1095)

UTILITIES: Installations or facilities, underground or overhead, furnishing for the use of the public electricity, gas, steam, communication, water, drainage, sewage disposal, or flood control, owned and operated by any person, firm, corporation, City of Mesa department, or board duly authorized by state or City of Mesa regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments, or boards as sense requires. (1095)

9-8-3: STREET AND UTILITY IMPROVEMENT REQUIREMENTS:

(A) Purpose. It is the purpose of this Section to establish in outline the minimum acceptable standards for improvement of public streets and utilities, and dedication of rights-of-way where required, to define the responsibility of the developer in the planning, constructing, and financing of public improvements and to establish procedures for review and approval of engineering plans. (1095,3105,4570)

All improvements required in streets, alleys, or easements which are required as a condition of site plan approval shall be the responsibility of the developer. (1095)

The City Engineer is authorized to develop and apply such engineering standards, specifications, and procedures for the design and construction of improvements as are consistent with the objectives of this section and necessary or appropriate to protect the public health, safety, and welfare. (4570)

(B) Applicability. The standards and requirements of this Section shall apply to all commercial, industrial, and multiple-residential developments, and single residential developments where no subdivision of land is required, as follows: (3105,4570)

1. Any new construction on undeveloped or vacant parcels; or (3105)

2. Total removal and reconstruction of existing buildings and structures; or (3105)

3. A one hundred percent (100%) or more increase in the total aggregate area of existing building and structures. (3105,4570)

4. Buildings and structures existing at the time of annexation by the City. (4834)

(C) Responsibility for Improvements -- New Development. All requirements required under Section 9-8-3(B)1 shall be the responsibility of the developer. (4570)

(D) Responsibility for Improvements -- Existing Development. The requirements of Section 9-8-3(B)2 and 3 apply to parcels and shall be the responsibility of the developer as follows:

1. For parcels that have not previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for all improvements. (4570,4834)
2. For parcels fronting on other than arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is not responsible for additional improvement requirements. (4570,4834)

3. For parcels fronting on arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is not responsible for arterial street widening improvements when such improvements are not identified on the City's currently adopted Transportation Plan. (4570,4834)

4. For parcels fronting on arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for fifty percent (50%) of the costs of the arterial street widening requirements calculated in accordance with City policy as approved by the City Engineer when such street widening improvements are identified on the City's currently adopted Transportation Plan but are not a part of the City's five (5) year Capital Improvement Plan. (4570,4834)

5. For parcels fronting arterial streets, that have previously provided R-O-W improvements in accordance with the standards at the time of development or annexation, or paid in-lieu fees for such improvements, the developer is responsible for all of the costs of the arterial street widening requirements calculated in accordance with City policy as approved by the City Engineer when such street widening improvements are identified on the City's currently adopted Transportation Plan and are a part of the City's five (5) year Capital Improvement Plan. (4570,4834)

The developer's responsibility for right-of-way improvements as determined in this section may be fulfilled by constructing the required right-of-way improvements in accordance with all City requirements and standards or by paying an in-lieu payment in accordance with Section 9-8-4(C), as approved by the City Engineer. (4570)

(E) Engineering Plans. (1095,3105,4570)

1. It shall be the responsibility of the developer to have prepared by a civil engineer, registered in the State of Arizona, a complete set of engineering plans, satisfactory to the City Engineer, for construction of required improvements. Such plans shall be prepared and submitted to the City of Mesa Building Safety Director together with the on-site construction plans. (1095,4570)

2. Engineering plans shall be approved by the City Engineer prior to the issuance of a building permit by the City Building Safety Director. (1095,4570)

(F) Dedication of Rights-of-Way. The dedication of rights-of-way in accordance with Section 9-6-2 and the table contained in this Section shall be made prior to the issuance of a building permit, or rights-of-way permit, or pursuant to the recording of a subdivision plat or land split document. (1095,3105,4570)

RIGHTS-OF-WAY DEDICATION TABLE

<table>
<thead>
<tr>
<th>Street Classification</th>
<th>Local</th>
<th>Collector</th>
<th>Major Collector</th>
<th>Local Industrial</th>
<th>Arterial</th>
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<td>R/W Dedication</td>
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<tr>
<td>50' Full Street</td>
<td>80' Full Street</td>
<td>110' Full Street</td>
<td>80' Full Street</td>
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<td>25' Half Street</td>
<td>40' Half Street</td>
<td>55' Half Street</td>
<td>40' Half Street</td>
<td>*65' Half Street</td>
<td></td>
</tr>
</tbody>
</table>

* Footnote: Additional right-of-way width required at arterial-to-arterial intersections. See Section 11-13-2 (J). Refer to Sections 9-8-4 and 9-8-5 for modifications and appeals to these requirements.
(G) Construction and Inspection. (1095,3105,4570)

1. All improvements in the public right-of-way shall be constructed under the inspection and approval of the City Engineer. Construction shall not be commenced until a permit has been issued for such construction, and if work has been discontinued for any reason, it shall not be restarted prior to notifying the City Engineer. (1095,4570)

2. All underground utilities to be installed in streets and alleys shall be constructed prior to the surfacing of such streets and alleys. Service stubs for underground utilities shall be placed in such length and size as not to necessitate disturbance of street improvements when service connections are made. (1095)

(H) Required Right-of-Way Improvements. (1095,3105,4570,5395)

1. Streets. All streets contiguous to the developing land shall be paved and concrete curbs and gutters installed to lines, grades, and dimensions approved by the City Engineer and in conformance with City standards. The streets shall be improved to the centerline thereof. When improvement of a major collector or arterial street is required, the City will pay for such extra width paving as may be deemed appropriate by the City. (1095)

2. Alleys. All alleys adjacent to the developing land shall be surfaced with granite or ABC to grades and dimensions approved by the City Engineer and in conformance with City standards, except that alleys to be used for primary vehicular access as defined under Section 9-5-1 of the City Code shall be improved as required by Section 9-5-1 of the City Code. Alleys to be used for delivery of goods and materials to commercial and industrial buildings shall be considered to be used for primary vehicular access. (1095)

3. Sidewalks. Concrete sidewalks shall be constructed along the entire length of the street adjacent to the land under development to a width and to lines and grades approved by the City Engineer and in conformance with City standards. (1095)

4. Water and Sewer Lines. Water and sewer lines shall be installed in all streets adjacent to the land under development to lines and grades and of such sizes as approved by the City Engineer and in conformance with City standards. Water and sewer service lines of sizes and at locations approved by the City Engineer and in conformance with City standards shall be installed prior to paving the streets and improving the alleys. Where it is necessary to extend a water or sewer main from an existing main of adequate size to the development, the developer will be required to pay the full cost of the line extension; however, and if so requested, the City will enter into a private line agreement with the developer requiring others to pay a share of the cost of the line extension at such time as they take service from the line extension if such service is taken during the term of the agreement. (1095)

5. Fire Hydrants. Fire hydrants shall be installed along adjacent streets at locations and to lines and grades approved by the City Engineer and in conformance with City standards. (1095)

6. Irrigation Lines and Ditches. All S.R.P. and R.W.C.D. irrigation ditches located in the streets, alleys, or public easements adjacent to the land being developed shall be piped or abandoned in accordance with plans and specifications prepared by the respective irrigation district and as approved by the City Engineer. All private irrigation ditches in the streets, alleys, or public easements adjacent to the land being developed shall be piped or abandoned to lines and grades as approved by the City Engineer and in conformance with City standards. (1095,4570)
7. Storm Drainage. (1095,1896)

(a) The developer shall make provisions to retain within the boundaries of his development the runoff generated by development of the site in accordance with plans approved by the City Engineer and in conformance with City standards. The plans shall show the method, location, and capacity of retention to be provided. The plans shall also show the runoff calculations, surface, grades, and methods of draining the retention facility. A one hundred- (100-) year, two- (2-) hour storm will be used as a minimum basis for the design of drainage facilities. (1095,1896,2776)

(b) In lieu of retaining runoff within the boundaries of the development, a common retention facility may be established for two (2) or more developments. This shall be done in accordance with plans approved by the City Engineer and in conformance with City standards. (1095,1896)

(c) Retention facilities shall be of the type and size approved by the City Engineer. (Multiple, small retention areas shall not normally be acceptable.) (1896)

(d) At the time of completion of development, the developer’s engineer shall provide as-built certification to the City Engineer that the drainage and retention facilities were constructed in accordance with the approved plans and conform to City standards. Said certification shall be signed by the engineer and stamped with his professional seal. (1896)

(e) Once constructed and approved by the City, the drainage and retention facilities may not be modified unless modification is approved by the City Engineer. (1896)

8. Streetlights. Streetlights shall be installed along all perimeter streets developed in conjunction with the development in accordance with a design approved by the Development Services Department. For developments with less than one hundred fifty feet (150') of street frontage, the City Engineer may waive the required streetlight installation. If installation is waived, prior to the issuance of a building permit, the developer shall pay to the City an amount, determined by the Development Services Department, for his arterial street frontage to pay for the future installation of streetlights by the City. All streetlights along other perimeter streets shall be installed by the developer in accordance with plans approved by the Development Services Department and in conformance with City standards. (1095,1647,1772,3766)

9. Traffic Control Devices. Traffic control devices shall be provided or existing control devices shall be modified in conjunction with the development in accordance with designs approved by the Development Services Department, where required in accordance with the Mesa Transportation Division. The Transportation Division may defer the installation of required traffic control devices. (4570)

When the installation of required traffic control devices is deferred, the owner/developer shall pay the City a payment in-lieu of causing the actual design, installation, and/or construction of the devices. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (4570)
10. Street Name Signs. Street name signs shall be placed in all street intersections. The developer shall install signposts and signs per Mesa Standard Details with designs approved by the City Traffic Engineer. (1095,4570,5395)

11. Survey Monuments. Survey monuments conforming to City standards shall be installed at all corners, angle-points, points of curves, and at all street intersections adjacent to the land under development and at such other locations as may be required by the City Engineer. After all improvements have been installed, a registered land surveyor or registered civil engineer shall check the locations of the monuments and mark the brass cap. (1095,4570,5395)

(I) Oversize of Required Public Improvements. The developer may be required to oversize certain public street and utility improvements for the purpose of ensuring that the City of Mesa's public improvement standards for transportation, utility service, and infrastructure are maintained. The City of Mesa may participate in the increased costs of oversize improvements when approved by the Development Services Manager. The City's commitment to participate in these increased costs may be formalized in a development agreement limited to those improvements specifically identified as oversize and executed by the developer and the Development Services Manager. (2907,3105,4570)

9-8-4: MODIFICATIONS: (1095,1656,3105,4570,4606,4771,4777)

(A) Where an individualized assessment reveals the existence of special conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the impact the development will have on the City's need for off-site improvements associated with the proposed development, the City Manager or designee may reduce, defer, or approve alternatives to the requirements and specifications contained in this Chapter based upon a finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (3105,3766,4606,4771)

(B) Where an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors, relating to the impact the development will have on the City's need for the dedication of rights-of-way, the City Manager or designee may eliminate, reduce, defer or approve alternatives to the dedication of rights-of-way requirements contained in this chapter upon finding that such conditions or factors exist and that the requirements will substantially impair existing uses or the ability for development. (4570,4606,4771,4777)
(C) With the approval of, or amendment to, a rezoning to PC District, the City Council may approve modifications to the requirements and specifications required by this Chapter if the City Engineer or City Traffic Engineer recommends approval of the modification. The City Engineer or City Traffic Engineer, in consultation with the Planning Director, may recommend the elimination, reduction, or approval of alternatives to the requirements and specification required by this Chapter. If the City Engineer or City Traffic Engineer recommends approval of such a modification, the recommendation, which may be subject to conditions or stipulations, shall be forwarded to the City Council with the PC district. City Council may approve the modification as recommended. The City Engineer's or City Traffic Engineer's recommendation shall be based upon a finding that the modification:

1. Is consistent with the intent of these regulations; (4771)
2. Will result in an equivalent level of service for health, safety and welfare to the General public; (4771)
3. Will result in improvements that are adequate and meet the City's needs; (4771)
4. Furthers the purposes of the PC District; and (4771)
5. Is not contrary to the public interest. (4771)

(D) To ensure compliance with any elimination, modification, deferral, or alternative, the City Manager or designee may require certain provisions such as protective covenants, bonds, and development agreements. Such provisions may be recorded against the property being developed. (3105,3766,4570,4771,4777)

1. When the deferral of certain right-of-way improvement requirements is authorized by the City Manager or designee for a specific development project, the owner and/or developer shall remit to the City of Mesa a payment in lieu of causing the actual design, installation, and/or construction of said required public improvements. This in-lieu payment shall be based upon a cost estimate prepared by a professionally registered civil engineer and approved by the City of Mesa. The in-lieu payment cost estimate shall include all design costs, labor and materials costs, plus twenty percent (20%) for future contingency costs. All in-lieu payments shall be remitted to the City of Mesa as a condition of and in conjunction with the issuance of any on-site construction permits and/or off-site rights-of-way permits associated with the development project. (3882,4570,4771)

2. The obligation to construct right-of-way improvements or make an in-lieu payment prior to the issuance of permits, including the determination of the amount of the in-lieu payment required, may be deferred to a future date if the developer provides financial assurances acceptable to the City Engineer and the City Attorney, the developer and City enter into a development agreement that provides adequate financial assurance for the future construction of the improvements and/or the future payment of an in-lieu amount, and the City Manager or designee finds that such deferral meets all of the following criteria:

   (a) The development is non-residential; and (4777)
   (b) The property is zoned as a commercial or industrial district; and (4777)
   (c) The deferred right-of-way improvements are not included in this City's Capital Improvement Plan for construction within five (5) years of the deferral; and (4777)
   (d) The deferral is in the best interest of the City of Mesa. (4777)
9-8-5: APPEALS:

(A) Discretionary decisions of the Development Services Manager may be appealed to the Hearing Office, who shall be appointed by the City Manager, when such decisions involve one (1) or more of the following: (3105,3766)

1. Any requirement that exceeds or is in addition to the minimum development requirements as defined in this Chapter. (3105)

2. Any requirement not specified in the Mesa City Code or other legislative act of the City of Mesa. (3105)

3. Any requirement resulting from a discretionary act of an administrative official of the City of Mesa. (3105)

(B) Appeals to the Hearing Officer may be submitted by the developer or owner of the property proposed for development which is affected by a discretionary decision of the Development Services Manager. The appeal shall be submitted within thirty (30) days of such decision by filing with the Development Services Manager a notice of appeal on a form provided therefor. No fee is required for this appeal. The Development Services Manager shall transmit to the Hearing Officer all the papers constituting the records upon which the decision appealed from was taken. (3105,3766)

(C) The Hearing Officer shall schedule a time for the appeal to be heard, which shall be no later than thirty (30) days from receipt of the appeal. The appellant shall be given at least ten (10) days' prior notice of the date and time set for the hearing. The Hearing Officer shall decide the appeal within five (5) working days from the date the appeal hearing concludes. (3105)

(D) For determination of the appeal, it shall be the responsibility of the City to establish that there is a nexus between the requirement and a legitimate governmental interest and that the requirement is roughly proportional to the impact of the proposed use, improvement, or development. If more than a single parcel is involved, this requirement applies to the entire property that is subject to the approval. (3105)

(E) If the appeal is upheld, the Hearing Officer shall modify or delete the requirement. If the appeal is denied, the appellant may at any time within thirty (30) days of the decision of the Hearing Officer file a complaint for a trial de novo in the Superior Court on the facts and the law regarding the issues of the requirement. (3105)

9-8-6: PENALTIES:

(A) It is unlawful to develop land contrary to or in violation of any provisions of this Chapter or of any provision designated as a condition of approval either by the plan review process or through an amendment, variance, or appeal by an office, board, commission, or the City Council as established by this Chapter. (3105)

(B) Any person, firm, or corporation violating any provision of this Chapter and any amendments to it shall be guilty of a Class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described. (3105)
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CHAPTER 9
FALCON FIELD AIRPORT

See Title 6, Chapter 3 for Aircraft Regulations

SECTION:

9-9-1: DEFINITIONS
9-9-2: GENERAL RULES AND REGULATIONS
9-9-3: AIRCRAFT OPERATIONS
9-9-4: AIRCRAFT ACCIDENT PROCEDURES
9-9-5: MOTOR VEHICLE REGULATIONS
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9-9-15: VIOLATIONS OF THIS CHAPTER

9-9-1: DEFINITIONS:

AIRPORT: The Falcon Field Airport. (1246)

CITY: The City of Mesa. (1246)

COUNCIL: The City Council, City of Mesa. (1246)

DIRECTOR: The Neighborhood Services Manager, Neighborhood Services Department, City of Mesa, or his designee. (1246,3168,3766)

FIELD AREA: That area on the landing area side of the terminal building, including passenger ramp, aircraft parking areas, shops, hangars, gasoline storage areas, runways, taxiways, perimeter roads, and all areas separated from roadways, sidewalks, buildings, and highways by means of fencing, no trespassing signs, or lack of evidence of provisions of proper facilities for convenient, safe, and easy entrance into and around subject land sections and areas or any other specific areas designated by the Director as field areas. (1246)

PUBLIC AREA: That area including the various concessions, rest rooms, terminal building lobby section used for public access, roadways, sidewalks, and parking lots. Office areas and approaches thereto are not public areas. (1246)
9-9-2: GENERAL RULES AND REGULATIONS:

(A) The Director may issue such rules, regulations, orders, and instructions as are necessary in the administration of this Chapter. He may post signs at the airport which state or apply such rules, regulations, orders, or instructions. Each person on the airport shall comply with these orders, regulations, and signs. Each member of the staff of the Director, as a representative of the Director, is empowered to require compliance with the provisions of this Chapter and all orders and regulations issued by the Director. (1246)

(B) The airport shall be conducted as a public air facility for the promotion and accommodation of civil aviation and associated activities. (1246)

(C) The airport shall be open for public use at such hours and subject to such restrictions as may be determined by the City Council. (1246)

(D) The privilege of using the airport and its facilities shall be conditioned on the assumption by the user thereof of full responsibility and risk for such use, and by accepting the use of the airport and its facilities, the user thereof releases and agrees to hold the City and its officers and employees harmless and indemnify them from any liability or loss resulting from such use. The owners and operators of all aircraft based at the airport shall comply with all of the applicable provisions of Title 28, Chapter 12, Arizona Revised Statutes. (1246)

9-9-3: AIRCRAFT OPERATIONS:

(A) No person shall conduct any aircraft operation to, on, from, or over the airport except in conformity with all Federal Aviation Administration regulations; the applicable provisions of Title 28, Chapter 12, Arizona Revised Statutes; this Section; and rules and regulations established by the Director. (1246)

(B) No person shall take off or land an aircraft on the airport except on a hard surface area unless otherwise authorized by the Director. (1246)

(C) All aircraft traffic shall conform to the established traffic pattern as approved by the Director and posted at the airport. (1246)

(D) No person shall park or loiter an aircraft on any runway or taxiway at the airport. (1246)

(E) No person shall park or store an aircraft at the airport except in areas designated by the Director. (1246)

(F) Preventive maintenance work, as defined in Title 14, Part 43, Appendix A(c), Code of Federal Regulations, may be performed at the airport tie-down areas by the owner or operator of the aircraft. Aircraft owners who possess current mechanic ratings such as A & P and A & I may do additional work in the tie-down areas subject to approval of the Director. All other aircraft maintenance, rebuilding, and alterations shall be performed only in areas designated by the Director. (1246)

(G) No person shall conduct experimental flight or ground demonstrations on the airport without prior permission of the Director. (1246)
(H) No person shall take any aircraft from the landing area or hangars or operate such aircraft while under the influence of intoxicating liquor or a dangerous drug. (1246)

(I) No person shall board or disembark from any aircraft on a runway or in the takeoff or landing area except in an emergency or with prior approval of the Director. (1246)

(J) Persons parking transient aircraft shall register their aircraft with the Director or his representative as soon as possible after landing at the airport. (1246)

(K) All owners and operators who desire to base their aircraft at the airport shall register their aircraft with the Director or his representative prior to beginning operations. Any change in ownership of the aircraft shall be reported immediately. (1246)

(L) No person shall leave an aircraft unattended unless it is properly tied down or placed in a hangar. (1246)

(M) No engine in an aircraft shall be started or run without a competent person at the engine controls and unless blocks have been placed in front of the wheels or the aircraft has adequate parking brakes. No aircraft engine shall be operated in such manner as to endanger life or property. (1246)

(N) No aircraft shall be operated in or taxied into or out of a hangar. (1246)

(O) If the Director believes the conditions at the airport or any portion thereof are unfavorable for aircraft operations, he may close the airport or such portions thereof, using applicable FAA procedures as appropriate. (1246)

(P) No aircraft capable of movement on the ground shall be operated on the airport unless it is equipped with wheels and wheel brakes except with permission of the Director. (1246)

(Q) No aircraft shall be permitted to remain on any part of the landing or takeoff areas for the purpose of repairs. (1246)

(R) All aircraft shall be taxied at slow and reasonable speeds and shall not be taxied onto a runway without first stopping and waiting for any approaching aircraft preparing to land. (1246)

(S) No person shall, without the owner’s permission, interfere or tamper with an aircraft parked or stored at the airport. (1246)

(T) No person shall move an aircraft on the airport in a negligent or reckless manner. (1246)

(U) No person shall start or taxi any aircraft on the airport in a place where the air or exhaust blast is likely to cause injuries to persons or property. If the aircraft cannot be taxied without violating this Subsection, the operator must have it towed to the desirable destination. (1246)
9-9-3  9-9-5

(V) No person shall move a rotocraft at a place on the airport while its rotors are turning unless there is a clear area of at least fifty feet (50') from the outer tip of each rotor. (1246)

9-9-4: **AIRCRAFT ACCIDENT PROCEDURES:**

(A) Persons involved in aircraft accidents occurring at the airport shall make a full report thereof to the Director or his representative within twenty-four (24) hours after such accident. (1246)

(B) Any person damaging property on the airport by means of contact with aircraft shall report such damage to the airport office immediately and shall be fully responsible to the City for costs of repairs. (1246)

(C) Every pilot and aircraft owner shall be responsible for the prompt removal of his disabled aircraft or parts thereof as directed by the Director or his representative, subject to accident investigation requirements. (1246)

9-9-5: **MOTOR VEHICLE REGULATIONS:** (See Section 10-4-8 for Speed Limits)

(A) No motor vehicle shall be operated on the airport if it is so constructed, equipped, or located as to endanger persons or property. (1246)

(B) Each operator of a motor vehicle involved in an accident between that vehicle and an aircraft or in any other motor vehicle accident on the airport that results in personal injury or in total property damage of more than fifty dollars ($50.00), shall make a full report thereof to the Director as soon as possible after the accident. The report must include the name and address of the person reporting. (1246)

(C) No person shall operate any motor vehicle on the airport in violation of this Chapter or rules promulgated and posted by the Director or the laws of the State of Arizona. (1246)

(D) No person shall operate a motor vehicle on the airport in a negligent or reckless manner or in excess of posted speed limits. (1246)

(E) No motor vehicle shall be permitted on taxiways, runways, or operational areas, except authorized maintenance or service vehicles, without prior permission of the Director. (1246)

(F) No person shall operate a vehicle on, to, or across a runway except when authorized by the Director or his representative. (1246)

(G) Operators of motor vehicles on the field area shall yield the right-of-way to taxiing aircraft. (1246)

(H) All motor vehicles on the field area shall pass to the rear of aircraft whose engines are running. (1246)

(I) When backing gasoline tenders, the driver shall remain in the vehicle and shall not stand on the running board or fender. Gasoline tenders shall at no time be so positioned as to prevent their rapid removal. (1246)

(J) Except as authorized by the Director, no person shall clean or make any repairs to motor vehicles anywhere on the airport other than designated shop areas except those minor repairs necessary to remove such motor vehicle to a proper location. (1246)
1. No person shall park or stand a motor vehicle on the airport except in an area specifically designated therefor. (1246)

2. No person shall park a motor vehicle in any posted area on the airport for a period longer than that prescribed by the City. (1246)

3. No person shall park a vehicle in a restricted or reserved area on the airport unless he displays, in the manner prescribed by the Director, a parking permit issued by the Director for that area. (1246)

4. No person shall double-park a motor vehicle on any road on the airport. (1246)

5. No person shall abandon a motor vehicle on the airport. (1246)

6. No person shall leave a motor vehicle standing unattended or parked on the airport with a key in the ignition switch, the motor running, a key in the door lock, or an open door. (1246)

