

TOWN OF DUNCAN
MUNICIPAL CODE

REVISED 2024

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CHAPTER 1

GENERAL

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CHAPTER 1 GENERAL

ARTICLE 1-1 HOW CODE DESIGNATED AND CITED

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

ARTICLE 1-2 CONSTRUCTION OF ORDINANCES

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

ARTICLE 1-3 DEFINITIONS

1-3-1 General Rule Regarding Definitions

1-3-2 Specific Definitions

Section 1-3-1 General Rule Regarding Definitions

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

Section 1-3-2 Specific Definitions

- A. Acts by Agents. When this code or an ordinance requires an act to be done which may by law be as well done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.
- B. Town. Whenever the word "town" is used, it shall mean the Town of Duncan, Arizona.
- C. Code. The words "the code" or "this code" shall mean "The Code of the Town of Duncan, Arizona," unless the context indicates otherwise.
- D. Council. Whenever the word "council" is used, it shall be construed to mean the common council of the Town of Duncan, Arizona.

- E. Day. A "day" is a period of time between any midnight and the midnight following.
- F. Daytime, Nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.
- G. Department, Board, Commission, Office, Officer or Employee. Whenever any "department, board, commission, office, officer or employee" is referred to, it shall mean a department, board, commission, office, officer or employee of the town unless the context indicates otherwise.
- H. Gender; Singular and Plural. Words of the masculine gender include feminine; words in the singular number include the plural and words in the plural include the singular.
- I. In the Town. The words "in the town" or "within the town" shall mean and include all territory over which the town now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.
- J. Joint Authority. All words purporting to give a joint authority to three or more town officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.
- K. Month. The word "month" shall mean a calendar month.
- L. Oath. "Oath" includes affirmation or declaration.
- M. Or, And. "Or" may be read "and," and "and" may be read "or" if the sense requires it.
- N. Person. The word "person" shall extend and be applied to firms, corporations or voluntary associations, as well as to individuals, unless plainly inapplicable.
- O. Personal Property. "Personal Property" includes every species of property, except real property as defined in this article.
- P. Preceding, Following. The words "preceding" and "following" mean next before and next after, respectively.
- Q. Property. The word "property" shall include real and personal property.
- R. Real Property. "Real Property" shall include real and personal property.
- S. Shall, May. "Shall" is mandatory and "may" is permissive.

T. Shall Have Been. The words "shall have been" include past and future cases.

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

V. State. The words "the state" shall be construed to mean the State of Arizona.

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

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

Y. Time-Computation. The time within which an act is to be done as provided in this code or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day is a Saturday, Sunday or holiday it shall be excluded; and when such time is expressed in hours, the whole Saturday, Sunday or a holiday, from midnight to midnight, shall be excluded.

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

AA. Week. A "week" consists of seven consecutive days.

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

CC. Year. The word "year" shall mean a calendar year, except where otherwise provided.

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

1-4-1 Additional Rules of Construction

1-4-2 References to This Code

1-4-3 Conflicting Provisions — Different Chapters

1-4-4 Conflicting Provisions — Same Chapter

Section 1-4-1 Additional Rules of Construction

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

Section 1-4-2 References to This Code

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

Section 1-4-3 Conflicting Provisions — Different Chapters

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

Section 1-4-4 Conflicting Provisions — Same Chapter

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

ARTICLE 1-5 SECTION HEADINGS

Headings of several sections of this code are intended as a convenience to indicate the contents of the section and do not constitute part of the law.

ARTICLE 1-6 EFFECT OF REPEAL

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

ARTICLE 1-7 SEVERABILITY OF PARTS OF CODE

It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses and phrases of this code shall be severable, and, if any provision of this code is held unconstitutional for any reason by a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining provision of the code.

ARTICLE 1-8 PENALTY

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

ARTICLE 1-9 REPEAL OF EXISTING ORDINANCES

1-9-1 Effective Date of Repeal

1-9-2 Ordinances Exempt from Repeal

Section 1-9-1 Effective Date of Repeal

All ordinance of the town except those specially exempted in this article, now in force and effect are hereby repealed at twelve o'clock noon on the 7th day of June, 1995, by all rights, duties and obligations created by said ordinances shall continue and exist in all respects as if this code had not been