7. No person shall park or stand a motor vehicle at any place on the airport in violation of any sign posted by the Director. (1246)

8. No person shall park or stand a motor vehicle within fifteen feet (15') of a fire hydrant on the airport or park in such manner as to block any fire gate or entrance. (1246)

9. No person shall park a motor vehicle in any marked space in such manner as to occupy more than one (1) space. (1246)

10. No person shall park a motor vehicle in individual storage hangars or aircraft shelters unless permitted by the owner or lessee of said structure. (1246)

11. The Director or his agent may remove, at the owner’s expense, any motor vehicle which is parked on the airport in violation of this Chapter. The vehicle shall be subject to a lien for the cost of removal. (1246)

9-9-6: TAXICABS:

(A) No person shall operate a vehicle that is carrying passengers for hire from the airport unless he is the holder of a contract authorizing same by the City Council. (1246)

(B) Except for discharging passengers, no person shall park on the airport a vehicle used for the purpose of carrying passengers for hire unless he is the holder of a contract authorizing same by the City Council. (1246)
(C) No person shall, on the airport, solicit or invite any person to ride in a vehicle used for the purpose of carrying passengers for hire, either by driving slowly past a loading entrance to an airport building or by any other act or utterance calculated to induce that person to engage the vehicle, unless said taxicab operator is the holder of a contract authorizing same by the City Council. (1246)

9-9-7: RULES OF CONDUCT:

(A) No person shall commit any act or nuisance on the airport. (1246)

(B) No person shall dispose of garbage, papers, refuse, or other such material on the airport except in receptacles provided for that purpose. (1246)

(C) No person shall destroy, injure, deface, or disturb any building, sign, equipment, marker or other structure, tree, flower, lawn, or other public property on the airport. (1246)

(D) No person shall alter, make additions to, or erect any building or sign or make any excavations on the airport without the permission of the Director, subject to lease provisions. (1246)

(E) No person shall willfully abandon any personal property on the airport. (1246)

(F) No person may ride horseback on the airport without permission of the Director. (1246)

(G) No person shall hunt, pursue, trap, catch, injure, or kill any bird or animal on the airport without authorization of the Director. (1246)

(H) No person, except peace officers, an authorized post officer, air carrier, airport employee, or a member of an armed force of the United States on official duty, shall carry any weapon, explosive, or inflammable material on or about his person, openly or concealed, on the airport without the written permission of the Director. This Section shall not apply to persons carrying firearms in cases, broken down or unloaded, when said firearms are being transported by air. For the purpose of this Section, a weapon includes all those listed in Section 13-3101, Arizona Revised Statutes. (1246)

(I) No person shall solicit fares, alms, or funds for any purpose on the airport without permission of the Director. (1246)

(J) No person shall post, distribute, or display signs, advertisements, circulars, or other printed or written matter in the public area of the airport without permission of the Director. (1246)

(K) No person may enter the airport with a dog or other domestic animal unless the animal is kept restrained by a leash or is confined so as to be completely under control. (1246)

(L) No person shall loiter or loaf on any part of the airport. (1246)
(M) No unauthorized person shall enter any restricted area posted as being closed to the public. (1246)

(N) No person shall use a rest room other than in a clean and sanitary manner. (1246)

(O) No person shall drink alcoholic beverages in the terminal building lobby. (1246)

9-9-8: COMMERCIAL PHOTOGRAPHY:

(A) Except as hereinafter provided, no person shall take a still, motion, or sound picture on the airport for commercial purpose without the permission of the Director. (1246)

(B) The Director may allow any of the following to take pictures on the airport for commercial purposes: (1246)

1. Professional photographers and motion picture cameramen photographing events on the airport as representatives of news concerns or bona fide news publications. (1246)

2. Professional photographers and motion picture cameramen photographing events at the airport, for nonprofit exhibit, to stimulate interest in air commerce or travel, or for nonprofit educational purposes. (1246)

3. Professional photographers photographing scenes on the airport for general artistic purposes. (1246)

9-9-9: USE OF ROADS AND WALKS:

(A) No person shall travel on the airport except on a road, walk, or other place provided for the kind of travel he is doing. (1246)

(B) No person shall occupy or place an object on the road or walk on the airport in a manner that hinders or obstructs its proper use. (1246)

(C) No person shall walk in a picket line as a picket or take part in a labor or other public demonstration on any part of the airport except in a place specifically assigned by the Director for picket lines or other public demonstrations. (1246)

9-9-10: USE OF GATE POSITIONS:

(A) No person shall use an aircraft gate position on the airport unless he has been authorized to use it. (1246)

(B) Except in an emergency, no person shall emplane or deplane passengers on the airport on an area that has not been established for that purpose by the Director. (1246)

(C) No person shall park an aircraft which is carrying explosives or inflammable material, nor shall he load or unload such items on or from such aircraft, other than in areas designated by the Director. (1246)

(D) No person may repair an aircraft while it is parked at the gate position, except for minor adjustments. (1246)
9-9-11: FIRE HAZARDS AND FUELING OPERATIONS:

(A) Fuel Delivery and Dispensing. No person shall transport or deliver aviation fuels, oils, or lubricants on the airport or dispense fuels into aircraft unless he is the holder of a valid permit with the City authorizing such activity. (1246)

(B) Cleaning Fluids. No person shall use a flammable volatile liquid having a flash point of less than one hundred degrees (100°) Fahrenheit to clean an aircraft, aircraft engine, propeller, or appliance in an aircraft hangar or similar type building or within fifty feet (50') of another aircraft, building, or hangar. (1246)

(C) Open-Flame Operations. No open flame, flame-producing device, or other source of ignition shall be permitted in any hangar or similar-type building except in locations approved by the Director. (1246)

(D) Smoking. No person shall smoke on any apron or ramp, in any hangar or shop, in any aircraft, or in any other place on the airport where smoking is specifically prohibited by the Director. (1246)

(E) Storage. (1246)

1. No person shall store or stock material or equipment on the airport in a manner that constitutes a fire hazard. (1246)

2. No person shall store any combustible materials, flammable liquids, or other hazardous materials in an aircraft hangar or other building on the airport except in locations and containers approved by the Mesa Fire Department. (1246)

3. Each lessee of a hangar on the airport shall provide suitable metal receptacles for storing waste, rags, and other rubbish and shall remove all rubbish from its premises each week. (1246)

(F) Apron Surface Areas and Floor Surface. (1246)

1. Each person to whom space on the airport is leased, assigned, or made available for use shall keep the space free and clear of oil, grease, or other foreign materials that could cause a fire hazard or a slippery or otherwise unsafe condition. (1246)

2. No person shall use any material (such as oil absorbents or similar material) that creates an eye hazard when picked up, swirled, or blown about by the blast from an aircraft engine in any passenger loading area or other public area. (1246)

(G) Doping. (1246)

1. No person shall conduct a doping process on the airport except in a properly designed fire-resistive and ventilated room or building in which all lights, wiring, heating, ventilating equipment, switches, outlets, and fixtures are approved for use in such hazardous areas and in which all exit facilities are approved and maintained for such use or except in an open area as designated by the Director. (1246)
2. No person shall enter or work in a dope room while doping processes are being conducted unless he is wearing sparkproof shoes. (1246)

(H) Fueling Operations. (1246)

1. No person shall fuel or defuel an aircraft on the airport while:

   (a) Its engine is running or is being warmed by applying external heat; (1246)

   (b) It is in a hangar or enclosed space; (1246)

   (c) Passengers are in the aircraft, unless a passenger loading ramp is in place at the cabin door, the door is open, and a cabin attendant is at or near the door. A "No Smoking" sign shall be displayed in the cabin and the rule enforced. (1246)

2. No person shall start the engine of an aircraft on the airport if there is any gasoline or other volatile flammable liquid on the ground beneath it of sufficient quantity to constitute a hazard. (1246)

3. No person shall operate a radio transmitter or receiver or switch electrical appliances on or off in an aircraft on the airport while it is being fueled or defueled. (1246)

4. During the fueling of an aircraft on the airport, the dispensing apparatus and the aircraft shall both be grounded in accordance with orders and instructions of the Director. (1246)

5. Each person engaged in fueling or defueling on the airport shall exercise care to prevent the overflow of fuel and shall have readily accessible and adequate fire extinguishers. (1246)

6. During the fueling or defueling of an aircraft on the airport, no person shall, within fifty feet (50') of that aircraft, smoke or use any material that is likely to cause a spark or be a source of ignition. (1246)

7. Each hose, funnel, or appurtenance used in fueling or defueling an aircraft on the airport shall be maintained in a safe, sound, and nonleaking condition and must be properly grounded to prevent ignition of volatile liquids. (1246)

(I) Mesa Fire Code. All persons shall comply with the provisions of the Mesa Fire Code found in Title 7, Chapter 2 of the Mesa City Code. (1246)

(J) Inspections. The City Fire Chief or his duly authorized representatives shall inspect monthly or as often as may be necessary all buildings and premises for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread or endanger life or property from fire. All orders, notices, or recommendations of the City Fire Chief shall be complied with by all persons without delay. (1246)
9-9-12: OBLIGATION OF TENANTS:

(A) Use of Premises. No lessee of airport property shall knowingly allow that property to be used or occupied for any purpose prohibited by this Chapter. (1246)

(B) Trash Containers. (1246)

1. No tenant, lessee, concessionaire, or agent of any of them doing business on the airport shall keep uncovered trash containers on a sidewalk or road or in a public area of the airport. (1246)

2. No person shall operate an uncovered vehicle to haul trash on the airport. (1246)

3. No person shall operate a vehicle for hauling trash, dirt, or any other material on the airport unless it is built to prevent its contents from dropping, sifting, leaking, or otherwise escaping. (1246)

4. No person shall spill dirt or any other material from a vehicle operated on the airport. (1246)

(C) Bulletin Boards. Each lessee of a hangar or other operational area specified by the Director on the airport shall maintain a bulletin board in a conspicuous place in his hangar or area. He shall post on that board current workmens' compensation notices, a list of competent physicians, a list of his liability insurance carriers, a copy of this Chapter, and a copy of each pertinent order or instruction issued under this Chapter. (1246)

(D) Storage of Equipment. No tenant or lessee of a hangar, shop facility, or other operational area specified by the Director on the airport shall store or stack equipment or material in a manner to be a hazard to persons or property. (1246)

(E) Fire Apparatus. Each tenant or lessee of a hangar, shop facility, or other operational area specified by the Director on the airport shall supply and maintain adequate and readily accessible fire extinguishers, approved by Underwriters’ Laboratories for the hazard involved, as the Director considers necessary. (1246)

(F) Right of Inspection. The Director or his authorized representative shall have the right at all reasonable times to inspect all areas under lease to or occupied by tenants. (1246)

9-9-13: COMMERCIAL OPERATIONS:

(A) Policy. As the operator and proprietor of the airport, on behalf of the citizens of the City, it is the policy and intent of the City Council: (1246)

1. To operate the airport in a businesslike manner with as little cost as possible to the taxpayer through the imposition of fair and reasonable rentals, fees, and charges. (1246)

2. To provide for both private and commercial aviation at the airport to the extent practicable within physical, economical, and environmental constraint. (1246)
3. To provide for the full range of on-base aeronautical support through private enterprise consistent with the need for the service and the availability of space and physical facilities. (1246)

4. To protect airport patrons and users from unsafe and inadequate aeronautical service and to maintain and preserve all airport facilities in a safe, secure, and orderly condition. (1246)

5. To promote fair competition and not to expose those who have lawfully undertaken to provide commodities and services at the airport to irresponsible, unethical, or unauthorized competition. (1246)

6. To permit and provide adequate facilities for owners of general aviation aircraft to work on and service their own aircraft within such limits as may be imposed by this Section or airport regulation for purposes of safety, preservation of airport facilities, and protection of the public interest. (1246)

7. To promote the utility, educational, and recreational aspects of general aviation. (1246)

(B) Prohibition. No person shall engage in any business or commercial activity on the airport without a lease approved by the City Council or a sublease from a duly authorized master lessee. For the purpose of this Section, a "person" means any individual or group of individuals, including a company, partnership, corporation, or other association. This prohibition shall apply to persons who use the airport as a base for conducting their activity but whose office or other place of business is not situated on the airport. This prohibition does not apply to:

1. Aircraft operations in which the flight originates and terminates elsewhere and the Falcon Field Airport is utilized as a temporary stopping place for such purposes as landings, refueling, or other aeronautical service or the embarking or debarking of passengers, except in the case of charter or air taxi airlines. (1246)

2. Company- or corporate-owned aircraft where personnel or products are transported free of charge, the trip being merely incidental to the company’s principal business and not, in itself, a major enterprise for profit. (1246)

3. Casual or isolated transactions such as sales by the owner. (1246)

(C) Definition. For the purpose of this Section, a "business or commercial activity" includes the following types of activities when done for hire, compensation, or reward: (1246)

1. Retail sales of any goods, wares, merchandise, or services. (1246)

2. Pilot training and flight instruction. (1246)

3. Sale, rental, or charter of aircraft. (1246)

4. Air carrier and air taxi operations. (1246)

5. Sale of aviation petroleum products. (1246)
6. Sale or service of aircraft parts, avionics, instruments, or other aircraft equipment. (1246)

7. Repair, maintenance, rebuilding, alteration, or exchange of aircraft and aircraft engines, components, or other parts. (1246)

8. Flying clubs. (1246)

9-9-14: **RATES AND CHARGES:**
A schedule of rates and charges for use of the airport and its facilities shall be established by the City Council, and each person or organization subject to said rates and charges shall promptly pay the amounts due. A copy of such schedule shall be posted in the office of the Director. (1246)

9-9-15: **VIOLATIONS OF THIS CHAPTER:**

(A) Any person who shall violate any of the provisions of Title 9, Chapter 9 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (1501,2466)

(B) In addition to the penalties set forth in the above paragraph, violations of this Chapter or of any rule, regulation, order, or instruction issued by the Director may result in withdrawal of permission by the Director to use the airport. (1501)
CHAPTER 10

DISPOSITION OF UNNECESSARY ROADWAY AND EASEMENTS

SECTION:

9-10-1: DISPOSITION OF ROADWAYS

Pursuant to the provisions of Title 28, Chapter 20, Article 8, of the Arizona Revised Statutes, the City Council may dispose of unnecessary public roadways, upon application being made to the Real Estate Services offices on forms prepared by that office and upon paying an application fee for each application in accordance with the following schedule: (1843, 4202, 4703)

<table>
<thead>
<tr>
<th>Type of Land</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Residential Land</td>
<td>$350 plus value of the land</td>
</tr>
<tr>
<td>All Other Land</td>
<td>$750 plus value of the land</td>
</tr>
<tr>
<td>Residential Alley Roadways</td>
<td>$0</td>
</tr>
</tbody>
</table>

9-10-2: EXTINGUISHMENT OF EASEMENTS

Pursuant to the provisions of Title 28, Chapter 20, Article 8 of the Arizona Revised Statutes, the City Council may extinguish easements no longer needed by the City upon application being made to the Real Estate Services offices on forms prepared by that office and upon paying an application fee for each application in accordance with the following schedule: (1843, 4202)

<table>
<thead>
<tr>
<th>Type of Land</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Single Lot</td>
<td>$350</td>
</tr>
<tr>
<td>Undeveloped Subdivision</td>
<td>$750</td>
</tr>
<tr>
<td>Commercial and all other land</td>
<td>$750</td>
</tr>
</tbody>
</table>

9-10-3: RESERVATION OF EASEMENTS

In the event there are existing public utility lines in any unneeded public roadway that is to be abandoned or if in the sole discretion of the City it is probable that there will be a need for a public utility easement, the City shall retain an easement or easements for such purposes and of such size as the City may determine. (1843)

9-10-4: LEGAL DESCRIPTION

A legal description of the unnecessary public roadway to be abandoned or unnecessary easements to be extinguished shall accompany the application. (1843)

9-10-5: APPLICATION FEE NOT TO BE REFUNDED

In the event the City Council denies the application for vacation of a public roadway or any portion thereof or extinguishment of an easement or any portion therefore, no portion of the application fee shall be refunded to the applicant. (1843)
CHAPTER 11
FLOODPLAIN REGULATIONS
(2396, 2466, 2597, 2906, 3405, 4455, 4961, 5298)

SECTION:

9-11-1: PURPOSE AND STATUTORY AUTHORITY
In accordance with Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes, the City of Mesa elects not to assume the responsibility of Floodplain Management from the Flood Control District of Maricopa County as provided for in A.R.S. §§ 48-3609, 3610; and development within areas designated as Flood Hazard Zones located within city limits shall be subject to such rules and regulations as may be established by the State and the Flood Control District of Maricopa County in conformance with the National Flood Insurance Program requirements and the provisions of Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes and conformance to such rules and regulations shall be in addition to any other applicable Mesa code requirements.

9-11-2: FLOODPLAIN ADMINISTRATOR:
The City Engineer is appointed and designated as the Floodplain Administrator for the City of Mesa and will serve as the community point of contact on National Flood Insurance Program issues for County, State and Federal officials. The Floodplain Administrator will be responsible for (1) coordinating with County Flood Control District staff regarding floodplain management and (2) verifying that the community’s participation in the National Flood Insurance Program is maintained and remains in good standing through adoption and enforcement of these regulations.

The Floodplain Administrator shall also be, at a minimum, responsible for the following:

1. Keep and maintain current flood insurance studies and flood insurance rate map(s) applicable to the community.

2. Keep and maintain copies of the most current version of the “Floodplain Regulations for Maricopa County” at the office of the Mesa City Clerk.

3. Keep and maintain elevation certificates (or acceptable records of lowest flood elevations) for all structures within the Special Flood Hazard areas; and

4. Repeal or modify all existing local ordinances that conflict with these regulations.
Duties of the Floodplain Administrator shall also include: (4455, 4961, 5298)

(A) Establishment of procedures to ensure that all requests for permits for floodplain development will be promptly forwarded to the Flood Control District of Maricopa County and that no permits will be issued by any agent of the City until a valid Floodplain Use Permit is obtained by the applicant. (4961)

(B) Delineating and assisting the Federal Insurance Administrator, at his request, in delineating the limits of the areas having special flood hazards on available local maps of sufficient scale to identify the location of building sites. (4961)

(C) Providing such information to the Federal Insurance Administrator as he may request concerning present uses and occupancy of the floodplain areas within city limits. (4961)

(D) Cooperation with federal, state and local agencies and private firms which undertake to study, survey, map and identify floodplain areas, and cooperate with neighboring communities with respect to management of adjoining floodplain areas in order to prevent aggravation of any existing hazards. (4961)

(E) Submission of reports and information, as needed, to the Federal Insurance Administrator on floodplain management. (4961)

9-11-3 ELEVATION CERTIFICATE:
No Certificate of Occupancy, Certificate of Completion, or Temporary Certificate of Occupancy shall be issued by the City until the applicant provides to the City an Elevation Certificate approved by the Flood Control District of Maricopa County. (4961)

9-11-4 FLOODPLAIN MANAGEMENT REGULATIONS:
That certain public document entitled “Floodplain Management Regulations for Maricopa County” dated and amended on June 25, 2014 as may be amended from time to time, a copy of which shall be kept on file in the Office of the City Clerk, is hereby adopted as the legal basis for implementing floodplain management in the City of Mesa. (4455, 4961, 5298)

9-11-5: SPECIAL FLOOD HAZARD AREAS:
Those certain public documents entitled “Flood Insurance Study for Maricopa County, Arizona, and Incorporated Areas” dated October 16, 2013 with accompanying “Flood Insurance Rate Maps” dated October 16, 2013, as each may be amended from time to time, a copy of each shall be kept on file in the Office of the City Clerk, are hereby adopted by reference and are referred to herein as the “Flood Study” and “Rate Maps.” The Flood Study and Rate Maps are the basis for establishing the Special Flood Hazard Areas for floodplain management in the City of Mesa. The Special Flood Hazard Areas documented in the Flood Study and Rate Maps are the minimum area of applicability of the Floodplain Management Regulations. These Special Flood Hazard Areas may be changed and supplemented by amendments to the Flood Study and Rate Maps and by studies for other areas as allowed in the Floodplain Management Regulations. (4961, 5298)
9-11-6: VIOLATIONS AND PENALTIES:

It shall be a violation of this Chapter to develop land contrary to or in violation of any provision of this Chapter, to violate any provision or requirement of this Chapter, or to fail to comply with the Floodplain Management Regulations. (4961)

(A) A person who violates this Chapter is guilty of a Class 2 Misdemeanor. (4961)

(B) In addition to the penalties set forth in the above paragraph, if the Floodplain Administrator determines that there has been a violation of this Chapter, the Building Safety Director is authorized to issue a stop work order, or to withhold, suspend or revoke a Certificate of Occupancy, Certificate of Completion, or Temporary Certificate of Occupancy issued under the provision of Title 4 of the Mesa City Code. (4961, 5298)

(C) A violation of this Chapter shall also be deemed to be a violation of Title 48, Chapter 21, Article 1 of the Arizona Revised Statutes and is subject to penalties described in A.R.S. §48-3615; and the City shall be entitled to seek injunctive and all other applicable legal and equitable remedies as provided by law for any development that diverts, retards or obstructs the flow of waters in a watercourse or Special Flood Hazard Area without the written authorization of the Flood Control District of Maricopa County. (4961)

(D) Nothing in this Chapter precludes any private or public right of action by any person or entity damaged by another’s unauthorized diversion, retardation or obstruction of a watercourse. (4961)

9-11-7: WARNING AND DISCLAIMER OF LIABILITY:

The degree of flood protection required by this Chapter and applicable state and county regulations is considered reasonable for regulatory purposes. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City or any officer or employee thereof. (4961)

CHAPTER 12

CUSTOMER RESPONSIBILITIES IN THE MESA PUBLIC LIBRARY (3038)

(Repealed by 3803)
CHAPTER 13

FOREIGN TRADE ZONE

SECTION:

9-13-1: PURPOSE
9-13-2: DEFINITIONS
9-13-3: CREATION OF FOREIGN TRADE ZONE
9-13-4: APPLICATION FOR FOREIGN TRADE ZONE
9-13-5: ACTIVATION AND DEACTIVATION
9-13-6: FEES SCHEDULE
9-13-7: PROCEDURES
9-13-8: APPEALS
9-13-9: PENALTY

9-13-1: PURPOSE:
The purpose of this Chapter is to promote economic development through the creation of a foreign trade zone ("FTZ"). (3404)

9-13-2: DEFINITIONS:
Unless the context requires otherwise, the following words and phrases shall have the following meanings: (3404)


(B) BOARD: The Foreign Trade Zones Board ("FTZB") created by the Act to carry out the provisions thereof. The FTZB consists of the Secretary of the Department of Commerce (Chairman) and the Secretary of the Treasury, or their designated alternates. (15 CFR §400.2[D]). (3404, 5194)

(C) FOREIGN TRADE ZONES (FTZ or Zone): Restricted-access sites in or near ports of entry that are licensed by the Foreign Trade Zones Board and operated under the supervision of U.S. Customs & Border Protection. To the extent Zones are “activated” under U.S. Customs and Border Protection (CBP) procedures in 19 CFR Part 146, and only for the purposes specified in the Act (19 U.S.C. 81C), Zones are treated for purposes of the Tariff Laws and Customs Entry Procedures as being outside the customs territory of the United States. Under Zone Procedures, foreign and domestic merchandise may be admitted into Zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs Entry Procedures and payment of duties, unless and until the foreign merchandise enters customs territory for domestic consumption. (3404, 5194)

(D) GRANTEE: The grantee of Foreign Trade Zone No. 221 is the City of Mesa, Arizona, an organization to which the privilege of establishing, operating, and maintaining a foreign trade zone has been granted by Order 883 and Order 1538 of the Foreign Trade Zones Board. (3404, 5194)

(E) PORT DIRECTOR, U.S. CUSTOMS: The Port Director of U.S. Customs & Border Protection (CBP) located in Phoenix, Arizona, or representative. (3404, 5194)

(F) SUBZONE: A site (or group of sites) established for a specific use. (3404, 5194)
ZONE OPERATOR: The City of Mesa or an organization, corporation, partnership, or person that operates within FTZ No. 221 under the terms of an agreement with the City of Mesa, with concurrence of U.S. Customs & Border Protection. (3404, 5194)

ZONE PARTICIPANT: A current or prospective zone operator, zone user, or property owner. (5194)

ZONE SCHEDULE: The grantee’s rules, regulations and policies for the zone including all rates or charges assessed by or on behalf of the grantee and information regarding any operator which has an agreement with the grantee to offer services to the public, including the operator’s rates or charges for all zone-specific services offered. The zone schedule may be updated from time to time by the City of Mesa Economic Development Department. (5194)

ZONE SITE (SITE): The physical location of a zone or subzone. (5194)

ZONE USER: A party using a zone under agreement with a zone operator. (3404, 5194)

CREATION OF FOREIGN TRADE ZONE:
FTZ No. 221 was granted by the Foreign Trade Zones Board to the City of Mesa, Arizona on April 25, 1997 (Board Order #883). FTZ No. 221 was reorganized and expanded on January 7, 2008 (Board Order #1538). (5194)

The City may assist those businesses that request trade assistance outside of the FTZ No. 221 boundaries through modification of the general purpose zone boundaries (major or minor) or through sponsorship of a subzone. (3404, 5194)

APPLICATION FOR FOREIGN TRADE ZONE:
(A) Requests for an activation, expansion or subzone must be made to the City of Mesa Office of Economic Development. (5194)

(B) Agreements to operate within a zone site must be entered into with City of Mesa and approved by the City Council. (3404, 5194)

(C) All applicable fees shall be received by the City prior to granting authorization to establish or operate in a Mesa-approved general-purpose zone or subzone site. (3404, 5194)

(D) Arizona offers a property tax benefit for activated zone sites under A.R.S. 42-12006. Approval of a zone site by the FTZB does not, in and of itself, convey the Arizona property tax benefit to any zone participant (operator, user or property owner). The City of Mesa will not sponsor any zone site seeking property tax reclassification without a written explanation of the tax impact and the necessary concurrence or non-objection letter from the applicable local taxing authority. (5194)

ACTIVATION AND DEACTIVATION:
(A) The Port Director of U.S. Customs & Border Protection, with concurrence from the grantee, may approve activation of all or a portion of a zone site based on a written activation application submitted to the Customs Port Director by a proposed zone operator pursuant to 19 CFR Part 146. (3404, 5194)

(B) An activated zone operator may file a request with the Customs Port Director to deactivate all or a portion of an existing activated general purpose zone or subzone and shall thereafter cease to admit merchandise into the zone site in zone status. Final action and disposition of the zone merchandise must be made with the concurrence of the Port Director. (3404, 5194)
9-13-6:  FEE SCHEDULE:

(A) The following list of fees is adopted: (3404, 5194)

1. Application Fee: (3404, 5194)

   Boundary Modification  $ 1,000.00
   Expansion Application    $ 5,000.00
   Subzone Application      $ 5,000.00

Fees are payable within ten (10) days after City of Mesa Council approval of application and prior to submission of application to the Foreign Trade Zones Board. Balance due within ten (10) days after filing of application with Foreign Trade Zones Board. (3404, 5194)

2. Activation Fee: (3404, 5194)

The City of Mesa charges a fee to cover the costs of reviewing and processing the necessary grantee documentation for FTZ activation applications to CBP. (5194)

   Activation Fee               $ 1,000.00

The activation fee is due within ten (10) days after execution of an operating agreement and prior to issuance of grantee’s activation concurrence letter. (3404, 5194)

3. Annual Fee: (3404, 5194)

The City of Mesa charges an annual fee that is due at the end of each calendar year. (5194)

   Property Owners (non-activated site)    No Fee Charged
   General-Purpose Zone Operators            $ 5,000.00
   Subzone Operators                      $ 5,000.00

9-13-7:  PROCEDURES:

(A) Agreements. All zone operators and property owners must enter into an agreement with the City of Mesa, the zone grantee. Zone users who are not also zone operators must enter into a user agreement with a zone operator. If there is a conflict between an agreement between the City of Mesa and an operator and the zone schedule, the agreement will prevail. If there is a conflict between a user agreement and the zone schedule, the zone schedule will prevail unless the City of Mesa agrees in writing to such terms. (3404, 5194)

(B) Independent Contractor Status. Zone grantee, zone operator, zone user and zone property owner are not and shall not be considered as joint ventures, partners, or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in any written agreements. Zone grantee, zone operator, zone user and zone property owner agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another except as set forth in any written agreements. (3404, 5194)
(C) Exemption from Grantee Liability. The City of Mesa will not undertake detailed operational oversight of or direction to zone participants. Pursuant to CFR § 400.46 grantee liability, as may be amended from time to time, the City of Mesa shall not be liable for violations of any laws by zone participants. (5194)

(D) No Grantee Warranties. The City makes no warranties or representations regarding the benefits that may or may not be realized through participation in the FTZ program by property owners, zone operators or zone users. (5194)

(E) For Foreign Trade Zones Board annual reporting purposes, the zone year is a calendar year. For U.S. Customs & Border Protection annual reconciliation purposes, each zone operator may choose its own operating zone year. Each zone operator shall provide an annual report to the City of Mesa each calendar year or at such other time as set forth in the zone schedule or operator agreement. (5194)

9-13-8: APPEALS:

Any determination made by any official of the City charged with the administration of any part of this Chapter may be appealed to the City Manager, or his designee. All appeals must include a written notice of appeal that contains an explanation of why the appellant feels that the determination was in error. The notice of appeal must be filed with the Office of Economic Development within thirty (30) days of the determination for which the appeal is being filed. The determination of the City Manager, or his designee, shall be final. (5194)

9-13-9: PENALTY:

(A) Violations of this Chapter are civil under the City of Mesa authority and may also be subject to a federal action under the provisions and regulations of U.S. Customs & Border Protection and the Foreign Trade Zones Board. Violations can result in the loss of foreign trade zone privileges other remedies including merchandise seizure, fines, penalties and criminal sanctions may be applicable as provided by laws and regulations. (3404, 5194)

(B) Termination-Conviction/Abandonment. Foreign trade zone privileges may be terminated if:

1. Zone participant shall be convicted under any law of a felony as defined by such law; (5194)

2. If the Foreign Trade Zones Board or U.S. Customs & Border Protection suspends or terminates zone participant or the activated status of the zone; (5194)

3. If the zone participant voluntarily abandons, deserts, or vacates the premises or discontinues its operations; (5194)

4. If zone participant fails to immediately provide all records and reports required to be prepared or maintained by zone participant under applicable law or regulation to zone grantee, the Foreign Trade Zones Board, and U.S. Customs & Border Protection upon request of one of those entities. (3404, 5194)

5. If zone participant violates or fails to comply with any of the provisions or requirements of this Title 9 Chapter 13 of the Mesa City Code, the zone schedule, or its operator agreement with the City of Mesa. (5194)
CHAPTER 14

TELECOMMUNICATIONS SERVICE (3602)

SECTION:

9-14-1: DEFINITIONS
9-14-2: LICENSE REQUIRED
9-14-2: LICENSE PROPOSAL

9-14-1: DEFINITIONS:
In this Chapter, unless the context otherwise requires: (3602)

“CABLE SERVICES” and “CABLE SYSTEM” shall have the same meaning as defined in Chapter 7, Title 9, Mesa City Code. (3602)

“CITY” means the City of Mesa, Maricopa County, Arizona. (3602)

“COMMERCIAL MOBILE RADIO SERVICE” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code Section 157. (3602)

“FACILITIES” means the plant, equipment, and property, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways and not owned by the City in the provision of telecommunications services. (3602)

“PUBLIC HIGHWAY” or “HIGHWAY” means all roads, streets, and alleys and all of the dedicated public rights-of-way and public utility easements of the City. (3602)

“TELECOMMUNICATIONS” means the transmission, between or among points specified by the user of information of the user’s choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services, or cable services. (3602)

“TELECOMMUNICATIONS CORPORATION” means any public service corporation to the extent that it provides telecommunications services in this State. (3602)

“TELECOMMUNICATIONS SERVICES” means the offering of telecommunications for a fee directly to the public, or to such users to be effectively available directly to the public, regardless of the facilities used. (3602)

9-14-2: LICENSE REQUIRED:

(A) No telecommunications corporation shall install, maintain, construct, or operate telecommunications facilities in any public highway in the City, or provide telecommunications service by means of such facilities unless a license to provide telecommunications services has first been granted by the City under this Chapter. (3602)
(B) Notwithstanding Subsection (A), any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 31, 1997 pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that State grant, until the State grant is lawfully repealed, revoked, or amended, and need not obtain any further authorization from the City to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in Title 9, Chapter 5, Article 7, Arizona Revised Statutes. (3602)

(C) Nothing in this Chapter shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the City prior to October 31, 1997, or to release any party from its obligations thereunder. Those franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. The City Manager, with the consent of the City Council, may enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement. (3602)

(D) A license to any telecommunications corporation to use the highways to install, maintain, construct, or operate telecommunications facilities, or to provide telecommunications services under this Chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license, or permit that authorizes the use of the highways for such other service; nor shall the fact that an entity holds a franchise, license, or permit to make any other use of the highway or to provide any other service authorize installation, maintenance, construction, or operation of telecommunications facilities in any highway in the City, or permit such entity to provide telecommunications services by means of such facilities without obtaining a license hereunder. (3602)

(E) Any license granted shall not be exclusive. (3602)

9-14-3: LICENSE PROPOSAL:

(A) A telecommunications corporation desiring a license to occupy the streets and other highways of the City to provide telecommunications service shall file a proposal with the Development Services Manager in the form prescribed by such Manager, and shall pay a fee determined by the Development Services Manager. The amount of the fee shall be reasonably related to the cost directly incurred by the City relating to the granting or administration of the license and can be appealed to the City Manager. (3602, 3766)

(B) Each application shall, at a minimum, (1) show where the facilities the applicant will use will be located, or contain such other information as the City may deem necessary in order to ensure that the applicant will comply with the requirements for use of the highways; (2) identify the applicant, its name, current address, and telephone number; (3) contain a description of the services to be provided; and (4) set out a description of any agreement with any other entity that would permit such entity to use the facilities. (3602)

(C) Upon receiving an application for a license that satisfies the conditions of Section (B), the City shall promptly offer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the offered license, the applicant’s request shall be approved. Notwithstanding the foregoing, the City need not issue or renew a license if the applicant has previously had a license or permit revoked, or for any other reason permitted under Arizona law. (3602)
(D) As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the City may require that: (3602)

1. The applicant show that it has received a Certificate of Public Convenience and Necessity from the Arizona Corporation Commission; (3602)

2. The applicant agrees to comply with the highway use requirements that the City may establish from time to time; (3602)

3. The applicant agrees to provide and maintain accurate maps showing the location of all the facilities it will use in the highways within the City, and to comply with such other mapping requirements as the City may establish from time to time. (3602)

4. The applicant obtains the insurance, and provides proof of insurance, as required by the City; posts the performance bonds and security fund required by the City; agrees to fully indemnify the City, its Mayor and Councilmembers, officers, agents, boards, and commissions, in a form satisfactory to the City; and agrees that it shall have no recourse against the City for monetary damages as a result of any damage that may result from the City’s exercise of its rights under the license, or applicable provisions of law. (3602)

5. The applicant agrees to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the City which may include: (3602)

   (a) Provisions covering assignment; (3602)

   (b) The right to inspect records to determine compliance by the licensee; (3602)

   (c) Provisions for renewal; (3602)

   (d) Fees and charges contemplated by A.R.S. §9-582(C) may be charged by the City as allowed by law. (3602)

(E) Any license granted by the City pursuant to this Chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be for a term of five (5) years, and subject to the conditions and restrictions provided in the instrument and this Chapter. (3602)

(F) Every licensee shall be subject to the City’s exercise of such police, regulatory, and other powers as the City now has or may later obtain, and a license may not waive the application of the same, and must be exercised in strict conformity therewith. Every license shall be subject to revocation if the licensee fails to comply with the terms and conditions of the license or applicable law. Provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the City finds that the defect in performance is due to intentional misconduct, or is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the licensee requests a hearing. (3602)

(G) The issuance of a license by the City is not a representation or warranty that such license is a legally sufficient substitute for a franchise and is not a representation or warranty that a franchise is not required. (3602)
CHAPTER 1

BICYCLES AND SKATEBOARDS

SECTION:

10-1-1: DEFINITIONS
10-1-2: REGISTRATION OF BICYCLES
10-1-3: FEES
10-1-4: DATE OF REGISTERING BICYCLE
10-1-5: RENTAL AGENCIES
10-1-6: BICYCLE DEALERS
10-1-7: TRAFFIC LAWS APPLICABLE TO PERSONS RIDING BICYCLES
10-1-8: OBEDIENCE TO TRAFFIC-CONTROL DEVICES
10-1-9: RIDING ON ROADWAYS AND BICYCLE PATHS
10-1-10: SPEED
10-1-11: EMERGING FROM ALLEY OR DRIVEWAY
10-1-12: CLINGING TO VEHICLES
10-1-13: CARRYING ARTICLES
10-1-14: PARKING
10-1-15: RIDING ON SIDEWALKS
10-1-16: LAMPS AND OTHER EQUIPMENT ON BICYCLES
10-1-17: SKATEBOARDING
10-1-18: MOTORIZED SKATEBOARDS
10-1-19: VIOLATION OF PROVISION OF CHAPTER; FAILURE OR REFUSAL TO DO OR PERFORM REQUIRED ACT
10-1-20: PARENT OR GUARDIAN LIABILITY
10-1-21: PENALTY

10-1-1: DEFINITIONS:
For the purposes of this Chapter, a bicycle is defined as any two- (2-) wheeled vehicle having a tandem arrangement of the wheels and having cranks, levers, or pedals for its propulsion by the feet. (227)

For the purposes of this Chapter, a skateboard is defined as a platform mounted on wheels that is propelled by human power, and skateboarding is defined as the use of a skateboard. (2547)

For the purposes of this Chapter, a motorized skateboard is defined as a self-propelled device which has a motor, a deck on which a person may ride, and has at least two (2) wheels in contact with the ground and which is not otherwise defined in Arizona Revised Statutes, Title 28, as amended, as a "motor vehicle," "motorcycle," "motor-driven cycle," or "motorized wheelchair." (3688)

The term owner shall mean any person who holds legal title to a bicycle; or if the bicycle is the subject of a lease or an agreement for the conditional sale thereof, with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee; or if a mortgagor of a vehicle is entitled to possession, then such lessee, conditional vendee, or mortgagor shall be deemed the owner. (227)
10-1-2: REGISTRATION OF BICYCLES:
Every owner of a bicycle, before the same shall be operated on any of the public thoroughfares of the Municipality, and every purchaser of a bicycle obtained from a City auction, shall apply for the registration thereof. Registration shall be accomplished through utilization of the Mesa Police Department’s operation I.D. procedures. (227,1665)

10-1-3: FEES:
No fees shall be required for the registration of bicycles. (357,1665)

10-1-4: DATE OF REGISTERING BICYCLE:
Before January 1 of each year, all bicycles must be registered in compliance with this Chapter, and all persons becoming the owners of a new or rebuilt bicycle must immediately after acquiring such ownership comply with the provisions hereof. (227,1665)

10-1-5: RENTAL AGENCIES:
A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate is attached thereto as provided herein and such bicycle is equipped with the lamps and other equipment required in this Chapter. (227,1665)

10-1-6: BICYCLE DEALERS:
Every person engaged in the business of buying or selling new or secondhand bicycles shall make a report to the Chief of Police of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name or make, the frame number thereof, and the number of license plate, if any, found thereon. (227,1665)

10-1-7: TRAFFIC LAWS APPLICABLE TO PERSONS RIDING BICYCLES:
Every person riding a bicycle upon a roadway in the City shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State declaring rules of the road applicable to vehicles or by the traffic laws of this City applicable to the driver of a vehicle except as to special regulations herein and except as to those provisions of law which by their nature can have no application. (227,1665)

10-1-8: OBEDIENCE TO TRAFFIC-CONTROL DEVICES:
Any person operating a bicycle shall obey the instructions of official traffic-control signals, signs, and other control devices applicable to vehicles unless otherwise directed by a Police officer. (227,1665)

Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make such turn, in which event such person shall then obey the regulations applicable to pedestrians. (227,1665)

10-1-9: RIDING ON ROADWAYS AND BICYCLE PATHS:
Every person operating a bicycle upon a roadway shall ride as near to the right-hand side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. (227,1665)

Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. (227, 1665)
10-1-10: SPEED:
No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (227,1665)

10-1-11: EMERGING FROM ALLEY OR DRIVEWAY:
The operator of a bicycle emerging from an alley, driveway, or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area and upon entering the roadway, shall yield the right-of-way to all vehicles approaching on said roadway. (227,1665)

10-1-12: CLINGING TO VEHICLES:
No person riding upon any bicycle shall attach the same or himself to any vehicle upon a roadway. (227,1665)

10-1-13: CARRYING ARTICLES:
No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping at least one (1) hand upon the handlebars. (227,1665)

10-1-14: PARKING:
No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb in such manner as to afford the least obstruction to pedestrian traffic. (227,1665)

10-1-15: RIDING ON SIDEWALKS:
When signs are erected giving notice thereof, no person shall ride a bicycle, skateboard, motorized skateboard, or scooter upon a sidewalk within a Pedestrian Overlay Area (POA). The City Traffic Engineer is authorized to erect signs on any sidewalk within a POA prohibiting the riding of bicycles, skateboards, motorized skateboards, or scooters thereon by any person. The boundaries of the POA are the east side of Country Club Drive to the west side of Centennial Way, the south side of 1st Street to the north side of 1st Avenue. The centerline of the aforementioned streets shall be construed to be the boundaries. (227,1286,1665,1968,3847,5024)

10-1-16: LAMPS AND OTHER EQUIPMENT ON BICYCLES:
Every bicycle, when in use at nighttime, shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet (500') to the front and with a red reflector on the rear of a type which shall be visible from all distances from fifty feet (50') to three hundred feet (300') to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet (500') to the rear may be used in addition to the red reflector. (227,1665)

No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle. (860,1665)

Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement. (227,1665)
10-1-17:    SKATEBOARDING:
    Skateboarding is prohibited upon the stairways, handicap access ramps, and other appurtenances of
    the Mesa City Council Chambers, the City Hall (Municipal) Building, and all other municipal buildings within the
    City. (2547)

10-1-18:    MOTORIZED SKATEBOARDS:

(A) Obedience to Traffic Laws: (3688)

1. Except as to those provisions of law which by their nature can have no application, any person operating a
   motorized skateboard on a roadway or on any shoulder adjoining a roadway shall be granted all the rights and
   shall be subject to all the duties applicable to the driver of a vehicle by both: (3688)

   (a) The laws of this State declaring rules of the road applicable to vehicles; and (3688)

   (b) The traffic laws of the City applicable to the driver of a vehicle. (3688)

2. This Section shall not be construed to require the licensing or registration of motorized skateboards; the
   licensing of motorized skateboard operators or the carrying of insurance covering accidents involving
   motorized skateboards. (3688)

(B) Responsibilities of Parents, Guardians, and Custodians: (3688)

1. The parent, guardian, or legal custodian of any minor or ward shall not authorize or knowingly permit such
   minor or ward to violate any of the provisions of this Article. (3688)

2. No minor shall operate a motorized skateboard on any City right-of-way, including streets, roadways, and
   alley ways, unless the minor possesses at all times while operating the motorized skateboard a written consent
   of the minor's parent or legal guardian. The written consent shall be signed by the parent or legal guardian,
   whose signature shall be notarized, and shall contain the following: (3688)

   (a) The name and date of birth of the minor. (3688)

   (b) The residence address of the minor and parent/guardian. (3688)

   (c) The residence and work telephone number of the parent/guardian. (3688)

   (d) The following statement: (3688)

       I am the parent/guardian of the minor named herein and hereby authorize said minor to operate a
       motorized skateboard in the City of Mesa. I have read and discussed with said minor the applicable laws
       of the State of Arizona and of this City regarding the operation of motorized skateboards and have assured
       myself that said minor understands these regulations. (3688)
(C) Operation Prohibited in Certain Areas and at Certain Times: (3688)

1. No person shall operate a motorized skateboard on any sidewalk except for use in crossing such sidewalk to gain access to any public or private road or driveway. (3688)

2. No person shall operate a motorized skateboard in any City parking structure or City park, except for use on public roadways within such park on which a motorized skateboard is otherwise allowed. (3688)

3. No person shall operate a motorized skateboard on any public property that has been posted or designated by the owner of such property as an area in which the operation of motorized skateboards is prohibited. (3688)

4. No person shall operate a motorized skateboard on any private property of another, or any public property which is not held open to the public for vehicle use, without the written permission of the owner, or the owner's authorized agent. (3688)

5. No person shall operate a motorized skateboard on any public roadway having a speed limit established greater than thirty (30) miles per hour. (3688)

6. No person shall operate a skateboard on a City right-of-way, including streets, roadways, and alley ways, except during daylight and in no event before seven (7:00) A.M. or after eight (8:00) P.M. (3688)

(D) General Operating Restrictions: (3688)

1. No child under the age of fourteen (14) shall operate a motorized skateboard. (3688)

2. No person shall operate a motorized skateboard in excess of the posted speed limit or at a speed greater than is reasonable and prudent under the circumstances then existing. (3688)

3. A person operating a motorized skateboard, approaching a sidewalk, bicycle path, bicycle lane, or multiuse path in order to cross such, shall yield the right-of-way to all other users. (3688)

4. No person operating a motorized skateboard shall allow passengers when the motorized skateboard is in operation or motion. (3688)

5. No person operating or riding upon a motorized skateboard shall attach themselves or the motorized skateboard in any manner to any other vehicle. (3688)

6. No person shall operate a motorized skateboard while carrying any package, bundle, or article which prevents the operator from keeping both hands upon the steering mechanism at all times. (3688)

7. No person operating a motorized skateboard shall transport extra fuel in a separate container or alter the fuel reservoir from the original manufacturer's design. This includes the prohibition of physically attaching fuel packs or containers to the operator's person. (3688)
8. No person shall operate a motorized skateboard in a manner causing excessive, unnecessary, or offensive noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to a reasonable person of normal sensitivity. (3688)

(E) Required Safety Equipment: (3688)

1. No person shall operate a motorized skateboard at any time when there is not sufficient light to render clearly discernible persons and vehicles at a distance of five hundred feet (500') ahead. (3688)

2. No person shall operate a motorized skateboard unless it is equipped with a brake which enables the operator to make a braked wheel(s) skid on pavement. (3688)

3. A person under the age of eighteen (18) years operating a motorized skateboard on a roadway shall at all times wear a protective helmet on his or her head in an appropriate and safely secured manner. The helmet shall meet minimum standards of testing and safety inspection as approved by the bicycle industry. (3688)

4. No person shall operate a motorized skateboard without wearing footwear. The footwear must have a sole and completely cover the feet and toes. (3688)

5. A person operating a motorized skateboard shall wear, at all times, protective glasses or goggles or a transparent face shield of a type approved for motorcycle or motor-drive cycle use. (3688)

10-1-19: VIOLATION OF PROVISION OF CHAPTER; FAILURE OR REFUSAL TO DO OR PERFORM REQUIRED ACT:

No person shall fail to register any bicycle owned by such persons, and no person shall violate any of the provisions of Title 10, Chapter 1 of the Mesa City Code providing for registration and regulation of all bicycles operated in the Municipality. (227,1665,1771,3688)

10-1-20: PARENT OR GUARDIAN LIABILITY: (3688)

The parent of any minor or the guardian having custody or control of any minor shall not authorize or knowingly permit the minor to violate any of the provisions of this Chapter. If a fine is imposed upon a minor who is found to be in violation of this Ordinance (3688, pertaining to motorized skateboards), the parents or legal guardian having custody or control of the minor shall be jointly and severally liable with the minor for payment of the fine whether or not the parents or guardian knew of, or anticipated, a violation of this Ordinance. (3688)

10-1-21: PENALTY:

A violation of any provision of this Chapter of the Mesa City Code shall be a civil traffic offense punishable by a fine not to exceed three hundred dollars ($300.00). (2547,3688)

CHAPTER 2

PARKING METERS

(REPEALED BY 5024)
CHAPTER 3

TRAFFIC

SECTION:

10-3-1: DEFINITIONS
10-3-2: DUTY OF POLICE DEPARTMENT
10-3-3: RECORDS OF TRAFFIC VIOLATIONS
10-3-4: TRAFFIC ACCIDENT STUDIES
10-3-5: TRAFFIC ACCIDENT REPORTS
10-3-6: POLICE DEPARTMENT TO SUBMIT ANNUAL TRAFFIC SAFETY REPORT
10-3-7: DUTIES OF OFFICERS OF POLICE AND FIRE DEPARTMENTS
10-3-8: OBEDIENCE TO TRAFFIC REGULATIONS
10-3-9: PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC REGULATIONS
10-3-10: COASTERS, ROLLER SKATES, AND SIMILAR DEVICES
10-3-11: PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS
10-3-12: EXEMPTIONS TO AUTHORIZED EMERGENCY OR SERVICE VEHICLES
10-3-13: TRAFFIC-CONTROL DEVICES
10-3-14: TURNING MOVEMENTS
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10-3-16: ONE-WAY STREETS, ALLEYS, AND DRIVEWAYS
10-3-17: SPECIAL STOPS REQUIRED
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10-3-19: PEDESTRIAN’S RIGHTS AND DUTIES
10-3-20: METHOD OF PARKING
10-3-21: STOPPING, STANDING, OR PARKING PROHIBITED IN SPECIFIED PLACES
10-3-22: COMMERCIAL VEHICLE PARKING TIME RESTRICTED
10-3-22.1: PARKING OF SPECIFIED VEHICLES RESTRICTED
10-3-23: STOPPING FOR LOADING OR UNLOADING ONLY
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10-3-25: PARKING VIOLATIONS; LIABILITY AND ENFORCEMENT
10-3-26: WHEN VEHICLES MAY BE IMPOUNDED
10-3-27: EXCESS LOADS; CIVIL SANCTIONS AND PENALTIES FOR VIOLATION

10-3-1: DEFINITIONS:
The following words and phrases, when used in this Chapter, shall for the purpose of this Chapter have the meanings respectively ascribed to them in this Section. Whenever any words and phrases used herein are not defined herein but are defined in the State laws regulating the operation of vehicles, any such definition therein shall be deemed to apply to such words and phrases used herein: (Reso. 990)

ALLEYS: Lanes or passageways for use in unloading merchandise, Fire Department convenience, and generally as a means of reaching the rear end of lots or buildings, and not in any way to be considered a thoroughfare. (Reso. 990)

AUTHORIZED EMERGENCY VEHICLE: Vehicles of the Fire Department, Police vehicles, and such ambulances and emergency vehicles of City of Mesa departments or public service corporations as are designed or authorized by the State Highway Commission. (Reso. 990)
**BICYCLE:** Every device propelled by human power upon which any person may ride, having two (2) tandem wheels, either of which is over sixteen inches (16") in diameter, and including any device generally recognized as a bicycle though equipped with two (2) front or two (2) rear wheels. (380 Reso. 990)

**BUSINESS DISTRICT:** The territory contiguous to and including a roadway when within any six hundred feet (600') along such roadway there are buildings in use for business or industrial purposes, including but not limited to, hotels, banks or office buildings, railroad stations, and public buildings which occupy at least three hundred feet (300') of frontage on one (1) side or three hundred feet (300') collectively on both sides of the roadway. (Reso. 990)

**CITY TRANSPORTATION FACILITY:** Any City street, sidewalk, bicycle lane, equestrian, bicycle, pedestrian or multi-use path, special use trail, alley, highway, transit stop or station, or similar public way. (5050)

**CROSSWALK:** (Reso. 990)

(A) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highways measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway. (Reso. 990)

(B) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (Reso. 990)

**CURB LOADING ZONE:** A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials. (Reso. 990)

**DRIVER:** Every person who drives or is in actual physical control of a vehicle. (Reso. 990)

**FREIGHT CURB LOADING ZONE:** A space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight (or passengers). (Reso. 990)

**INTERSECTIONS:** (Reso. 990)

(A) The area embraced with the prolongation or connection of the lateral curb lines or if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. (Reso. 990)

(B) Where a highway includes two (2) roadways thirty feet (30') or more apart, then every crossing of each roadway of such dividing highway by an intersecting highway shall be regarded as a separated intersection. In the event such intersecting highway also includes two (2) roadways thirty feet (30') or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection. (Reso. 990)

**LANED ROADWAY:** A roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic. (Reso. 990)

**LIMITED-ACCESS HIGHWAY:** Every highway, street, or roadway in respect to which owners or occupants of abutting property of lands and other persons have no legal right of access to or from the same, except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway. (Reso. 990)
MOTOR VEHICLE: Every vehicle which is self-propelled. (Reso. 990)

MOTORCYCLE: Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor. (Reso. 990,1074)

OFFICIAL TRAFFIC-CONTROL DEVICES: All signs, signals, markings, and devices not inconsistent with this Chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, and guiding traffic. (Reso. 990)

PARK: When prohibited, means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading. (Reso. 990)

PASSENGER CURB LOADING ZONE: A place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers. (Reso. 990)

PEDESTRIAN: Any person afoot. (Reso. 990)

POLICE OFFICER: Every officer of the City of Mesa Police Department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. (Reso. 990)

PRIVATE ROAD OR DRIVEWAY: Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons. (Reso. 990)

RAILROAD: A carrier of persons or property upon cars, other than street cars, operated upon stationary rails. (Reso. 990)

RAILROAD TRAIN: A steam engine, electric, or other motor, with or without cars coupled thereto, operated upon rails, except street cars. (Reso. 990)

RESIDENCE DISTRICT: The territory contiguous to and including a highway and comprising a business district when the property on such highway for a distance of three hundred feet (300’) or more is in the main improved with dwellings or dwellings and buildings in use for business. (Reso. 990)

RIGHT-OF-WAY: The privilege of the immediate use of the roadway. (Reso. 990)

ROADWAY: That portion of a street or highway improved, designed, or ordinarily used for vehicular travel. In the event a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively. (Reso. 990)

SAFETY ZONE: The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. (Reso. 990)

SERVICE VEHICLE: A licensed vehicle used in the construction, operation or maintenance of a municipal, utility or other similar facility or infrastructure, or in the provision of service for a municipal, utility or other similar service. (5050)
**SIDEWALK:** That portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians. (Reso. 990)

**STOP:** When required, means complete cessation of movement. (Reso. 990)

**STOP, STOPPING, OR STANDING:** When prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control signal or sign. (Reso. 990)

**STREET OR HIGHWAY:** 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. (Reso. 990)

**THROUGH ROADWAY:** Every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this act. (Reso. 990)

**TRAFFIC:** Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any street for purpose of travel. (Reso. 990)

**TRAFFIC-CONTROL SIGNAL:** Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed. (Reso. 990)

**TRAFFIC DIVISION:** The traffic division of the Police Department of the City or in the event a traffic division is not established, then said term whenever used herein shall be deemed to refer to the Police Department of the City. (Reso. 990)

**VEHICLE:** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (Reso. 990)

10-3-2: **DUTY OF POLICE DEPARTMENT:** It shall be the duty of the Police Department to enforce the street traffic regulations of the City and all of the State vehicle laws applicable to street traffic in the City, to make arrests for State of Arizona criminal traffic violations, to investigate accidents and to assist in developing ways and means to improve traffic conditions, and to carry out all duties specially imposed upon said Department by this Chapter. (Reso. 990,1771)

10-3-3: **RECORDS OF TRAFFIC VIOLATIONS:** The Police Department shall keep a record of all violations of the traffic laws of the City or of the State vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five- (5-) year period, and from that time on, the record shall be maintained complete for at least the most recent five- (5-) year period. All forms for records of violations and notices of violations shall be serially numbered. For each month and year, a written report shall be kept available to the public showing the disposal of all such forms. All records and reports shall be public records. (Reso. 990)

10-3-4: **TRAFFIC ACCIDENT STUDIES:** Whenever the accidents at any particular location become numerous, the City Traffic Engineer shall conduct studies of such accidents and determine remedial measures. (Reso. 990,1074,1771,3766,5024)
10-3-5: TRAFFIC ACCIDENT REPORTS:

(A) The Police Department shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. (reso. 990)

(B) The Police Department shall receive and properly file all accident reports made to it under State law or under any law of the City, but all such accident reports made by drivers shall be for the confidential use of the Police Department and no such report shall be admissible in any civil or criminal proceeding other than upon request of any person making such report or upon request of the court having jurisdiction to prove a compliance with the laws requiring the making of any such report. (Reso. 990)

10-3-6: POLICE DEPARTMENT TO SUBMIT ANNUAL TRAFFIC SAFETY REPORT:

The Police Department shall annually prepare a traffic report which shall be filed with the City Clerk. Such report shall contain information on traffic matters in the City as follows: (Reso. 990, 1771)

(A) The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data. (Reso. 990, 1771)

(B) The number of traffic accidents investigated and other pertinent data on the safety activities of the Police. (Reso. 990, 1771)

(C) The plans and recommendations of the division for future traffic safety activities. (Reso. 990, 1771)

10-3-7: DUTIES OF OFFICERS OF POLICE AND FIRE DEPARTMENTS:

(A) It shall be the duty of the officers of the Police Department or such officers as are assigned by the Chief of Police to enforce all street traffic laws of the City and all of the State vehicle laws applicable to street traffic. (Reso. 990, 1771)

(B) Officers of the Police Department or such officers as are assigned by the Chief of Police are hereby authorized to direct all traffic by voice, hand, or signal, provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require. (Reso. 990, 1771)

(C) Officers of the Fire Department, when at the scene of a fire, may direct or assist the Police in directing traffic thereat or in the immediate vicinity. (Reso. 990, 1771)

10-3-8: OBEDIENCE TO TRAFFIC REGULATIONS:

No person shall do any act forbidden or fail to perform any act required herein. (Reso. 990, 1771)

10-3-9: PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC REGULATIONS:

Every person propelling any pushcart or driving any animal-drawn vehicle or riding an animal upon a roadway shall be subject to the provisions of this Chapter applicable to the driver of any vehicle, except those provisions which by their very own nature can have no application. (Reso. 990, 1771)

10-3-10: COASTERS, ROLLER SKATES, AND SIMILAR DEVICES:

No person upon roller skates or riding any coaster, toy vehicle, or similar device shall go upon any roadway except while crossing a street on a crosswalk, and when crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. (Reso. 990, 1771)
10-3-11: PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS:
The provisions of this Chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, County, or Municipality, and no such driver shall violate any of the provisions of this Chapter, except as otherwise permitted by State Statute. (Reso. 990, 1771)

10-3-12: EXEMPTIONS TO AUTHORIZED EMERGENCY OR SERVICE VEHICLES:
(A) The provisions of this Chapter regulating the operation, parking, and standing of vehicles shall apply to authorized emergency vehicles, as defined in this Chapter, except as follows: (Reso. 990, 1771, 5050)

1. A driver, when operating any such vehicle in an emergency, except when otherwise directed by a Police officer, may: (Reso. 990, 1771, 5050)

   (a) Park or stand notwithstanding the provisions of this Chapter. (Reso. 990, 1771, 5050)

   (b) Proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation. (Reso. 990, 1771, 5050)

   (c) Exceed the speed limits so long as he does not endanger life or property. (Reso. 990, 1771, 5050)

   (d) Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property. (Reso. 990, 1771, 5050)

2. The exemptions granted in Subsection (A)(1) of this Section in reference to the movement of an authorized emergency vehicle shall apply when the driver of said vehicle displays at least one (1) lighted lamp exhibiting a red or red-and-blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet (500') to the front of the vehicle, other than a Police vehicle when operated as an authorized emergency vehicle and when the driver is giving audible signal by siren, exhaust whistle, or bell. An authorized emergency vehicle operated as a Police vehicle need not be equipped with or display the red or red-and-blue light or lens visible from in front of the vehicle. (Reso. 990, 1771, 5050)

(B) The provisions of this Chapter regulating the parking and standing of vehicles shall apply to authorized service vehicles except as follows: (5050)

1. A driver, when operating any such vehicle and engaged in official duties, except when otherwise directed by a police officer, may park or stand notwithstanding the provisions of this Chapter. (5050)

2. The exemption granted in Subsection (B)(1) of this Section shall apply when such parking or standing is to carry out official duties, does not endanger life or property, and temporary traffic control measures as required by applicable City regulations are in place. (5050)

10-3-13: TRAFFIC-CONTROL DEVICES:
(A) Authority to Install Traffic-Control Devices. The City Traffic Engineer shall place and maintain traffic-control devices, signs, and signals when and as required under the traffic regulations of the City of Mesa to make effective the provisions of said regulations and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic laws of the City or under State law or to guide or warn traffic. (Reso. 990, 1286, 1440, 1771, 3766, 5024)
(B) Specifications for Traffic-Control Devices. All traffic-control signs, signals, and devices shall conform to the approved specifications. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic-control devices so erected and not inconsistent with the provisions of this Chapter shall be official traffic-control devices. (Reso. 990,1286,1771)

(C) Obedience to Traffic-Control Devices. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the traffic regulations of the City, unless otherwise directed by a Police officer, subject to the exceptions granted the driver of an authorized emergency vehicle. (Reso. 990,1286,1771)

(D) When Traffic-Control Devices are Required for Enforcement Purposes. No provisions of this Chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Section does not state that signs are required, such Section shall be effective even though no signs are erected or in place. (Reso. 990,1286,1771)

(E) Traffic-Control Signal Legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights successively one (1) at a time, the following colors only shall be used, and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows: (Reso. 990,1286,1336,1771)

1. Circular Green. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign, pavement marking, or arrow signal prohibits any particular movement. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited. (Reso. 990,1286,1336,1771)

Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk. (Reso. 990,1286,1336,1771)

2. Circular Yellow. Vehicular traffic facing the signal is thereby warned that the red signal will be exhibited immediately thereafter and such vehicular traffic shall not enter the intersection when the red signal is exhibited. (Reso. 990,1286,1336,1771)

No pedestrian facing the signal shall enter the roadway until the green is shown, unless authorized to do so by a pedestrian "walk" or a symbolic "walking man" signal. (Reso. 990,1286,1336,1771)

3. Circular Red. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until green is shown alone. (Reso. 990,1286,1336,1771)

No pedestrian facing such signal shall enter the roadway until the green is shown alone, unless authorized so to do by a pedestrian "walk" or a symbolic "walking man" signal. (Reso. 990,1286,1336,1771)

The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of an intersection, or if there is no crosswalk, then at the entrance to the intersection in obedience to a red signal, may make a right turn but shall yield the right-of-way to the pedestrian and other traffic proceeding as directed by the signal, excepting at such intersections as shall, by an appropriate sign, indicate that no right turn can be made against the red signal. (1286,1336,1771)
4. Green, Yellow, and Red Arrows. (1286,1336,1771)

   (a) Green Arrow. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. (1286,1336,1771)

   (b) Yellow Arrow. Vehicular traffic facing the signal is thereby warned that the related green arrow movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection. (1286,1336,1771)

   (c) Red Arrow. Vehicular traffic facing a steady red arrow signal shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and will remain standing until an indication to proceed is shown. (1286,1336,1771)

(F) Traffic-Control Signal at a Place Other Than an Intersection. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this Chapter shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such signs or marking, the stop shall be made at the signal. (1286,1771)

(G) Pedestrian "Walk" and "Don’t Walk" or Symbolic "Walking Man" and "Hand" Signals. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" or the symbolic "Walking Man" and "Hand" signals are in place, such signals shall indicate as follows: (Reso. 990,1286,1336,1771)

1. "Walk" or Symbolic "Walking Man." Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the driver of all vehicles. (Reso. 990,1286,1336,1771)

2. "Don’t Walk" or Symbolic "Hand." No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "Walk" or symbolic "walking man" signal shall proceed to a sidewalk or safety zone while the "Don't Walk" or symbolic "Hand" signal is showing. (Reso. 990,1286,1336,1771)

(H) Flashing Signals. Whenever flashing red or yellow signals are used, they shall require obedience by vehicular traffic as follows: (Reso. 990,1286,1771)

1. Flashing Red (Stop Signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. (Reso. 990,1286,1771)

2. Flashing Yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. (Reso. 990, 1286,1771)
(I) Display of Unauthorized Signs, Signals, or Markers. No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to the highways of signs giving useful directional information and of a type that cannot be mistaken for official signs. (Reso. 990,1286,1771)

Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. (Reso. 990,1286,1771)

(J) Interference With Official Traffic-Control Devices or Railroad Signs or Signals. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control signal device or any railroad sign or any inscription, shield, or insignia thereon or any part thereof. (Reso. 990,1286,1771)

(K) Authority to Close Streets for Block Parties. The City Traffic Engineer or his designee is hereby authorized to grant temporary street closures for block parties. (Reso. 990,1074,1286,1440,1771,3766, Ord. 4577,5024)

(L) City Traffic Engineer to Designate Crosswalks, Establish Safety Zones, and Mark Traffic Lanes. The City Traffic Engineer is hereby authorized: (Reso. 990,1074,1286,1440,1771,3766,5024)

1. To designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway and at such other places as he may deem necessary. (Reso. 990,1074,1286,1440,1771)

2. To establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians. (Reso. 990,1074,1286,1440,1771)

3. To mark lanes for traffic on street pavements at such places as he may deem advisable, consistent with the traffic laws of the City. (Reso. 990,1074,1286,1440,1771)

(M) Authority to Install Yield Right-of-Way Signs. The City Traffic Engineer shall place and maintain yield right-of-way signs when and as required under the traffic regulations of the City and may place and maintain such additional yield right-of-way signs as he may deem necessary to regulate traffic under the traffic laws of the City or under State law or to guide or warn traffic. After the erection of such yield right-of-way signs, the driver of a vehicle about to enter or cross a highway or street from another highway or street shall, whenever a yield right-of-way sign is posted at the intersection thereof, yield the right-of-way to all closely approaching vehicles on the highway or street said driver is about to enter. (1074,1286,1440, 1771,3766,5024)

(N) Experimental Traffic Control. The City Traffic Engineer, with the approval of the City Manager is authorized to test traffic-control devices under actual conditions of traffic. This testing shall consist of conducting research and tests on current devices and traffic control devices not presently included in the Manual on Uniform Traffic Control Devices. (1440,1771,3766,5024)

(O) Authority to Install Restricted Entry Signs. Where necessary to preserve the public safety and welfare, the City Traffic Engineer is authorized to post signs restricting entry to a street, alley, driveway, or portion thereof. When authorized signs are erected indicating that entry is restricted, the directions of such sign shall be obeyed. (1771, 2294, 3766, 5024, 5053)
10-3-14: TURNING MOVEMENTS:

(A) Required Position and Method of Turning at Intersections. The driver of a vehicle intending to turn at an intersection shall do as follows: (Reso. 990,1771)

1. Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway. (Reso. 990,1771)

2. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof, and after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. (Reso. 990,1771)

3. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection. (Reso. 990,1771)

4. Where both streets or roadways are one-way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway. (Reso. 990,1771)

(B) Authority to Place and Obedience to Turning Markers. (Reso. 990,1074,1771,5024)

1. The City Traffic Engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law. (Reso. 990,1074,1771,3766,5024)

2. When authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications. (Reso. 990,1074,1771)

(C) Authority to Place Restricted Turn Signs. The City Traffic Engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right, left, or U turn and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted. (Reso. 990,1074,1771,3766,5024)

(D) Obedience to No Turn Signs. Whenever authorized signs are erected indicating that no right, left, or U turn is permitted, no driver of a vehicle shall disobey the directions of any such sign. (Reso. 990,1771)

(E) Limitations on Turning Around. The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic. (Reso. 990,1771)
10-3-15:  PROHIBITINGturns FROM driveways: (4926,5024)

(A) Authority to Place Signs Prohibiting Turns from Driveways. The City Traffic Engineer is authorized to
determine those driveways from which left, right or all turns onto streets shall be prohibited at all times,
prohibited during specific hours, or prohibited at other certain times, and shall place proper signs at such
driveways. (1074,1771,3766,4926,5024)

(B) Obedience to No Turns Signs at Driveways. When authorized signs are erected indicating that left, right, or
all turns are prohibited, no driver of a vehicle shall disobey the directions of any such sign. (1771,5024)

10-3-16:  ONE-WAY STREETS, ALLEYS, AND driveways:

(A) Authority to Sign One-Way Streets, Alleys, and Driveways. The City Traffic Engineer shall determine
those streets, alleys, or driveways that shall be designated as one-way, and shall place and maintain signs
giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs
indicating the direction of lawful traffic movement shall be placed at every intersection where movement or
traffic in the opposite direction is prohibited. (Reso. 990,1074,1440,1771,3766,5024)

10-3-17:  SPECIAL stops REQUIRED:

(A) Authority to Designate Through Streets. The City Traffic Engineer shall determine those streets to be
designated as through streets, and place and maintain a traffic-control device on each and every street
intersecting such through street or intersecting that portion thereof designated as such, except where two
through streets intersect, in which case the City Traffic Engineer shall determine on which street traffic-
control devices shall be placed. When signs are erected giving notice thereof, drivers of vehicles shall stop at
every intersection before entering any of the streets or parts of streets so designated and indicated by a traffic-
control device. (Reso. 990,1771,5024)

(B) Intersections Where Stop Required. The City Traffic Engineer is hereby authorized to determine and
designate intersections where a particular hazard exists upon other than through streets and to determine
whether vehicles shall stop at one (1) or more entrances to any such stop intersection, and shall erect a traffic-
control device at every such place where a stop is required. (Reso. 990,1074,1440,1771,3766,5024)

(C) Stop Signs. If the traffic-control device is a stop sign, every such stop sign erected pursuant to this Chapter
shall bear the word "Stop" in letters not less than six inches (6") in height and such sign shall be reflectorized.
Every such stop sign shall be located as near as practical to the stop line. (Reso. 990,1074,1771,5024)

(D) Vehicles to Stop at Traffic-Control Devices. When traffic-control devices are erected as herein provided at or
near the entrance to any intersection, every driver of a vehicle shall stop such vehicle at a clearly marked stop
line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching
traffic on the intersecting roadway before entering the intersection, except when directed to proceed by a
Police officer or traffic-control signal. No driver shall drive upon or through any private property such as an
oil station, vacant lot, or similar property to avoid obedience to any regulations regarding this Section. (Reso.
990,1771,5024)
(E) Emerging From Alley or Private Driveway. The driver of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway. (Reso. 990,1771,5024)

(F) Stop When Traffic Obstructed. No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (Reso. 990,1771,5024)

(G) Obedience to Signal Indicating Approach of Railroad Train. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this Section, the driver of such vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when: (Reso. 990,1771,5024)

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train. (Reso. 990,1771)

2. A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach of a railroad train. (Reso. 990,1771)

3. A railroad train approaching within approximately one thousand five hundred feet (1,500') of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard. (Reso. 990,1771)

4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing. (Reso. 990,1771)

No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or is being opened or closed. (Reso. 990,1771)

10-3-18: MISCELLANEOUS RULES:

(A) Following Fire Apparatus Prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet (500') or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (Reso. 990,1771)

(B) Crossing Fire Hose. No vehicle shall be driven over any unprotected hose of a Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire without the consent of the Fire Department in command. (Reso. 990,1771)

(C) Driving Through Funeral or Other Procession. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this Chapter. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or Police officers. (Reso. 990,1771)
(D) Drivers in a Procession. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe. (Reso. 990, 1771)

(E) Funeral Processions to be Identified. A funeral procession composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the Chief of Police. (Reso. 990, 1771)

(F) When Permits Required for Parades and Processions. No procession or parade, except funeral processions, shall be held without first securing a permit from the Chief of Police, and all such requests for permits shall state the time, place of formation, proposed line of march, destination, and other regulations as the Chief of Police may set forth therein. (Reso. 990, 1771)

(G) Driving on Sidewalk. A person shall not drive a vehicle on a sidewalk area except on a permanent or duly authorized temporary driveway. A person driving an authorized service vehicle engaged in official duties may drive within a sidewalk area at a location other than a driveway. (Reso. 990, 1771, 5050)

(H) Limitations on Backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic. (Reso. 990, 1771)

(I) Riding on Motorcycles. A person operating a motorcycle or motor scooter shall not ride other than upon the permanent and regular seat attached thereto or carry any other person other than upon a firmly attached seat to the rear or side of the operator. (Reso. 990, 1771)

(J) Clinging to Moving Vehicles. Any person riding upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicles shall not attach the same or himself to any moving vehicle upon any roadway. (Reso. 990, 1771)

(K) Restricted Access. No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority. (372, Reso. 990, 1771)

(L) Railroad Trains Not to Block Streets. An engineer, conductor, or other employee or officer of a railroad company who permits a locomotive or cars to be or remain upon the crossing of a public highway over such railway so as to obstruct travel over the crossing for a period exceeding fifteen (15) minutes, except in cases of unavoidable accident, is guilty of a misdemeanor. (745, Reso. 990, 1771)

(M) Regulations for House-moving Vehicles. No driver of a vehicle involved in moving a house or other building shall drive or operate said vehicle on any street or public way within the limits of the City without first securing a permit from the City Manager or designee and all requests for permits shall state the time, the proposed route, and destination of the vehicle. No such house-moving vehicle so involved shall be driven or operated on any street or public way within the City without having in attendance a suitable escort and without having the vehicles marked plainly with the legend "wide load" both in the front and in the rear. The permit to be issued by the City Manager or designee shall be prominently displayed on the house or building being moved, and no permit shall be issued without a fee of two dollars ($2.00) first being paid by the applicant to the City Manager or designee. In the event that it becomes necessary for any department of the City to move any utility lines, traffic signals, street lights or other City facilities to permit the passage of said house or building, then the applicant for a building permit shall pay to the City the actual cost of time and materials used in moving such utilities, traffic signals, street lights or other City facilities. In the event any damage is done to any City utility lines, traffic signals, streetlights, pavement, or other City facilities in connection with any such moving project, the applicant for such permit shall likewise pay to the City the cost of the time and materials for repairing any such City installation. (372, 1771, 5024)
(N) Driving Upon Certain Real Property. No person may operate a motor vehicle upon real property situated in the City other than on a street or highway; provided, that this Subsection shall not be deemed to prohibit the operation of a motor vehicle upon real property under the following circumstances: (1771)

1. Operation of licensed or unlicensed motor vehicles by the property owner, his immediate family, lessee, or invitee which does not violate other applicable laws; (1771)

2. Lawn and garden maintenance equipment; (1771)

3. Motor vehicles customary and incidental to farming or ranching activities when the operation of such vehicles is conducted on property properly zoned and used for such activities; (1771)

4. Temporary construction motor vehicles whose activities are reasonably necessary for the development, repair, or maintenance of property; (1771)

5. Governmental vehicles when reasonably operated to perform a governmental function; (1771)

6. Vehicles of an electric power, natural gas, telephone, or other utility company when reasonably operated to facilitate the delivery of utility services. (1771)

(O) Commercial Vehicles Restricted On Certain Streets. (2256,5024)

1. When authorized signs are erected, commercial vehicles having a manufacturer’s rating of one and one-half (1-1/2) tons or more or any commercial vehicle having a length of twenty-two feet (22’) or more, inclusive of front and rear bumpers, or a commercial vehicle coupled to a trailer or semi-trailer having a length of twenty-two feet (22’) or more, inclusive of the front and rear bumpers, may not operate on those portions of streets so posted except for the delivery and pickup of merchandise, materials, or equipment going to or from a specific location requiring travel on streets so posted. The commercial vehicle must use the shortest and most direct route on such streets. (2256)

2. Signs prohibiting commercial vehicle traffic may be posted at specific locations where deemed necessary to preserve the public peace and welfare by the City Traffic Engineer. (2256,3766,5024)

(P) Preferential Lanes. (3490,5024)

The City Traffic Engineer is hereby authorized to designate preferential lanes by posting signs restricting the use of traffic lanes to certain classes of vehicles or movements. The restricted use of the lanes may be full or part time. Whenever authorized signs are erected indicating a preferential use, no driver shall operate other classes of vehicles or make other movements within that lane. (3490,3766,5024)

(Q) Maximum Allowable Vehicle Weight on Certain Streets (5258)

1. The City Traffic Engineer is hereby authorized to determine and designate gross vehicle weight limits on portions of streets where such limits are necessary to preserve the public peace and welfare or to protect public assets from damage by vehicles above a specified weight. (5258)

2. Whenever authorized signs are erected indicating a gross vehicle weight limit, no driver shall operate a vehicle exceeding the indicated gross weight, except as indicated below. (5258)
3. Unless the authorized signs state “No Exceptions,” a driver may operate a vehicle exceeding the indicated gross weight for the delivery and pickup of merchandise, materials, or equipment going to or from a specific location requiring travel on streets so posted. Such drivers must use the shortest and most direct route on such streets. (5258)

4. Unless otherwise posted, the gross weight limit does not apply to: (5258)

   (a) Public transportation and school buses (5258)

   (b) Public and private emergency vehicles (5258)

   (c) Public and private utility company vehicles going to or from a specific location requiring travel on streets so posted (5258)

   (d) City vehicles or any other vehicle used in providing services including but not limited to contract services and waste collection at locations requiring travel on streets so posted. (5258)

10-3-19: PEDESTRIAN’S RIGHTS AND DUTIES:

(A) Pedestrians Subject to Traffic-Control Signals. Pedestrians shall be subject to traffic-control signals as heretofore declared in this Chapter, but at all other places, pedestrians shall be granted those rights and be subject to the restrictions stated herein. (Reso. 990,1771)

(B) Pedestrian’s Right-Of-Way in Crosswalks. When traffic-control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. A pedestrian’s right-of-way in a crosswalk is modified under the condition and as stated hereinafter. (Reso. 990,1771)

Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Reso. 990,1771)

(C) Pedestrians to Use Right Half of Crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (Reso. 990,1771)

(D) Crossing at Right Angles. No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk. (Reso. 990,1771)

(E) When Pedestrian Shall Yield. (Reso. 990,1771)

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway. (Reso. 990,1771)

2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway. (Reso. 990,1771)

3. The foregoing rules in this Section have no application under the conditions stated hereinafter when pedestrians are prohibited from crossing at certain designated places. (Reso. 990,1771)
(F) Prohibited Crossing. Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a crosswalk, and no pedestrian shall cross a roadway other than in a crosswalk in any business district. (Reso. 990,1771)

(G) Pedestrians Walking Along Roadways. (Reso. 990,1771)

1. Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. (Reso. 990,1771)

2. Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. (Reso. 990,1771)

3. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle. (Reso. 990,1771)

(H) Drivers to Exercise Due Care. Notwithstanding the foregoing provisions of this Chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (Reso. 990,1771)

(I) Pedestrians Soliciting/Distributing. It shall be unlawful for any person to enter upon or remain on any median or traveled portion of any street or highway to solicit an occupant of a vehicle for employment, business, or contributions; or for distribution of advertisements, merchandise, or other property; or to offer any services. (3271)

10-3-20: METHOD OF PARKING:

(A) Standing or Parking Close to Curb. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within eighteen inches (18") of the curb or edge of the roadway except as otherwise provided herein. (Reso. 990,1771)

(B) Signs or Markings Indicating Angle Parking. The City Traffic Engineer shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets. (Reso. 990,1286,1440,1771,3766,5024)

Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street. (Reso. 990,1286,1440,1771)

(C) Obedience to Angle-Parking Signs or Markings. Upon those streets which have been signed or marked by the City Traffic Engineer for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings. (Reso. 990,1286,1440,1771,3766,5024)

(D) Permit for Loading or Unloading at an Angle to the Curb. The Chief of Police is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized herein, and it shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit. (Reso. 990,1771)
(E) Lights on Parked Vehicles. (Reso. 990,1771)

1. Whenever a vehicle is lawfully parked at nighttime upon any street within a business or residence district, no lights need be displayed upon such parked vehicle. (Reso. 990,1771)

2. Whenever a vehicle is parked upon a street or highway outside of a business or residence district during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, such vehicle shall be equipped with one (1) or more lamps which shall exhibit a white light on the roadway side visible from a distance of five hundred feet (500') to the front of the vehicle and a red light visible from a distance of five hundred feet (500') to the rear. (Reso. 990,1771)

3. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed. (Reso. 990,1771)

(F) Backing Into a Parking Space. Vehicles parked on any street, highway, or roadway or in any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City shall not be parked with the rear of the vehicle backed or otherwise placed in the front portion of the parking space. If a parking space in a lot or garage is marked or designated so that two (2) vehicles can be parked end to end in two (2) separate spaces, a vehicle parked therein shall be parked with the rear of the vehicle at the end of the space which is adjacent to the aisle or open area upon which a vehicle may be driven. (1771,2189)

(G) Reparking Within Three Hundred Feet (300'). If a vehicle has been parked in an area on any street or in any public or private lot or in any public or private garage where parking is limited or restricted to a specified period of time by official signs posted at that location, it is prohibited and a violation of this Section for the said vehicle to be reparked for a period of twenty-four (24) hours within three hundred feet (300') of the location where the said vehicle was first parked. (1771,2189)

10-3-21: STOPPING, STANDING, OR PARKING PROHIBITED IN SPECIFIED PLACES:

(A) The City Traffic Engineer is hereby authorized to determine the locations of parking prohibitions on public streets and alleys and shall have the authority to place and maintain curb markings and/or appropriate signs indicating these prohibitions and the days and hours during which these prohibitions are applicable. (4811)

1. This authority includes but is not limited to the authority to:

(a) Place, maintain or remove traffic signs, curb painting, or other permanent or temporary parking control devices. (4811)

(b) Establish zones where only certain types of motor vehicles may park, for example motorcycles, recreational vehicles and compact vehicles. (4811)

(c) Establish zones where parking is prohibited at certain times on certain days. (4811)
2. The City Traffic Engineer shall consider the following circumstances when determining the location of parking prohibitions:

(a) Traffic safety concerns such as sight distances and obstructions for drivers approaching or exiting driveways, side streets and intersections. (4811)

(b) Alleviation of traffic congestion caused by circumstances such as streets that are too narrow to accommodate parking and two directions of through traffic, striping pattern that does not allow space for parking, or streets with exclusive bike lanes adjacent to curbs. (4811)

(c) Significant burdens to public safety caused by situations such as solid waste receptacles that are blocked by parked vehicles; parking patterns that facilitate criminal activities such as vandalism or lewd activities; and heavy parking volume that disrupts the quiet enjoyment of residents located near assembly activities such as schools, parks, churches, and businesses. (4811)

(B) Stopping, Standing, or Parking Prohibited; Whether or Not Official Signs are Posted or Markings in Place. No person may stop, stand, or park a vehicle, except when necessary to avoid conflict with the traffic or in compliance with law or the directions of a Police officer or a traffic-control device, in any of the following places: (Ord 4811 / Reso. 990,1286,1440,1771)

1. On a sidewalk. (Reso. 990,1286,1440,1771)

2. In front of a public or private driveway. (Reso. 990,1286,1440,1771)

3. Within an intersection. (Reso. 990,1286,1440,1771)

4. Within fifteen feet (15') of a fire hydrant. (Reso. 990,1286,1440,1771)

5. On a crosswalk. (Reso. 990,1286,1440,1771)

6. Within twenty feet (20') of a crosswalk at an intersection, unless the City Traffic Engineer has indicated a different length by signs or markings. (Ord 4811 / Reso. 990,1286,1440,1771,3766)

7. Within thirty feet (30') upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of the roadway. (Reso. 990,1286,1440,1771)

8. Between a safety zone and the adjacent curb or within thirty feet (30') of points on the curb immediately opposite the ends of a safety zone, unless the City Traffic Engineer has indicated a different length by signs and markings. (Ord 4811 / Reso. 990,1286,1440,1771,3766)

9. Within fifty feet (50') of the nearest rail of a railroad crossing. (Reso. 990,1286,1440,1771)

10. Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75') of said entrance when properly sign-posted. (Reso. 990,1286,1440,1771)
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic. (Reso. 990,1286,1440,1771)

12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street. (Reso. 990,1286,1440,1771)

13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel. (Reso. 990,1286,1440,1771)

14. At any place where the curb is painted red. (1771,2888)

15. In that area between a curb and a sidewalk. (1996,2888)

16. In any unpaved portion of the public right-of-way behind and adjacent to the curb. (2014,2888)

17. Upon any street or highway for a period in excess of seventy-two (72) consecutive hours. (2032,2888)

(C) Moving Vehicle. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful. (Ord. 4811/Reso. 990,1771)

(D) Parking Not to Obstruct Traffic. No person may park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet (10') of the width of the roadway for free movement of vehicular traffic. (Ord. 4811/Reso. 990,1771)

(E) Parking in Alleys. No operator may park a vehicle within an alley except for the loading or unloading of materials and not then unless such loading or unloading can be accomplished without blocking the alley to the free movement of vehicular traffic. (Ord. 4811/Reso. 990,1771)

(F) Deleted. (3770)

(G) Parking for Certain Purposes Prohibited. No person may park a vehicle upon any roadway for the principal purpose of: (Ord. 4811/Reso. 990,1771)

1. Displaying such vehicle for sale. (Reso. 990,1771)

2. Washing, greasing, or repairing such vehicle except repairs necessitated by any emergency. (Reso. 990,1771)

3. Displaying advertising. (Reso. 990,1771)

4. Displaying commercial exhibits. (Reso. 990,1771)

(H) Parking Adjacent to Schools. The City Traffic Engineer is hereby authorized to erect signs indicating no parking upon that side of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation. (Ord. 4811/Reso. 990,1286,1440,1771,3766)

When official signs are erected indicating no parking upon that side of the street adjacent to any school property, no person may park a vehicle in any such designated place. (Ord. 4811/Reso. 990,1286,1440,1771)
Standing or Parking on One-Way Streets. The City Traffic Engineer is authorized to erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign. (Ord. 4811 / Reso. 990, 1286, 1440, 1771, 3766)

Standing or Parking on One-Way Roadways. In the event a highway includes two (2) or more separate roadways and traffic is restricted to one direction upon such roadway, no person may stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The City Traffic Engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof. (Ord. 4811 / Reso. 990, 1286, 1440, 1771, 3766)

No Stopping, Standing, or Parking Near Hazardous or Congested Places. The City Traffic Engineer is hereby authorized to determine and designate by proper signs places in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic. When official signs are erected at hazardous or congested places authorized herein, no person may stop, stand, or park a vehicle in any such designated place. (Ord. 4811 / Reso. 990, 1286, 1440, 1771, 3766)

Parking Prohibited in Spaces Reserved for the Physically Disabled. (1705, 1771, 1889, 4811)

1. Except as provided in paragraph 3 of this Subsection, no person may stop, stand, or park any motor vehicle within any parking place designated and marked pursuant to the provisions of Title 28, Chapter 3, Article 14, Arizona Revised Statutes, unless the motor vehicle is transporting a person who has been issued a valid placard or international symbol of access special plates and either:

(a) The motor vehicle displays the valid permanently disabled or temporarily disabled removable windshield placard or (1705, 1771, 1889, 3770)

(b) The motor vehicle displays international symbol of access special plates that are currently registered to the vehicle. (1705, 1771, 1889, 3770)

2. If a Police officer, or a duly authorized agent employed by the City, finds a motor vehicle in violation of this Section, such person shall issue a complaint to the operator or other person in charge of the motor vehicle for a civil traffic violation. The court shall impose the minimum civil sanction of fifty dollars ($50.00) plus the penalty assessments prescribed by statute on a person who violates any provision of this Subsection. (1705, 1889, 2434)

3. Any person who is chauffeuring a physically disabled person shall be allowed, without a distinguishing insignia placard or number plates bearing the international wheelchair symbol, to park momentarily in any such parking space for the purpose of loading or unloading such disabled person, and no complaint shall be issued to the driver for such momentary parking. (1889)

4. Parking spaces marked in the manner provided in Title 28, Chapter 3, Article 14, Arizona Revised Statutes, may be designated on privately owned property. The designation of such parking spaces as provided herein shall authorize Police officers and other duly authorized agents to enforce the provisions of this Subsection (K) and shall constitute a waiver of any objection by the owner or person in possession of such property to the enforcement of this Subsection. (1889, 3770)
5. The Court or Civil Traffic Hearing Officer may dismiss citations under this subparagraph (K) at the arraignment if the person cited satisfies both of the following conditions: (3770)

(a) Declares and affirms that the vehicle was being used on the date the citation was issued to transport a person who was eligible to be issued a valid placard or international symbol of access special plates; and (3770)

(b) Presents a valid placard indicating that the person is permanently or temporarily disabled that was issued pursuant to State law or in accordance with the laws of a nonresident's jurisdiction, or provides proof of current registration for the vehicle that includes the international symbol of access special plates. (3770)

(M) No Stopping, Standing, or Parking Near School Crosswalks. The City Traffic Engineer is authorized to erect signs prohibiting stopping, standing, or parking between the fifteen (15) mile per hour speed limit signs of an official school crosswalk while the speed limit signs are in place. Such signs shall state that the prohibition against stopping, standing, or parking is in effect only during specified hours on school days. When such signs are in place, no person may stop, stand, or park a vehicle in any such designated place during the prohibited hours. (2061,3770,4811)

(N) Obstructing a Fire Lane. The required width of access roadways shall not be obstructed in any manner. No person shall stop, stand, or park any vehicle within a fire lane, whether on public or private property, provided that appropriate signs and other markings, as approved by the Fire Chief, shall be erected and maintained in order for this regulation to be effective. (3530,4811)

(O) On-street decal parking shall be permitted in the business districts located in the area bounded by the University Drive centerline to the south, the Mesa Drive centerline to the west, the Broadway Road centerline to the north, and the Country Club Drive centerline to the east. This area shall be referred to as the decal area. The City Traffic Engineer may designate certain streets or locations in the decal area for parking of vehicles only with approved parking decals. (4492,4811)

1. Parking may be restricted in the decal area during certain hours or weekends and holidays if signs are posted specifying the hours or days that a decal is required. (4492)

2. The City Traffic Engineer, or city retained parking contractor is authorized to issue parking decals for parking in the decal area. (4492,4811)

3. The definition of a business district shall be as defined in section 10-3-1 of the City of Mesa's Municipal Code. (4492)

10-3-22: COMMERCIAL VEHICLE PARKING TIME RESTRICTED:
No person may park any commercial vehicle having a gross vehicle weight rating (GVWR) exceeding thirteen thousand (13,000) pounds or having dual rear wheels exceeding seventeen inches (17") in diameter or park any commercial vehicle having the length of twenty-two feet (22') or more, inclusive of the front and rear bumpers, or park a commercial vehicle coupled to a trailer or semi-trailer having the length of twenty-two feet (22') or more, inclusive of front and rear bumpers, in any residential area of the City or on any street, alley, or other public right-of-way at any time for a period of time longer than two (2) hours except when such parking is necessarily required while actually carrying out a lawful commercial purpose. For the purposes of this Section, "residential area" shall mean any area in the City zoned for residential purposes. (750,1771,2123,2901)
10-3-22.1: **PARKING OF SPECIFIED VEHICLES RESTRICTED:**
Trailers or semi-trailers designed or intended to be drawn behind a motor vehicle shall not be parked upon a street, alley, or other public right-of-way for a period of time longer than two (2) hours, except commercial vehicles may be parked for a longer period of time only when such parking is necessarily required while actually carrying out a lawful commercial purpose. The provisions of this Section shall not apply to recreational vehicles defined in Chapter 17 of Title 11 of the Mesa City Code. (2901)

10-3-23: **STOPPING FOR LOADING OR UNLOADING ONLY:**

(A) City Traffic Engineer to Designate Curb Loading Zones. The City Traffic Engineer is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain curb markings and/or appropriate signs indicating the same and stating the hours during which the provisions of this Section are applicable. (Ord 4811 / Reso. 990,1074,1440,1771,3766)

(B) Standing in Passenger Curb Loading Zone. No person may stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective and then only for a period of time not to exceed three (3) minutes. (Ord 4811 / Reso. 990,1771)

(C) Standing in Freight Curb Loading Zone. No person may stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zone are in effect. In no case shall the stop for loading and unloading for materials exceed twenty (20) minutes. (Ord 4811 / Reso. 990,1771)

(D) City Traffic Engineer to Designate Public Carrier Stands. The City Traffic Engineer, is hereby authorized and required to establish bus stops and taxicab stands and stands for other passenger common carrier motor vehicles in such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every such bus stop, taxicab stand, or other stand shall be designated by appropriate signs. (Ord 4811 / Reso. 990,1074,1440,1771,3766)

(E) Parking of Buses and Taxicabs Regulated. The driver of a bus or taxicab may not park upon any street in any business district at any place other than at a bus stop or taxicab stand respectively, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers. (Ord 4811 / Reso. 990,1771)

(F) Restricted Use of Bus and Taxicab Stands. No person shall stand, stop, or park a vehicle other than a bus in a bus stop or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while engaged in loading and unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter the same. (Ord 4811 / Reso. 990,1771)

(G) City Traffic Engineer to Designate School Bus Loading Zones. The City Traffic Engineer, is authorized and required to establish school bus loading zones in such public streets, in such places, and in such number as he shall determine to be of the greatest benefit and convenience to the public, and every school bus loading zone shall be designated by appropriate signs. (2164,3766,4811)

(H) Restricted Use of School Bus Loading Zones. No person shall stand, stop, or park a vehicle, other than a school bus, in a school bus loading zone when such zone has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while engaged in loading and unloading passengers when such stopping does not interfere with any school bus waiting to enter or about to enter said loading zone. (2164,4811)
10-3-24: **STOPPING, STANDING, OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS:**

(A) Application. The provisions of this Chapter prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a Police officer or official traffic-control device. (Reso. 990,1771)

(B) Violation of Laws of City. No person may allow, permit, or suffer any vehicle registered in his name to stand or park in any street in the City in violation of any of the laws of the City regulating the standing or parking of vehicles. (Reso. 990,1771)

(C) Regulations Not Exclusive. The provisions of this Chapter imposing a time limit on parking shall not relieve any person from the duty to observe the other and more restrictive provisions prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times. (Reso. 990,1771)

(D) Parking Prohibited at Certain Times on Certain Streets. The City Traffic Engineer may determine locations where stopping, standing or parking is prohibited at all times or at certain times and/or on certain days. (Ord 4811 / Reso. 990,1771)

1. In accordance with the rules and regulations herein contained and when signs are erected giving notice thereof, or the curb is painted red under direction of the City Traffic Engineer, no person may at any time stop, stand or park a vehicle upon a portion of any street or alley so designated. (4811)

2. In accordance with the rules and regulations herein contained and when, under the direction of the City Traffic Engineer, signs are erected giving notice that parking is prohibited at certain times and/or on certain days, no person may stop, stand or park a vehicle upon a portion of any street or alley so designated during the specified times and/or days. (4811)

3. The City Traffic Engineer shall keep a record of all locations where the City Traffic Engineer, Transportation Advisory Board or City Council establishes permanent stopping, standing or parking prohibitions. The City Traffic Engineer shall also keep a record of any temporary stopping, standing or parking prohibitions established where the restrictions are expected to remain longer than 90 days. (4811)

(E) Parking Time Limited on Certain Streets. When signs are erected giving notice thereof, parking of a vehicle is limited to a period of time no longer than two (2) hours between the hours of eight (8:00) A.M. and five (5:00) P.M. of any day, except Saturdays, Sundays, and City holidays, upon any of the streets or parts of streets within the City. (Reso. 990,1771,2188)

(F) Parking Signs Required. Whenever by this or any other laws or regulations of the City any parking time limit is imposed or parking is prohibited on designated streets, it shall be the duty of the City Traffic Engineer to erect appropriate signs giving notice thereof, and no such regulations shall be effective unless said signs are erected and in place at the time of any alleged offense. (Ord 4811 / Reso. 990,1286,1771,3766)

(G) Stopping, standing, or parking at all times on any street is prohibited if official signs are erected and in place giving notice thereof that stopping, standing, or parking is prohibited. (2888)
(A) Parking a Civil Traffic Violation; Definition. Violation of any City ordinance or provision of this Code which regulates the time, place, or method of parking is a civil traffic violation. "Parking" means the standing of a vehicle, whether occupied or not. (2188)

(B) Parking Violations; Persons Liable. (2188)

1. It is unlawful for a vehicle to be parked in violation of any City ordinance or provision of this Code regulating the time, place, or method of parking. Violations of any City ordinance or provision of this Code regulating the time, place, or method of parking which are continuous in nature shall constitute a separate and distinct violation for each full hour thereof. (2188)

2. Whenever a vehicle is parked in violation of a City ordinance or provision of this Code regulating the time, place, or method of parking, the owner or owners of the vehicle, the registered owner or owners of the vehicle, and the person who parked or placed the vehicle where the violation occurred shall be jointly and individually liable for the violation and for the civil sanction prescribed herein. (2188)

3. A vehicle parked in contrary to or inconsistent with any City ordinance or provision of this Code regulating the time, place, or method of parking which provides that "no person" may stop, stand, or park a vehicle at a designated location or contrary to any limitations, restrictions, or other provision regulating the time, place, or method of parking is deemed to be parked in violation of said ordinance or provision of this Code. (2188)

4. Whenever a motor vehicle is parked upon the public right-of-way or other property in violation of this Code and the vehicle has previously been the subject of five (5) or more violations of the parking provisions of the Code within a twelve- (12-) month period but the civil sanctions prescribed under the Mesa City Code for those violations have not been satisfied, then the vehicle shall be deemed to constitute a public nuisance and the owner of the vehicle consents to immobilization, towing, and impoundment of the vehicle pursuant to Title 10 of the Mesa City Code. A possessory lien is hereby created and attached to such vehicle for the payment, in cash or its equivalent, of all current and accumulated parking tickets and for reasonable costs associated with immobilization, towing, and impoundment. (2434)

(C) Parking Notice; Issuance. (2188)

1. In an action involving unlawful parking, a copy of the notice need not be personally served upon the owner or operator of the vehicle but may be served by attaching a copy to the vehicle. These notices may be issued by a municipally hired police parking monitor or authorized private contractor approved by the Chief of Police. (2188,4693)

2. The notice shall include the date, time, and location of the violation; the state license number of the vehicle unlawfully parked; reference to the City ordinance or Code provision violated; and notice that within seven (7) calendar days from the day on which the notice was issued the sanction for the violation must be paid and received by the City or a request made and received by the City for a hearing to contest the alleged violation. (1771,2188,4444)

3. The notice, or copy thereof, shall constitute prima facie evidence of the parking infraction. (3770)
(D) Response to Parking Notice. (2188)

1. Within seven (7) calendar days from the day on which the notice was issued, the person or persons liable for the parking violation shall respond to the notice by one of the following methods: (2188,4444)

   (a) By appearing in person, by representation, by deposit in a City collection box, or by mail to the City within said seven (7) calendar day period, admitting responsibility for the violation and paying the civil sanction prescribed for the violation. (2188,4444)

   (b) By contacting the City in person, by representation, by telephone, by mail, or by deposit in a City collection box within said seven (7) calendar day period and requesting a hearing to contest the alleged violation. (2188,4444)

   (c) By appearing in person at the City Court and requesting an initial appearance before a Hearing Officer to explain the circumstances of the alleged violation. The Hearing Officer at the initial appearance may accept the defendant’s explanation and dismiss the notice of violation or shall inform the defendant that the civil sanction must be paid or a request must be made for a civil traffic hearing to contest the alleged violation. (2188)

   (d) A request for a hearing or payment of the civil sanaction will be considered received by the City if it is actually delivered to the City Court, deposited in a City collection box, or postmarked within seven (7) calendar days after the date the notice of violation was issued. A request for a hearing made by telephone will be considered received the day it is made if it is received by a City Court employee between the hours of eight (8:00) A.M. and five (5:00) P.M. of any day, except on Saturday, Sunday, or a City holiday. (2188,4444)

(E) Schedule of Sanctions. The sanctions listed in the following schedule are the minimum sanctions that may be imposed for violations of the Sections of the Mesa City Code listed therein. Any vehicle parked in violation of a City ordinance or other provision of this Code other than those in the following schedule shall cause the person or persons liable for the violation to be assessed a minimum sanction of fifteen dollars ($15.00). (2188,2434,2573,4444)

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<tbody>
<tr>
<td>10-3-21(B)1</td>
<td>Sidewalk Parking</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)2</td>
<td>Blocking Driveway</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)3</td>
<td>Intersection Parking</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)4</td>
<td>Fire Hydrant</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)5</td>
<td>Crosswalk Parking</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)10</td>
<td>Fire Station Exit</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)12</td>
<td>Double Parking</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(B)14</td>
<td>Red Curb</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(E)</td>
<td>Alley Parking</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(G)1</td>
<td>Vehicle for Sale; Parking Prohibited</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(G)2</td>
<td>Repairing Vehicle; Parking Prohibited</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-3-21(L)</td>
<td>Physically Disabled</td>
<td>$55.00</td>
</tr>
<tr>
<td>10-3-21(N)</td>
<td>Fire Lane</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-5-1(B)2</td>
<td>Lots and Garages; Improper Placement or Display of Permit or Decal</td>
<td>$26.00</td>
</tr>
<tr>
<td>10-5-1(C)</td>
<td>Parking Oversize Vehicle in Compact Car Area</td>
<td>$26.00</td>
</tr>
<tr>
<td>11-17-6</td>
<td>Recreational Vehicle Parking</td>
<td>$26.00</td>
</tr>
</tbody>
</table>

(2188,2434,2573,3530,4444,5024)
(F) Failure to Respond to a Notice; Increased Sanction for Failure to Make a Timely Response. (Reso. 990,1771, 2188)

1. If the person or persons liable for a parking violation fail to respond by one of the methods prescribed in Subsection (D) within seven (7) calendar days from the day the notice was issued, the sanction for the violation shall automatically be increased to twice the minimum sanction. If the sanction is not paid within thirty (30) days after the date of the violation and the person or persons liable for the violation have failed to make a timely response pursuant to Subsection (D), the sanction shall be increased automatically to four (4) times the minimum sanction which is due and payable at that time. (2188,4444)

2. The list of violations and sanctions provided for in Subsection (E) are the minimum sanctions that may be imposed when the defendant responds to the notice in a timely manner. The civil sanctions prescribed herein shall not be suspended or reduced except as provided herein. (2188)

3. A City Magistrate or a civil traffic Hearing Officer may suspend the payment of an increased sanction or late penalty for the failure to respond to a parking notice; however, a City Magistrate or civil traffic Hearing Officer cannot suspend the payment of the minimum sanction as provided in the schedule in Subsection (E). (2188)

(G) Civil Traffic Complaints; Hearings. (2188)

1. If a defendant has made a timely request for a hearing pursuant to Subsection (D)1(b) or (D)1(c) or has failed to timely respond to the notice and has not paid the civil sanction as required by Subsection (D)1(a), a civil traffic complaint and summons will be issued by the City Court unless the City Prosecutor determines that a complaint shall not be requested. (2188)

2. Failure to respond to a civil traffic complaint and summons will result in a default judgment for the amount of the civil sanction. (2188)

3. A civil traffic hearing for a parking violation may be heard by a civil traffic Hearing Officer pursuant to applicable State statutes and the Arizona Supreme Court Rules of Procedure in Civil Traffic Violation Cases. The Hearing Officer may make such orders as may be necessary and proper to dispose of such cases. (2188)

(H) Judgments; Collection. The City may contract with a private person or entity for the collection of civil judgments in parking cases. (2188)

(I) Courtesy Citations. Courtesy citations may be given for time violation and parking without a required permit/decal at the discretion of the authorized private contractor, parking enforcement officer or a Police Officer. No fine or sanction will be incurred for a courtesy citation. No more than two (2) courtesy citations may be given to the same person or vehicle within a period of seven (7) days. A third violation will result in the issuance of a parking notice of a violation. (2188,2573,4693)

(J) Time calculation. If the seventh (7th) calendar day as set forth herein is a Saturday, Sunday or Legal Holiday, then payment shall be due on the next day that is not a Saturday, Sunday, or Legal Holiday. (4444)
10-3-26: WHEN VEHICLES MAY BE IMPOUNDED:

(A) Authority to Impound Vehicles. Members of the Police Department are hereby authorized to remove any vehicle from any street, highway, or publicly or privately owned property, parking lot, or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a contract, lease, or agreement with the City or duly posted private property as defined in paragraph 5 of this Subsection (A) to the nearest garage or towing company lot designated or maintained by the Police Department or otherwise maintained by the City under the circumstances hereinafter enumerated: (Reso. 990,1074,1142,1669,1771, 1849,1974,2122,2188,2434)

1. When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where such vehicle constitutes an obstruction to traffic. (Reso. 990,1074,1142,1669,1771, 1849,1974,2122,2188)

2. When a vehicle upon a street or highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal. (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

3. When any vehicle is left unattended upon a street in an unlawful manner and is so parked as to constitute a definite hazard or obstruction to the normal movement of traffic or is parked in front of a public or private driveway. (Reso. 990,1074,1142,1669, 1771,1849,1974,2122,2188)

4. When any vehicle is left parked upon a street for a period in excess of forty-eight (48) hours. For the purposes of this paragraph the words "left parked" shall mean being left upon a street for a period of time in excess of forty-eight (48) hours without the vehicle having been moved at least three hundred feet (300'). (Reso. 990,1074,1142,1669,1771,1849,1974,2122,2188)

5. When any vehicle is advertised or offered for sale from a vacant property or unauthorized vehicle sales lot without the express written permission of the property owner when such property has been duly posted by the City to prohibit the parking or sale of such vehicles. Any property owner within the City may make application to the City Manager or designee to authorize the City to post signs indicating that the advertising, offering for sale, or sale of any vehicle is prohibited on the applicant’s property and further authorizing the City to act as the agent of the property owner to gain compliance with the provisions of this Section. Such application shall be made on a form prescribed by the City Manager or designee. The City Manager or designee shall thereupon cause the applicant’s property to be posted with an appropriate sign or signs stating that the advertising, offering for sale, or sale of any vehicle is prohibited thereon. When such property has been so posted, it shall be the duly posted private property. (1142,1669,1771,1849,1974, 2122,2188,5024)

6. When a vehicle is parked in a fire lane in violation of the provisions of Section 7-2-2(M) of the Mesa City Code. (1849,1974,2122,2188)

7. When a vehicle is parked, stopped, or standing in violation of any provision contained in Title X, Chapters 2, 3, or 5 of this Code or when signs are erected giving notice that vehicles parked in violation of the parking restrictions may be towed at the owner’s expense. (1974,2122,2188)
(B) Unoccupied Vehicle Violating Laws Declared Nuisance. Any unoccupied vehicle of any kind or description found under the circumstances enumerated in paragraph numbers 1 through 7, inclusive, of Subsection (A) of this Section is hereby declared to be a nuisance and a menace to the safe and proper regulation of traffic. Such vehicle shall be taken in charge by any Police officer and removed from the street, public parking lot or garage, private parking lot or garage, or duly posted private property and kept in custody upon the direction of the Chief of Police. Such vehicle may be recovered by the owner when he has furnished evidence of his identity and ownership and signed a receipt. The owner of such vehicle shall be liable for all towing and storage charges in connection with the removal and storage thereof. The payment of such removal and storage charges shall not release the owner or driver of such vehicle from any other penalty imposed for violation of the traffic laws of the City. (1142,1669,1771,1849,1974,2188)

(C) Notice of Removal to Owner. Whenever an officer removes a vehicle from a street, public parking lot or garage, private parking lot or garage, or duly posted private property as authorized in this Section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage. (Reso. 990,1142,1669,1974,2188)

(D) Unidentifiable Vehicles. Whenever an officer removes a vehicle from a street, public parking lot or garage, private parking lot or garage, or duly posted private property under this Section and does not know and is not able to ascertain the name of the owner or for any reason is unable to give notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three (3) days, then and in that event the officer shall immediately send or cause to be sent a written report of such removal by mail to the Motor Vehicle Department, whose duty it is to register motor vehicles, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reasons for such removal, and the name of the garage or place where the vehicle is stored. (Reso. 990, 1142,1669,1974,2188)

(E) Thirty-Day Impoundment. Pursuant to ARS §28-3511, a vehicle shall be immobilized or impounded for thirty (30) days for the following reasons:

1. The driver's driving privilege is revoked for any reason; (4659)
2. The driver's driving privilege is suspended; (4659)
3. The driver has never been issued a driver license or permit and does not produce evidence of a driver license by another jurisdiction; or (4659)
4. A Peace Officer has probable cause to arrest the driver for a violation of ARS §§ 4-244, 28-1382, or 28-1383. (4659)

(F) Thirty-Day Impoundment Fee Pursuant to ARS §28-3513. (4659)

1. If a vehicle is properly impounded, a $150.00 administrative fee will be charged, relating to the removal, immobilization, impoundment, storage or release of a vehicle. The administrative charge is in addition to any other immobilization, impoundment, or storage charges. (4659)
2. The administrative fee will be waived upon proof that the vehicle is stolen and the theft was reported. (4659)
3. If the theft was reported, the operator of the vehicle at the time of immobilization or impoundment is responsible for all towing, immobilization, and storage charges. (4659)
10-3-27: EXCESS LOADS; CIVIL SANCTIONS AND PENALTIES FOR VIOLATION:

(A) Single Axle Load Limit and Gross Weight of Vehicles and Loads. The gross weight imposed by the wheels of any one axle of a motor vehicle and the total gross vehicle weight of any motor vehicle operated upon any City street shall not exceed the weights set forth in ARS §28-1008, §28-1009, and §28-1009.01, and the provisions of said Sections, together with the tables and formulas set forth therein, are incorporated herein by reference and made a part hereof as though fully set forth herein. (1910)

(B) Violation; Classification; Prima Facie Evidence. (1910)

1. A person who violates any of the provisions of this Section is subject to a civil sanction except as otherwise set forth herein. (1910)

2. A second violation of this Section within six (6) months of a judgment for a first violation is a Class 2 misdemeanor. A second conviction as a misdemeanor for violation of Subsection (A) of this Section within one (1) year is a Class 1 misdemeanor. In addition to any term of imprisonment which may be imposed for a second or subsequent violation, the Court shall fine a person the amount which is set forth in the following table: (1910)

<table>
<thead>
<tr>
<th>If the Excess Weight is:</th>
<th>The Minimum Fine or Civil Sanction is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sanction</td>
</tr>
<tr>
<td>1,001 to 1,250 Pounds</td>
<td>$50.00</td>
</tr>
<tr>
<td>1,251 to 1,500</td>
<td>$100.00</td>
</tr>
<tr>
<td>1,501 to 2,000</td>
<td>$150.00</td>
</tr>
<tr>
<td>2,001 to 2,500</td>
<td>$200.00</td>
</tr>
<tr>
<td>2,501 to 3,000</td>
<td></td>
</tr>
<tr>
<td>3,001 to 3,500</td>
<td></td>
</tr>
<tr>
<td>3,501 to 4,000</td>
<td></td>
</tr>
<tr>
<td>4,001 to 4,500</td>
<td></td>
</tr>
<tr>
<td>4,501 to 4,750</td>
<td></td>
</tr>
<tr>
<td>4,751 and Over</td>
<td></td>
</tr>
</tbody>
</table>
3. Notwithstanding any of the provisions of Subsection 2 of this Section, a conviction for a violation of this Section in which the excess weight is over two thousand five hundred one pounds (2,501) or greater is a Class 1 misdemeanor. (1910)

4. If the officer finds that the person has violated only the axle weight limitation and not the total weight limitation, the officer shall request a driver to reload the vehicle to comply with the axle weight limitation. If the driver does not comply with the request of the officer to reload, the driver is subject to a civil sanction. (1910)

5. A weight certificate or other document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods stating the gross weight of the vehicle with a load which is in excess of the prescribed maximum weight set forth in this Section is prima facie evidence that the weight of a vehicle and load is unlawful. (1910)

6. If the commodity being carried is sold by weight, a weight certificate or other document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods stating the gross weight of the vehicle with a load which is not in excess of the prescribed maximum weight limitation permitted by this Section is prima facie evidence that the weight of a vehicle and load is lawful. (1910)
CHAPTER 4

SPEED LIMITS

SECTION:

10-4-1: SPEEDS OF 55 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-2: SPEEDS OF 50 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-3: SPEEDS OF 45 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-4: SPEEDS OF 40 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-5: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-6: SPEEDS OF 30 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-7: SPEEDS OF 25 MILES PER HOUR PERMITTED ON CERTAIN STREETS
10-4-7.1: SPEEDS OF 15 MILES PER HOUR PERMITTED ON ALLEYS
10-4-7.2: SPEEDS OF 15 MILES PER HOUR PERMITTED ON CERTAIN STREETS (REPEALED BY 2865)
10-4-8: FALCON FIELD RESTRICTIONS
10-4-9: EMERGENCY, CONSTRUCTION OR CONTINGENT SPEED LIMITS
10-4-10: PENALTY FOR EXCEEDING THE MAXIMUM SPEED LIMIT
10-4-11: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS DURING CERTAIN HOURS

10-4-1: SPEEDS OF 55 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of fifty-five (55) miles per hour on the following portions of the following streets: (990, 1771, 2002, 4594)

(Repealed by 4594)

10-4-2: SPEEDS OF 50 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of fifty (50) miles per hour on the following portions of the following streets: (990, 1771, 4594, 5140)

<table>
<thead>
<tr>
<th>Ellsworth Road</th>
<th>From Elliot Road to the south City limits; (5140)</th>
</tr>
</thead>
</table>

10-4-3: SPEEDS OF 45 MILES PER HOUR PERMITTED ON CERTAIN STREETS:
A person shall not exceed a speed of forty-five (45) miles per hour on the following portions of the following streets: (990, 1771, 5140)

<table>
<thead>
<tr>
<th>Alma School Road</th>
<th>From Baseline Road south to the City limits; (3221)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baseline Road</td>
<td>From 8th Street to the north City limits; (3456)</td>
</tr>
<tr>
<td>Broadway Road, East</td>
<td>From the west City limits to the east City limits; (3131,3903)</td>
</tr>
<tr>
<td>Broadway Road, West</td>
<td>From South Gilbert Road to the east City limits;</td>
</tr>
<tr>
<td>Brown Road</td>
<td>From Stapley Drive to the east City limits; (3784)</td>
</tr>
<tr>
<td>Center, North</td>
<td>From Brown Road to McKellips Road;</td>
</tr>
<tr>
<td>Country Club Drive</td>
<td>From Brown Road to the north City limits;</td>
</tr>
<tr>
<td>Crismon Road</td>
<td>From north City limits to Elliot Road; (2689,3639,3784,5432)</td>
</tr>
<tr>
<td>Dobson Road, South</td>
<td>From Baseline Road to the south City limits; (3221)</td>
</tr>
<tr>
<td>Elliot Road</td>
<td>From the west City limits to the east City limits; (3784,4477)</td>
</tr>
<tr>
<td>Ellsworth Road</td>
<td>From north City limits to Elliot Road; (4017,4068,4594,5140)</td>
</tr>
<tr>
<td>Germann Road</td>
<td>From the west city limits to the east city limits; (4918)</td>
</tr>
<tr>
<td>Street Name</td>
<td>Distance Details</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Gilbert Road</td>
<td>From the west leg of Lockwood Street to the south City limits; (4004)</td>
</tr>
<tr>
<td>Greenfield Road</td>
<td>From the north City limits to the south City limits; (3538,4066)</td>
</tr>
<tr>
<td>Guadalupe</td>
<td>From the west City limits to the east City limits; (3784)</td>
</tr>
<tr>
<td>Hawes Road</td>
<td>From Loop 202/Santan Freeway to Ray Road; (5009)</td>
</tr>
<tr>
<td>Higley Road</td>
<td>From Thomas Road to the south City limits; (2330,4017,4066)</td>
</tr>
<tr>
<td>Lindsay Road</td>
<td>From the north City limits to the south City limits; (3784)</td>
</tr>
<tr>
<td>Main Street</td>
<td>From a point two hundred eleven feet (211’) east of Gilbert Road to the east City limits; (3221,4823)</td>
</tr>
<tr>
<td>McDowell Road</td>
<td>From 26th Street to the east City limits; (4004,4017)</td>
</tr>
<tr>
<td>McKellips Road</td>
<td>From the west City limits to the east City limits; (4017)</td>
</tr>
<tr>
<td>Mesa Drive, North</td>
<td>From East Brown Road to East McKellips Road;</td>
</tr>
<tr>
<td>Mountain Road</td>
<td>From Pecos Road to Williams Field Road; (2565)</td>
</tr>
<tr>
<td></td>
<td>From Mesquite Street to Ray Road; (5177)</td>
</tr>
<tr>
<td>Pecos Road</td>
<td>From the west City limits to Mountain Road; (2565,4279,4882)</td>
</tr>
<tr>
<td>Power Road</td>
<td>From the Superstition Freeway (U.S. 60) to the north City limits; (3784,4017)</td>
</tr>
<tr>
<td></td>
<td>From Baseline Road to the south City limits; (5013)</td>
</tr>
<tr>
<td>Ray Road</td>
<td>From Power Road to East City Limits; (5424)</td>
</tr>
<tr>
<td>Recker Road</td>
<td>From Adobe Street to the Red Mountain Freeway (Loop 202) (3816,4456)</td>
</tr>
<tr>
<td>Signal Butte Road</td>
<td>From Broadway Road to Guadalupe Road; (2689,3585,5128,5307)</td>
</tr>
<tr>
<td></td>
<td>From a point four hundred fifty feet (450’) south of Elliot Road to the south City limits; (4886)</td>
</tr>
<tr>
<td>Sossaman Road</td>
<td>From Elliot Road to the north City limits; (3221,4594)</td>
</tr>
<tr>
<td></td>
<td>From a point two thousand eight hundred feet (2,800’) north of Pecos Road to the south City limits; (4279,5350)</td>
</tr>
<tr>
<td>Southern Avenue</td>
<td>From Alma School Road to the east City limits; (3784)</td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Southern Avenue to the south City limits; (3771)</td>
</tr>
<tr>
<td></td>
<td>From Brown Road to June Street; (3816);</td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From Higley Road to Recker Road; (4099)</td>
</tr>
<tr>
<td>University Drive, East</td>
<td>From North Gilbert Road to the east City limits; (3221,4594)</td>
</tr>
<tr>
<td>Usery Pass Road</td>
<td>From McDowell Road to the north City limits; (4017)</td>
</tr>
<tr>
<td>Val Vista Drive</td>
<td>From Pomegranate to the south City limits. (2664,3475)</td>
</tr>
<tr>
<td>Warner Road</td>
<td>From Signal Butte Road to Meridian Road; (3944,4795)</td>
</tr>
</tbody>
</table>

**10-4-4:** **SPEEDS OF 40 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**

A person shall not exceed a speed of forty (40) miles per hour on the following portions of the following streets: (990,1771,4980,5098,5200)
<table>
<thead>
<tr>
<th>Street Name</th>
<th>Start Location</th>
<th>End Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>McDowell Road, East</td>
<td>From North 26th Street to the west City limits;</td>
<td></td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From Brown Road to the south City limits; (5098)</td>
<td></td>
</tr>
<tr>
<td>Power Road</td>
<td>From the Superstition Freeway (S.R. 360) to Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>Recker Road</td>
<td>From Thomas Road to the Red Mountain Freeway (Loop 202); (4456)</td>
<td></td>
</tr>
<tr>
<td>Signal Butte Road</td>
<td>From the north City limits to a point one thousand two hundred thirty-seven feet (1,237') south of Main Street; (5128)</td>
<td>From Guadalupe Road to a point four hundred fifty feet (450’) south of Elliot Road; (4980,5307)</td>
</tr>
<tr>
<td>Southern Avenue, West</td>
<td>From Alma School Road to the west City limits;</td>
<td></td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Brown Road to Southern Avenue; (3297, 3771,5098)</td>
<td></td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From Recker Road to Power Road; (3992,4018,4099)</td>
<td></td>
</tr>
<tr>
<td>University Drive</td>
<td>From Gilbert Road to the west City limits; (5098)</td>
<td></td>
</tr>
<tr>
<td>Val Vista Drive</td>
<td>From Pomegranate to the north City limits; (2664,3475)</td>
<td></td>
</tr>
<tr>
<td>Williams Field Road</td>
<td>From the west City limits to Innovation Way; (5200)</td>
<td></td>
</tr>
<tr>
<td>8th Street</td>
<td>From Decatur Street to the west City limits. (3446)</td>
<td></td>
</tr>
</tbody>
</table>

**10-4-5: SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
A person shall not exceed a speed of thirty-five (35) miles per hour on the following portions of the following streets: (990,1771,2002,4980,5067,5098,5200)

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Start Location</th>
<th>End Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adobe road</td>
<td>From Power Road to 80th Street;</td>
<td></td>
</tr>
<tr>
<td>Alta Mesa Drive, North</td>
<td>Between East Adobe and East McKellips Road; (2002)</td>
<td></td>
</tr>
<tr>
<td>Cadence Parkway</td>
<td>From Ellsworth Road to a point one thousand and two hundred feet (1,200’) east of Ellsworth Road; (5431)</td>
<td></td>
</tr>
<tr>
<td>Center</td>
<td>From McKellips Road to Lehi Road; (3406)</td>
<td></td>
</tr>
<tr>
<td>Center Street</td>
<td>From 1st Street to University Drive; (5098)</td>
<td></td>
</tr>
<tr>
<td>Center, South</td>
<td>From Broadway Road to 8th Avenue;</td>
<td></td>
</tr>
<tr>
<td>Clearview Avenue</td>
<td>From Southern Avenue to Superstition Springs Boulevard; (2591)</td>
<td></td>
</tr>
<tr>
<td>Crismon Road</td>
<td>From Ray Road to Williams Field Road; (5432)</td>
<td></td>
</tr>
<tr>
<td>Dobson Road</td>
<td>From a point one thousand six hundred feet (1,600’) north of 8th Street to the Red Mountain Freeway (S.R. 202); (3103,3154)</td>
<td></td>
</tr>
<tr>
<td>Eagle Crest Drive</td>
<td>From Power Road to Ridgecrest; (3154)</td>
<td></td>
</tr>
<tr>
<td>Eastmark Parkway</td>
<td>From the north City limits to the south City limits; (5200)</td>
<td></td>
</tr>
<tr>
<td>Extension Road</td>
<td>From West University Drive to West Southern Avenue;</td>
<td></td>
</tr>
<tr>
<td>Hampton Avenue</td>
<td>From Power Road to Sossaman Road;</td>
<td></td>
</tr>
<tr>
<td>Harris Drive, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>Hawes Road</td>
<td>From McKellips Road to Hermosa Vista Drive; (3015)</td>
<td></td>
</tr>
<tr>
<td>Higley Road</td>
<td>From Guadalupe Road to Elliot Road; (3506)</td>
<td></td>
</tr>
<tr>
<td>Horne Street</td>
<td>From Brown Road to Lehi Road; (3167,3188,3222)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>From Southern Avenue to Baseline Road; (3167,3188)</td>
<td></td>
</tr>
<tr>
<td>Inspirian Parkway</td>
<td>From Elliot Road to Ray Road (5425)</td>
<td></td>
</tr>
<tr>
<td>Inverness Avenue</td>
<td>From a point four hundred feet (400’) east of Higley Road to Sunview; (5128)</td>
<td></td>
</tr>
<tr>
<td>Lehi, East</td>
<td>From the east City limits to McDowell Road; (3304)</td>
<td></td>
</tr>
<tr>
<td>Longbow Parkway</td>
<td>From Higley Road to Recker Road; Parkway (4099)</td>
<td></td>
</tr>
<tr>
<td>Longmore, South</td>
<td>From West Southern Avenue to the Superstition Freeway (S.R. 360);</td>
<td></td>
</tr>
<tr>
<td>Macdonald Street, South</td>
<td>From West 1st Avenue to West Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>Main Street</td>
<td>From a point fifty-three feet (53’) west of South Udall Street to a point fifty-three feet (53’) west of Allen Street; (4823)</td>
<td>From Alma School Road to Country Club Drive; (4823)</td>
</tr>
<tr>
<td>Street Name</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>McLellan Road, West</td>
<td>From the 400 block west to the west City limits;</td>
<td></td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From McKellips Road to Lehi Road; (3562,3986,5067,5098)</td>
<td></td>
</tr>
<tr>
<td>Mesquite Street</td>
<td>From Mountain Road to Meridian Road; (4922)</td>
<td></td>
</tr>
<tr>
<td>Mountain Road</td>
<td>From Elliot Road to Mesquite Street (4477,5177)</td>
<td></td>
</tr>
<tr>
<td>Pecos Road</td>
<td>From Mountain Road to the east City limits; (4882)</td>
<td></td>
</tr>
<tr>
<td>Point Twenty-two Boulevard</td>
<td>From Ellsworth Road to Signal Butte Road; (5200)</td>
<td></td>
</tr>
<tr>
<td>Recker Road, North</td>
<td>From Main Street to a point one-eighth (1/8) mile north of Main Street;</td>
<td></td>
</tr>
<tr>
<td>Recker Road, South</td>
<td>From East Main Street to Broadway Road; (2565)</td>
<td></td>
</tr>
<tr>
<td>Ridgecrest</td>
<td>From Eagle Crest Drive to McDowell Road; (3154)</td>
<td></td>
</tr>
<tr>
<td>Sossaman Road</td>
<td>From Ray Road to a point two thousand eight hundred feet (2,800’) north of Pecos Road; (3639,4279,5350)</td>
<td></td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From McKellips Road to June Street; (3816,5098)</td>
<td></td>
</tr>
<tr>
<td>Sunvalley Boulevard</td>
<td>From Main Street to Brown Road;</td>
<td></td>
</tr>
<tr>
<td>Superstition Springs Boulevard</td>
<td>From Southern Avenue to Sossaman Road; (3538)</td>
<td></td>
</tr>
<tr>
<td>Thomas Road</td>
<td>From a point three thousand six hundred seventy-three feet (3,673’) west of Val Vista Drive to the South Canal; (4922)</td>
<td></td>
</tr>
<tr>
<td>8th Avenue, West</td>
<td>From Country Club Drive to Alma School Road;</td>
<td></td>
</tr>
<tr>
<td>8th Street</td>
<td>From Country Club Drive to Decatur Street; (3446)</td>
<td></td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
<td></td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
<td></td>
</tr>
<tr>
<td>8th Avenue, West</td>
<td>From Country Club Drive to Cape Canaveral Road;</td>
<td></td>
</tr>
<tr>
<td>8th Street</td>
<td>From Country Club Drive to Decatur Street; (3446)</td>
<td></td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
<td></td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
<td></td>
</tr>
<tr>
<td>8th Avenue, West</td>
<td>From Country Club Drive to Alma School Road;</td>
<td></td>
</tr>
<tr>
<td>8th Street</td>
<td>From Country Club Drive to Decatur Street; (3446)</td>
<td></td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>39th Street, South</td>
<td>From East Southern Avenue to East Baseline Road;</td>
<td></td>
</tr>
<tr>
<td>63rd Street</td>
<td>From Main Street to Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>80th Street</td>
<td>From University Drive to Brown Road; (3275)</td>
<td></td>
</tr>
</tbody>
</table>

**10-4-6: SPEEDS OF 30 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
A person shall not exceed a speed of thirty (30) miles per hour on the following portions of the following streets: (990,1771)

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adobe</td>
<td>From Lindsay Road to Higley Road; (2503)</td>
</tr>
<tr>
<td>Allred Avenue, East</td>
<td>From South Windsor to South Lindsay Road;</td>
</tr>
<tr>
<td>Arbor Avenue, East</td>
<td>From Recker Road to 63rd Street;</td>
</tr>
<tr>
<td>Baldwin</td>
<td>From Monterey Avenue to Baseline Road; (3605)</td>
</tr>
<tr>
<td>Baywood Avenue, East</td>
<td>From 63rd Street to Power Road;</td>
</tr>
<tr>
<td>Billings Street</td>
<td>From 75th Street to Sossaman Road;</td>
</tr>
<tr>
<td>Boise</td>
<td>From Sunvalley Boulevard to 75th Street;</td>
</tr>
<tr>
<td>Brown Road, West</td>
<td>From North Country Club Drive to North Date Street;</td>
</tr>
<tr>
<td>Cadence Parkway</td>
<td>From a point one thousand and two hundred feet (1,200’) east of Ellsworth Road to Williams Field Road; (5431)</td>
</tr>
<tr>
<td>Center</td>
<td>From 1st Street to Broadway Road;</td>
</tr>
<tr>
<td>Date Street, North</td>
<td>From West 8th Street to West Brown Road;</td>
</tr>
<tr>
<td>Emerald Avenue, West</td>
<td>From South Alma School Road to South Longmore;</td>
</tr>
<tr>
<td>Extension Road</td>
<td>From Baseline Road to the south City limits;</td>
</tr>
<tr>
<td>Falcon Drive</td>
<td>From McKellips Road to Higley Road;</td>
</tr>
<tr>
<td>Farnsworth Drive</td>
<td>From Baseline Road to the south City limits;</td>
</tr>
<tr>
<td>Grove Avenue</td>
<td>From Alma School Road to Extension Road;</td>
</tr>
<tr>
<td>Street</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Hampton Avenue</td>
<td>From 48th Street to Higley Road; (3275)</td>
</tr>
<tr>
<td></td>
<td>From Crismon Road to Signal Butte Road; (4004,4904)</td>
</tr>
<tr>
<td>Hobson Street,</td>
<td>From East Main Street to East University Drive;</td>
</tr>
<tr>
<td>North</td>
<td></td>
</tr>
<tr>
<td>Holmes Avenue</td>
<td>From Alma School Road to Westwood;</td>
</tr>
<tr>
<td></td>
<td>From Greenfield Road to 48th Street; (3275)</td>
</tr>
<tr>
<td>Horne Street</td>
<td>From Lehi Road to the north City limits; (3167,3188,3222)</td>
</tr>
<tr>
<td></td>
<td>From Brown Road to Southern Avenue; (3167,3188)</td>
</tr>
<tr>
<td>Inverness Avenue,</td>
<td>From South Val Vista Drive to South 39th Street;</td>
</tr>
<tr>
<td>East</td>
<td></td>
</tr>
<tr>
<td>Isabella, West</td>
<td>From South Longmore Street to South Alma School Road;</td>
</tr>
<tr>
<td>Ivy Street, East</td>
<td>From 48th Street to North Greenfield Road;</td>
</tr>
<tr>
<td>Javelina Avenue,</td>
<td>From South Alma School Road to South Longmore;</td>
</tr>
<tr>
<td>West</td>
<td></td>
</tr>
<tr>
<td>Jensen Street,</td>
<td>From Power Road to Sterling;</td>
</tr>
<tr>
<td>East</td>
<td>From South Dobson Road to West Nido Avenue;</td>
</tr>
<tr>
<td>Keating Avenue,</td>
<td>From West Nido Avenue to the west City limits;</td>
</tr>
<tr>
<td>West</td>
<td></td>
</tr>
<tr>
<td>Lansing</td>
<td>From Ellsworth Road to Neville Avenue; (3605)</td>
</tr>
<tr>
<td>Lehi Road</td>
<td>From Center to Gilbert Road; (3304)</td>
</tr>
<tr>
<td>Lindner Avenue,</td>
<td>From West Kilarea Avenue to South Don Carlos Avenue;</td>
</tr>
<tr>
<td>West</td>
<td></td>
</tr>
<tr>
<td>Longmore, South</td>
<td>From the Superstition Freeway (S.R. 360) to Baseline Road;</td>
</tr>
<tr>
<td>Longmore, South</td>
<td>From Pueblo to Southern Avenue;</td>
</tr>
<tr>
<td>Los Lagos Vista</td>
<td>From South Dobson Road to Laguna Azul Avenue;</td>
</tr>
<tr>
<td>Avenue, West</td>
<td></td>
</tr>
<tr>
<td>Main Street, East</td>
<td>From Centennial Way/Sirrine to a point fifty-three feet (53') west of South Udall Street; (5356)</td>
</tr>
<tr>
<td>McLellan Road</td>
<td>From Country Club Drive to Center; (3222)</td>
</tr>
<tr>
<td></td>
<td>From Greenfield Road to the east City limits; (2728,3222,5339)</td>
</tr>
<tr>
<td>Mesa Drive</td>
<td>From Lehi Road to the north City limits (5067);</td>
</tr>
<tr>
<td>Monterey Avenue</td>
<td>From Power Road to Sossaman Road; (2887)</td>
</tr>
<tr>
<td>Mountain Ridge</td>
<td>From Eagle Crest Drive to Ridgecrest; (3154)</td>
</tr>
<tr>
<td>Neville Avenue</td>
<td>From Lansing to Monterey Avenue; (3605)</td>
</tr>
<tr>
<td>Patterson Avenue,</td>
<td>From West Nido Avenue to West Kilarea Avenue;</td>
</tr>
<tr>
<td>South</td>
<td></td>
</tr>
<tr>
<td>Pierpont</td>
<td>From 48th Street to Baseline Road; (4791)</td>
</tr>
<tr>
<td>Pueblo Avenue,</td>
<td>From South Gilbert Road to South Lindsay Road;</td>
</tr>
<tr>
<td>East</td>
<td></td>
</tr>
<tr>
<td>Recker Road, North</td>
<td>From Thomas Road to Viewmont; (2330)</td>
</tr>
<tr>
<td>Recker Road, South</td>
<td>From the Superstition Freeway (S.R. 360) to the south City limits; (2565)</td>
</tr>
<tr>
<td>Redmont Drive</td>
<td>From Power Road to Recker Road;</td>
</tr>
<tr>
<td>Red Mountain</td>
<td>From Eagle Crest Drive to Ridgecrest; (5128)</td>
</tr>
<tr>
<td>Saddleback Street</td>
<td>From Eagle Crest Drive to Mountain Ridge; (3154)</td>
</tr>
<tr>
<td>Saratoga, South</td>
<td>From West Nido Avenue to South Don Carlos Avenue;</td>
</tr>
<tr>
<td>Springwood Blvd.</td>
<td>From Baseline Road to the south City limits; (5067)</td>
</tr>
<tr>
<td>Stapley Drive</td>
<td>From Lehi Road to McDowell Road; (3103)</td>
</tr>
<tr>
<td>Sterling</td>
<td>From Jensen to Brown Road;</td>
</tr>
<tr>
<td>Westwood</td>
<td>From Southern Avenue to Holmes Avenue;</td>
</tr>
<tr>
<td>Williams Street,</td>
<td>From East Broadway Road to East 8th Avenue;</td>
</tr>
<tr>
<td>South</td>
<td></td>
</tr>
<tr>
<td>Windsor, South</td>
<td>From East Main Street to East Broadway Road;</td>
</tr>
</tbody>
</table>
10-4-6: | Street | From/City | Notes |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Avenue</td>
<td>From Country Club Drive to Mesa Drive; (4017)</td>
<td></td>
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<tr>
<td>1st Street</td>
<td>From Country Club Drive to Mesa Drive; (4344)</td>
<td></td>
</tr>
<tr>
<td>8th Avenue</td>
<td>From Stapley Road to Gilbert Road;</td>
<td></td>
</tr>
<tr>
<td>8th Street, East</td>
<td>From North Center to North Mesa Drive;</td>
<td></td>
</tr>
<tr>
<td>24th Street, South</td>
<td>From East Broadway Road to East Southern Avenue;</td>
<td></td>
</tr>
<tr>
<td>32nd Street, North</td>
<td>From McKellips Road to McDowell Road;</td>
<td></td>
</tr>
<tr>
<td>32nd Street, South</td>
<td>From Southern Avenue to Broadway Road; (2719)</td>
<td></td>
</tr>
<tr>
<td>40th Street</td>
<td>FromMain Street to Broadway Road; (3222)</td>
<td></td>
</tr>
<tr>
<td>48th Street</td>
<td>From Ive Street to McKellips Road; FromEast Adobe Road to East McLellan Road; From Hampton Avenue to Pierpont; (4791)</td>
<td></td>
</tr>
<tr>
<td>56th Street, South</td>
<td>From East Main Street to East Broadway Road;</td>
<td></td>
</tr>
<tr>
<td>64th Street, North</td>
<td>From Evergreen to McKellips Road; (2330)</td>
<td></td>
</tr>
<tr>
<td>70th Street</td>
<td>From Southern Avenue to Hampton Avenue; (2591)</td>
<td></td>
</tr>
<tr>
<td>72nd Street</td>
<td>From Superstition Springs Boulevard to Monterey Avenue; (2887)</td>
<td></td>
</tr>
<tr>
<td>74th Street</td>
<td>From Main Street to Boise Street;</td>
<td></td>
</tr>
<tr>
<td>75th Street</td>
<td>From Boise Street to University Drive;</td>
<td></td>
</tr>
</tbody>
</table>

10-4-7: **SPEEDS OF 25 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
A person shall not exceed a speed of twenty-five (25) miles per hour on any public street within the City limits, except within the areas of those certain streets designated in Section 10-4-1 through Section 10-4-6 inclusive. (1771)

10-4-7.1: **SPEEDS OF 15 MILES PER HOUR PERMITTED IN ALLEYS:**
A person shall not exceed a speed of fifteen (15) miles per hour on any public alley within the City limits. (2330)

10-4-7.2: **SPEEDS OF 15 MILES PER HOUR PERMITTED ON CERTAIN STREETS:**
(Repealed by 2865)

10-4-8: **FALCON FIELD RESTRICTIONS:**
A person shall not exceed a speed of twenty-five (25) miles per hour on any roadway in Falcon Field, except where otherwise posted. (1771)

10-4-9: **EMERGENCY, CONSTRUCTION OR CONTINGENT SPEED LIMITS:**
The City Traffic Engineer is authorized to fix speed limits less than the designated speed limits in this Chapter when construction conditions, congested traffic, or other conditions require such reduced speed limits for public safety. Such reduced speed limits shall become effective when signs are erected giving notice thereof, and such reduced speed limits shall remain in effect until the signs are removed. (840, 3766, 5258)

10-4-10: **PENALTY FOR EXCEEDING THE MAXIMUM SPEED LIMIT:**
The provisions of A.R.S. Sections 28-701.02 and 28-702.01 shall be applicable in all instances when a person exceeds the maximum speed limit set forth in either of those Sections. (1771)

10-4-11: **SPEEDS OF 35 MILES PER HOUR PERMITTED ON CERTAIN STREETS DURING CERTAIN HOURS:**
The City Traffic Engineer is hereby authorized to fix speed limits and to reduce the speed limit to thirty-five (35) miles per hour on streets immediately adjacent to any elementary, junior high, or high school property for portions of the day when children are on their way to or from school. After consultation with school officials, the City Traffic Engineer or his designee will determine the length along each street where the reduced speed limit will be in effect and the effective hours of the reduced speed limit. The City Traffic Engineer or his designee shall cause signs to be erected giving notice of the times and specified location of the reduced speed limit. (2257, 3639, 3713, 3766, 3784, 5258)
CHAPTER 5

PARKING LOTS AND GARAGES

SECTION:

10-5-1: PARKING RESTRICTED OR PROHIBITED

(A) Installation of and Obedience to Signs and Markings. In a publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, the City Traffic Engineer may have signs or markings installed that prohibit, limit, restrict, or regulate the time, place, or method of parking. When such signs or markings are in place, a vehicle shall not be parked in violation of the prohibition, limitation, restriction, method of parking, or regulation designated by said signs or markings. It shall be unlawful to park any vehicle in any parking lot or garage described above except within a parking stall as designated by official markings. It shall be unlawful to park any vehicle in any parking lot or garage described in this Section in such a position that it shall not be within the space designated by official lines or markings.

(B) In any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, all or certain portions of said lots or garages may be designated for parking of vehicles with permits or decals. Parking may be permitted in said lots, garages, or portions thereof during certain hours or on weekends and holidays if signs are posted which specify the hours or days that a permit or decal is required. Vehicles without a permit or decal may be parked in said lots or garages at any other time.

1. Parking in the above-described lots, garages, or portions thereof is prohibited during the hours or days that a permit or decal is required by official signs posted therein, except for vehicles that are displaying a current and valid permit or decal. A permit or decal is invalid if it is expired or has been cancelled because of a contract violation, such as nonpayment of the monthly rent or lease fee.

2. Vehicles parked in the above-described lots, garages, or portions thereof shall have a properly displayed permit or decal in the left rear lower corner of the rear window or other conspicuous location as approved by the City and in accordance with the provisions of this Section. A properly displayed permit or decal must be visible from the rear of the vehicle.

(C) Compact Car Parking. In any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, certain portions of said lots or garages may have parking spaces which are designated for compact cars. Vehicles which exceed fifteen feet (15') in length shall not be parked in areas designated for compact cars.

(D) Parking of motor vehicles is prohibited in the field area of Falcon Field Airport as defined in Title 9, Chapter 9, except for motor vehicles parked thereon pursuant to authority expressly granted by the Airport Director under Title 9, Chapter 9 of the Mesa City Code.
(E) In all publicly or privately owned parking lots or garages that are operated or managed by the City or by a private person or entity pursuant to an agreement with the City, persons shall use the lots and garages only for the parking of vehicles or for other uses expressly approved in advance by the City. It shall be unlawful for any person using such property for unauthorized purposes to refuse or fail to leave such property upon being requested to do so by the owner, operator, or agent thereof. (2584,4882)

(F) The City Manager or his designee may cause any publicly or privately owned parking lot or garage being operated or managed by the City or being operated or managed by a private person or entity pursuant to a lease, contract, or other agreement with the City, to be reserved to accommodate event parking, i.e., for concerts, plays, athletics, and other events. A fee may be assessed for the use of these lot(s) and/or garage(s) for daily parking. A fee may be assessed for the use of these lot(s) and/or garage(s) for event parking. The fees for daily parking and event parking shall be as approved by City Council Resolution. The City Manager or his designee shall determine if the event parking fee should be assessed for specific events. The City Council may authorize the City Manager to enter into licenses, leases, or other agreements that modify or waive daily and event parking fees. (4394,4882,4908)

10-5-2: VIOLATIONS:
When signs or markings are in place giving notice thereof, it is unlawful and a violation of this Section for a vehicle to be parked in any location designated in Section 10-5-1 of this Chapter unless the vehicle is parked consistent with and in accordance with all restrictions, limitations, times, hours, days, manner, and other requirements in this Chapter and in compliance with any City ordinance or provision of this Code which regulates the time, place, or method of parking. Any violation of this Chapter is a civil traffic violation and shall be enforced by the Police Chief of the City pursuant to the provisions of Section 10-3-25 of the Mesa City Code. (2189,3833,4882)

10-5-3: SIGNS OR MARKINGS REQUIRED FOR ENFORCEMENT:
The City Traffic Engineer may install appropriate signs or markings giving notice of parking restrictions, prohibitions, and method of parking in this Chapter and violations shall not be enforced unless appropriate signs or markings are installed and in place at the time of the violation. (2189,3766,4882)

10-5-4: RENTAL; LEASES AND PERMITS; ADMINISTRATION:

(A) The City may contract with a private person or entity for the management of privately owned and public parking lots and garages. (2189)

(B) The City or a private person or entity acting pursuant to a contract with the City may manage or lease publicly and privately owned parking lots and may enter into agreements whereby parking rights or privileges in privately owned lots or garages and public lots or garages are rented or leased to individuals. (2189)

(C) The City or a private person or entity acting pursuant to a contract with the City shall issue permits or decals showing the lot or garages rented or leased and shall provide for appropriate display of the permits or decals. Permits or decals shall be issued only for vehicles for which the rent or lease has been paid. (2189)

10-5-5: AUTHORITY TO IMPOUND VEHICLES:
Vehicles parked in violation of this Chapter may be impounded pursuant to the provisions of Section 10-3-26 of the Mesa City Code. (1771,2189)

10-5-6: AUTHORITY TO ATTACH A RESTRAINING DEVICE:

(A) Members of the Police Department are hereby authorized to attach a restraining device (boot) to any vehicle parked in violation of any provision of this Chapter where the vehicle is deemed to constitute a public nuisance under Title 10 of the Mesa City Code. (2189,2434)
(B) Whenever a restraining device is used under this Section, a notice shall be conspicuously attached to the vehicle indicating that the vehicle has been immobilized for failure to satisfy outstanding sanctions for five (5) or more prior parking violations; that release from such immobilization may be obtained at a designated place; that unless arrangements are made for release of the vehicle within seventy-two (72) hours, the vehicle shall be deemed abandoned under, and shall be disposed of pursuant to, Title 28, Chapter 8, Article 5 of the Arizona Revised Statutes; and that any person who tampers with, defaces, removes, or attempts to remove a restraining device without Police Department permission is subject to criminal prosecution. Reasonable charges may be assessed for removing the restraining device from the vehicle and for towing and impounding the vehicle. (2434)

(C) It shall be a misdemeanor for any person to tamper with, deface, remove, or attempt to remove a restraining device that has been attached to a vehicle pursuant to this Section without Police Department authority. (2434)

(D) The owner or driver of a vehicle immobilized under this Section shall be entitled, upon request, to a hearing in the Mesa City Court to contest the immobilization. Such request for a hearing shall be made in writing to the Clerk of the Mesa City Court within seventy-two (72) hours of the immobilization. If a timely request for a hearing is made under this Subsection, a hearing shall be held within forty-eight (48) hours of the receipt of the request unless the owner or driver of the immobilized vehicle requests or agrees to a hearing at a later time. (2434)

(E) Whenever the owner or driver of a vehicle immobilized under this Section requests a hearing before the Mesa City Court to contest the immobilization, the owner or driver may obtain the immediate release of the vehicle pending the hearing by depositing with the City the sum of two hundred dollars ($200.00) in cash or its equivalent or by posting a secured appearance bond or other form of security in the amount of, or having a value of, two hundred dollars ($200.00). The secured appearance bond or other form of security shall reflect the undertaking by the owner, driver, or surety, to bind himself or themselves to pay the full amount of the bond to the City of Mesa or otherwise to forfeit their security if the owner or driver fails to appear before the City Court to contest the immobilization. (2434)

(F) The person who parked or placed a vehicle in violation of Title 10 of the Mesa City Code, the owner or owners of the vehicle, and the registered owner or owners of the vehicle are individually and jointly responsible for the violations, the prescribed civil sanctions, and for payment of any applicable immobilization, towing, or impoundment charges. (2434)

(G) Vehicles immobilized or impounded under this Section shall promptly be released upon payment, in cash or its equivalent, of all current and accumulated sanctions and payment of all charges associated with immobilization and impoundment of the vehicle. (2189,2434)

(H) Whenever a vehicle is towed and impounded under this Section as an abandoned vehicle, notice shall be provided in accordance with Title 28, Chapter 8, Article 5 of the Arizona Revised Statutes. (2434)

CHAPTER 6

OFF-STREET PARKING AREAS

(Repealed by 2189)
CHAPTER 7

CIVIL TRAFFIC VIOLATIONS

SECTION:

10-7-1: CIVIL TRAFFIC VIOLATIONS:
Any violation of or failure or refusal to do or perform any act required by Chapters 1 through 7 of Title 10 of the Mesa City Code constitutes a civil traffic violation except as otherwise provided. Civil traffic violations are subject to the provisions of Title 28, Chapter 6, Articles 20 and 21, Arizona Revised Statutes, and amendments thereto. (1771)

10-7-2: AUTHORITY TO DETAIN PERSONS TO SERVE TRAFFIC COMPLAINT:
Any Police officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this Title and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this Title. (1771)

10-7-3: HEARING OFFICERS (1771)
(Repealed by 4027)

10-7-4: HABITUAL OFFENDERS:

(A) Any person who commits a civil traffic violation of this Title 10 of the Mesa City Code after previously having been found responsible for three (3) or more civil traffic violations of Title 10 of the Mesa City Code within a twenty-four- (24-) month period, whether by default or by judgment after hearing, and who has not paid the civil sanctions required by the Court for those offenses (underlying offenses) shall be guilty of a misdemeanor. For purposes of calculating the twenty-four- (24-) month period under this paragraph, the dates of the commission of the offenses are the determining factor. (2434,3117)

(B) The Mesa City Prosecutor is authorized to file a criminal misdemeanor complaint in the Mesa City Court against habitual offenders who violate this Section. (3117)

(C) The payment of the civil sanctions due on an underlying offense, when such payments are made after the issuance of a summons and complaint on a charge of being a habitual offender, shall not be a defense to the habitual offender charge. (3117)

(D) Upon conviction of a violation of this Section, the Court may impose a sentence of incarceration not to exceed six (6) months in jail or a fine not to exceed two thousand five hundred dollars ($2,500.00), exclusive of penalty assessments prescribed by law, or both. The Court shall order a person who has been convicted of a violation of this Section to pay a fine of not less than two hundred fifty dollars ($250.00) for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this Subsection except on the condition that the person pay the mandatory minimum fines as provided for in this Subsection. (2434,2466,3117)

(E) Every action or proceeding under this Section shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure. (2434,3117)
CHAPTER 8

PENALTY FOR REFUSAL TO FURNISH INFORMATION OR SIGN CIVIL TRAFFIC CITATION

SECTION:

10-8-1: REFUSAL TO FURNISH INFORMATION OR SIGN CITATION

10-8-2: PENALTY

10-8-1: REFUSAL TO FURNISH INFORMATION OR SIGN CITATION:
Any person who fails to furnish the citing officer or his designate the information required for completion of a civil traffic citation or who, after request by the citing officer, refuses to sign a civil traffic citation shall be guilty of a misdemeanor. (1771)

10-8-2: PENALTY:
Any person who shall violate any of the provisions of Section 10-8-1 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment in the City jail for a period not to exceed six (6) months, or by both such fine and imprisonment. (1771,2466)

CHAPTER 9

PRIVATE PARKING AREAS

SECTION:

10-9-1: PARKING IN PRIVATE PARKING AREAS

10-9-2: CONSENT AND NOTICE TO POLICE AND RELEASE OF VEHICLE

10-9-1: PARKING IN PRIVATE PARKING AREAS:

(A) No person shall park a vehicle in any private parking area without the express or implied consent of the owner or the agent of the owner of such property. (1862)

(B) The owner or the agent of the owner of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this Section which are clearly visible and readable from any point within the parking area and at each entrance thereto. The signs shall contain the following information: (1862)

1. Restrictions on parking. (1862)
2. That violator’s vehicle will be towed away at violator’s expense. (1862)

3. Telephone number of Mesa Police Department. (1862)

4. Each sign shall state "Mesa City Code, Title 10, Chapter 9." (1862)

10-9-2: CONSENT AND NOTICE TO POLICE AND RELEASE OF VEHICLE:

(A) No person shall tow or transport a vehicle from a private parking area without the permission of the owner or operator of the vehicle, unless requested to do so by a law enforcement agency or upon a written towing order signed by the real property owner or his agent specifying the vehicle to be towed. The signed towing request must be in the possession of the person towing or transporting the vehicle. (1862)

(B) No person shall hold or attempt to hold any vehicle towed from a private parking area without the consent of the vehicle owner or operator as security for accrued towing and/or storage fees. A vehicle owner or agent of a vehicle owner may recover the towed vehicle from the tow driver or tow company upon providing reliable identification such as a driver's license or other evidence of name and address of the registered owner or driver for assistance in billing and collection of towing and/or storage charges. (This Subsection shall not apply to vehicles deemed to constitute a public nuisance pursuant to Mesa City Code Section 10-3-25[B]4.) (2576)

(C) Any person towing or transporting any vehicle from any private parking area without the express permission of the vehicle owner or operator shall notify the City of Mesa Police Department immediately upon the taking of such action and provide the following information: (1862,2576)

1. Name and address of the owner of the vehicle, if known. (1862,2576)

2. The vehicle license number and description. (1862,2576)

3. Reason the vehicle was moved without the permission of the owner or operator. (1862,2576)

4. Location from which the vehicle was taken. (2576)

5. Location to which the vehicle was taken. (1862,2576)

6. Name, address, and telephone number of the person or company that towed or transported the vehicle. (1862,2576)

(D) Penalty. Any person who violates or fails to comply with any of the provisions of Section 10-9-2 of the Mesa City Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. (1862,2576)
CHAPTER 10

TEMPORARY TRAFFIC CONTROL MANUAL (5053/RESO. 9892, 5068, 5415)

SECTION:

10-10-1: TEMPORARY TRAFFIC CONTROL MANUAL (5053/RESO. 9892, 5068, 5415):

(A) City Temporary Traffic Control Manual. The City Traffic Engineer shall develop, publish, and revise from time to time as needed, a manual on procedures and practices necessary to establish temporary control measures to be used in conjunction with partial and full restrictions of all City streets, sidewalks, bicycle lanes, equestrian, bicycle, pedestrian or multi-use paths, special use trails, alleys, highways, transit stops or other facilities, hereinafter referred to as “City transportation facilities,” to be used in conjunction with any work, construction, maintenance, or other use of City rights-of-way or easements. Such City Temporary Traffic Control Manual may consist of a manual or manuals, in whole or in part, developed and published by other cities, states or the federal government, along with modifications, amendments, or a supplement specific to the City of Mesa. The City Temporary Traffic Control Manual shall be adopted by City Council resolution. (5053/Reso.9892, 5415)

1. Clarifications and Corrections. The City Traffic Engineer is authorized to publish clarifications and corrections to the City Temporary Traffic Control Manual as needed to provide clarification, additional explanation or illustration of any provision of the City Temporary Traffic Control Manual, or to correct typographical or other similar errors. Such clarifications and corrections shall be in writing and filed with the City Clerk. (5068, 5415)

(B) The City Traffic Engineer or designee, is authorized to approve or disapprove barricading utilized on any City transportation facility, and to take those actions necessary, in his professional judgment and in accordance with the City Temporary Traffic Control Manual, to promote, preserve and protect public health, safety and welfare on such City transportation facilities with respect to barricading and temporary traffic control. (5053/Reso.9892, 5415)

(C) It is unlawful for any person to restrict any portion of a City transportation facility, City right-of-way or easement in a manner that is not in compliance with the City Temporary Traffic Control Manual unless approved by the City Traffic Engineer or designee. (5053/Reso.9892, 5415)

10-10-2: AUTHORITY TO APPROVE OR DENY RESTRICTIONS AND ISSUE PERMITS (5053/RESO. 9892)

(A) Authority to approve or deny restrictions. The City Traffic Engineer or a designee shall have the authority to approve or deny all partial and full restrictions of City transportation facilities in conjunction with any work, construction, maintenance, or other use of City rights-of-way or easements to promote, preserve or protect public health, safety and welfare by minimizing impact on the traveling public and gaining compliance with temporary traffic control standards with respect to such restrictions. (5053/Reso.9892)
City Traffic Engineer to establish procedures, rules and issue permits. The City Traffic Engineer shall develop, publish and revise from time to time as needed, procedures and rules, hereinafter referred to as the rules, for applying for permission to restrict any portion of a City transportation facility, City right-of-way, or easement, and is authorized to issue or cause to be issued a Temporary Traffic Control Permit for all such requests that are approved. The rules may include blanket exceptions for certain types of work or specific types of restrictions for which a Temporary Traffic Control Permit is not necessary. Each Temporary Traffic Control Permit shall include general and special conditions as determined necessary by the City Traffic Engineer or designee for the permit holder’s temporary use of the right-of-way to promote, preserve or protect public health, safety and welfare by minimizing impact on the traveling public and gaining compliance with temporary traffic control standards with respect to such restrictions. (5053/Reso.9892)

Permit required. No person shall restrict any portion of any City transportation facility, City right-of-way or easement without first obtaining a valid Temporary Traffic Control Permit from the Transportation Department unless otherwise provided for in the rules. (5053/Reso.9892)

Temporary Traffic Control Permit Modification, Suspension or Revocation. The City Traffic Engineer or designee may modify any condition of a permit, or suspend or revoke such Temporary Traffic Control Permit at any time when necessary, in his sole discretion, to promote, preserve or protect public health, safety and welfare. Such permit may also be suspended or revoked if the permit holder fails to follow the Temporary Traffic Control Manual, applicable laws, or any general or special conditions of the permit. (5053/Reso.9892, 5415)

Fees. Temporary traffic control fees must be paid at the time of issuance of a Right-of-Way or non-City Utility Permit, and renewal fees, if any, must be paid in advance according to the Schedule of Fees and Charges and the rules except as provided in Subsection (F) below. (5053/Reso.9892)

Fees not Required. Temporary traffic control fees are not required for restrictions for neighborhood block parties, for restrictions in connection with activities conducted by City employees in the course of their City duties, or activities being carried out by others under direct contract to the City or under subcontract to another who is under direct contract to the City, or in any instance where the City Manager or his designee determines that it is in the City’s best interest to waive temporary traffic control fees. (5053/Reso.9892)

**10-10-3 VIOLATIONS AND ENFORCEMENT (5053/ RESO. 9892)**

The City Traffic Engineer or designee, is authorized to enforce the provisions of this Chapter as follows:

1. Seeking voluntary compliance through information and education; (5053/Reso.9892)

2. Issuing corrective action or violation notices and warnings; (5053/Reso.9892)

3. Other informal means designed to achieve compliance in the most efficient and effective manner; (5053/Reso.9892)

4. In cooperation with the Engineering Department, issuing stop work notices; (5053/Reso.9892)

5. Suspending or revoking Temporary Traffic Control Permits; (5053/Reso.9892)

6. In cooperation with the Development Services Division, placing a hold on issuance of new Right-of-Way and/or Temporary Traffic Control Permits for the same company or individual; (5053/Reso.9892)

7. Issuing a civil citation for civil sanctions under this Chapter; (5053/Reso.9892)
(B) Remedies not Exclusive. Violations of this Chapter are in addition to any other violation established by law, and this Section shall not be interpreted as limiting the penalties, actions or abatement procedures which may be taken by the City or other persons under the law, ordinances, or rules. (5053/Reso.9892)

(C) Responsible Parties:

1. Any person or his agent who causes, permits, facilitates, aids or abets any violation of this Chapter, or who fails to perform any act or duty required pursuant to this Section, is subject to the enforcement provisions of this Chapter. The person and his agent may be found to be individually responsible for the violations, the prescribed civil sanctions, and the abatement of the violations. (5053/Reso.9892)

2. Any person, firm, or agency conducting work in the public right-of-way or easement is responsible for assuring that all related activities comply with the provisions of this Chapter. Contracting with another person, firm or agency (subcontractor) for temporary traffic control services does not relieve the person, firm or agency conducting the work of the obligation to comply with the provisions of this Chapter. (5053/Reso.9892)

(D) Civil violations and procedure:

1. Violation of any portion of this Chapter shall be a civil offense and shall be commenced and adjudicated pursuant to the Arizona Rules of Procedure in civil traffic and civil boating violation cases. Violations will be filed with the Mesa Municipal Court. (5053/Reso.9892, 5068)

2. Complaints for violations of this Chapter may be issued by Transportation Department employees working under the authority of the City Traffic Engineer or designee, and shall be in a form substantially similar to the Arizona Traffic Ticket and Complaint as approved by the City Traffic Engineer or designee. (5053/Reso.9892, 5068)

(E) Penalties. Upon a finding or admission of responsibility, a violator is subject to the following sanctions: (5068)

1. Any act, error, or omission within the right-of-way that creates an imminent risk of death or injury; Civil Sanction: $1,500.00 (5068)

2. Restricting the right-of-way or easement without a required Temporary Traffic Control Permit; Civil Sanction: $1,000.00 (5068)

3. Restricting traffic during peak traffic hours as described in the Temporary Traffic Control Manual without authorization; Civil Sanction: $1,000.00 (5068, 5415)

4. Failing to correct or cure a violation of the Temporary Traffic Control Manual within the time period stated on the Notice of Violation; Civil Sanction: $1,000.00 (5068, 5415)

5. Restricting the right-of-way at an intersection with traffic signals without any work being conducted for which the restriction is necessary for a period of one continuous hour unless otherwise approved; Civil Sanction: $1,000.00 (5068)
6. Improperly closing a sidewalk or closing a sidewalk without first obtaining a required Traffic Control Permit; Civil Sanction: $500.00 (5068)

7. Failing to comply with the conditions, restrictions, limits, times, or location of a Temporary Traffic Control Permit; Civil Sanction: $500.00 (5068)

8. Failing to install advance warning signs or failing to install advance warning signs that comply with the Temporary Traffic Control Manual; Civil Sanction: $500.00 (5068, 5415)

9. Failing to install traffic barricades or channelizing devices or failing to install traffic barricades or channelizing devices that comply with the Temporary Traffic Control Manual; Civil Sanction: $500.00 (5068, 5415)

10. Failing to remove an advance warning sign leaving the sign facing traffic after the traffic restriction has been removed; Civil Sanction: $250.00 (5068)

11. Failing to remove traffic control devices from the right-of-way within twenty-four hours after expiration of the Temporary Traffic Control Permit; Civil Sanction: $250.00 (5068)

12. Failing to install and maintain traffic control devices that meet the quality requirements described in the Temporary Traffic Control Manual; Civil Sanction: $250.00 (5068, 5415)

13. Rendering a bus stop inaccessible without relocating it or making other approved accommodations; Civil Sanction: $250.00 (5068)

14. Failure to comply with any other provision of the Temporary Traffic Control Manual or this Chapter whether or not a Temporary Traffic Control Permit is required; Civil Sanction: $250.00 (5068, 5415)
CHAPTER 1

GENERAL REGULATIONS RELATING TO PUBLIC TRANSIT VEHICLES
(4889)

SECTION:

12-1-1: DEFINITIONS
12-1-2: POWERS AND DUTIES OF ENFORCEMENT AGENT
12-1-3: VIOLATIONS
12-1-4: USE RESTRICTIONS
12-1-5: CIVIL VIOLATIONS/PROCEDURE
12-1-6: PENALTIES

12-1-1: DEFINITIONS: (4889)

1. For purposes of this section, unless the context otherwise requires:

FARE: compensation paid for a light rail, bus boarding or other transit vehicle ticket from a vending machine or other source. (4889)

FARE INSPECTOR: a person authorized to enforce this section. (4889)

GUIDEWAY: an area where light rail vehicles will operate and includes the light rail track, overhead catenary system and the entire area extending seven (7) feet out from the track centerline, or within the prolonged curb lines adjoining the light rail tracks. (4889)

IDENTIFICATION: any government issued document that contains a photograph, date of birth and physical description, including but not limited to, height, weight, eye color, sex, origin and hair color of the person presenting the identification. (4889)

METRO: the light rail transit system operated by Valley Metro Rail, Inc. (4889)

PAID ZONE: the inside of a transit vehicle, light rail station platform or other areas as designated by appropriate signage or markings. (4889)

PASSENGER: any person occupying, riding or using any transit vehicle, boarding or alighting from such a vehicle, or waiting within a designated paid zone waiting area at a light rail station. (4889)

PROOF OF FARE PAYMENT: a valid METRO pass or transit fare media valid for the time and day of use. (4889)

TRANSIT COMPLAINT: a complaint whereby the passenger is charged with violating this Chapter. (4889)

TRANSIT ENFORCEMENT AIDE: an employee of the police department or an employee of a private entity which has entered into a contract with either the city, police department or a transit provider on behalf of the City. (4889)

TRANSIT VEHICLE: a light rail train, public bus, trolley or shuttle or Valley Metro vehicle used to transport passengers. (4889)
VALLEY METRO: motor buses and facilities operated by Phoenix Public Transit Department, City of Tempe, City of Mesa or other local jurisdictions that operate bus transit service as part of Valley Metro, private contractors, and the Regional Public Transportation Authority. (4889)

12-1-2: POWERS AND DUTIES OF ENFORCEMENT AGENTS: (4889)

(A) A police officer or a transit enforcement aide is authorized to enforce the provisions of this Chapter. (4889)

(B) The presentment of any citation to the violator shall be considered sufficient and appropriate service. (4889)

(C) Nothing in this Chapter is intended to limit the authority of the City or its police officers from enforcing concurrently, or in the alternative, other remedies applicable at law, including those related to the crimes of theft of services and/or trespass. (4889)

(D) A person who refuses to provide proof of fare payment when required, or otherwise violates any lawful regulation of this Chapter, may be removed from the transit vehicle by a fare inspector at any transit facility or usual stopping place. (4889)

12-1-3: SPECIFIED UNLAWFUL ACTIVITIES: (4889)

(A) Fare violations

1. It is unlawful for any person to:
   
   (a) Occupy or ride in any transit vehicle that requires a fare without payment of the applicable fare;
   
   (b) Fail to exhibit proof of fare payment upon request of a fare inspector when occupying or disembarking from a transit vehicle;
   
   (c) Refuse to disembark a transit vehicle or transit facility upon demand of a fare inspector;
   
   (d) Fail to provide his or her true name and address or identification to a fare inspector when being served with a transit complaint, or;
   
   (e) Fail to exhibit proof of fare payment upon request of a fare inspector while waiting in a designated paid zone waiting area. (4889)

(B) Conduct violations

1. It is unlawful for any person to:
   
   (a) Transport any item that blocks the aisle or the areas of the transit vehicle reserved for passengers in wheelchairs or who use mobility aids;
   
   (b) Possess an open container of or consume an alcoholic beverage in a transit vehicle or on transit property;
   
   (c) Carry onto or aboard a transit vehicle or transit property any flammable or explosive substance or hazardous materials;
   
   (d) Hang onto or attach his or her body in any manner to any exterior part of a transit vehicle or touch a moving transit vehicle;
(e) Walk between coupled light-rail vehicles;

(f) Enter upon, occupy or remain upon the guideway except as necessary to board or alight a transit vehicle unless authorized by a valid permit;

(g) Throw an object at or from any transit vehicle or at any person or thing on or in any transit vehicle, or on transit property;

(h) Travel in any mode, including but not limited to, motor vehicle, pedestrian, bicycle, equestrian, roller skate, rollerblade, upon or across any guideway, or light rail station platform, except within a marked crosswalk at a signalized intersection;

(i) Place any object on any portion of the guideway;

(j) Interfere with the operation of a transit vehicle, transit facility or ticket vending machine;

(k) Interfere with the ingress or egress of any passenger on transit vehicle or transit property;

(l) Use tobacco products, or carry any lighted or smoldering substance, in any form, aboard a transit vehicle or within any space where posted signage prohibits smoking;

(m) Operate a sound-emitting device, unless the only sound produced by such item is emitted by a personal-listening attachment (earphone or headphone) audible only to the person carrying the device producing the sound, except a peace officer, firefighter, transit employee, or emergency response professional, in the course of employment;

(n) Light a flashlight, scope light, laser light or object that projects a flashing light or beams of light while inside a transit vehicle or towards a transit vehicle, except in an emergency;

(o) Place feet on or lie down on the seat of a transit vehicle or place any article on the seat which would leave grease, oil, paint, dirt or any other substance on the seat;

(p) Expectorate, defecate, urinate or litter in or upon a transit vehicle, transit property or transit facility;

(q) Light or detonate sparklers, firecrackers or other types of pyrotechnic devices in or upon a transit vehicle, transit property or transit facility;

(r) Injure, mutilate, deface, alter, change, displace, remove or destroy any sign, notice or advertisement on or in any transit vehicle or transit property;

(s) Disobey the instructions of any traffic signal, security notice, sign or marker unless otherwise directed by a fare inspector, peace officer or authorized transit representative;

(t) Recklessly damage, deface, mutilate or tamper with transit property so as to impair its function or value;

(u) Post signs, notices or drawings or inscribe a message, slogan, sign, mark or symbol on transit property without written permission from the transit company, or;

(v) Remain at a transit station or stop for more than one hour. (4889)

(C) Transport of animals
1. No person shall transport animals in a transit vehicle unless:

(a) The animal is a guide or service animal, including a service animal in training, that has been specially trained to assist persons with disabilities and is on a leash, or;

(b) The animal is in a completely enclosed and secured cage or carrying case that is small enough to fit on the passenger’s lap, and the animal does not otherwise endanger or disturb the comfort or health of other passengers. (4889)

(D) Parking and boarding

1. A driver shall not park a vehicle in the area designated for vehicle parking unless the person complies with posted parking regulations. (4889)

2. If intending to pick up or drop off a transit passenger, a driver shall park in the area designated for vehicle parking or briefly stop his or her vehicle in areas designated for passenger loading or unloading, while remaining with the vehicle, and then remove the vehicle from the station without delay after the transit passenger is dropped off or picked up. (4889)

3. No person shall stop or park a vehicle at a transit parking facility in such manner that the vehicle blocks access to a marked pedestrian walkway, designated traffic lane, parking space, fire lane, boarding zone or guideway. (4889)

(E) Use restriction violation

1. A person shall not ride a transit vehicle in violation of a court order or finding that the person is prohibited from riding a transit vehicle. (4889)

12-1-4: USE RESTRICTIONS: (4889)

(A) Any person adjudicated responsible of violating any provision of this Chapter resulting in a fine is prohibited from riding a Metro transit vehicle until the sanction is fully paid. (4889)

(B) Any person adjudicated responsible for violating any provision of this Chapter more than two (2) times within a 24 month period is prohibited from riding a Metro transit vehicle for ninety (90) calendar days. (4889)

(C) Any person who poses a serious continuing risk to the public or transit property may be immediately removed from a Metro transit vehicle and the person will be prohibited from using Metro transit vehicles for a period not to exceed ninety (90) calendar days. (4889)

(D) Any person guilty of assaulting a fare inspector or employee acting in the scope of his employment will be prohibited from using a Metro transit vehicle for a minimum of one year. (4889)

12-1-5: CIVIL VIOLATIONS/PROCEDURE: (4889)

(A) Violation of this Chapter shall be a civil offense and shall be adjudicated pursuant to the Civil Traffic Violations. (4889)

12-1-6: PENALTIES: (4889)

(A) Violations of this Chapter shall be a civil offense. Upon a finding or admission of responsibility, a violator is subject to a sanction of not less than $50 but not more than $500, plus surcharges, costs and fees as set by law. (4889)

(B) In addition to any fines imposed by this Chapter, a City Magistrate or a Civil Hearing Officer may issue an order prohibiting a person from riding a transit vehicle for a specified period of time. (4889)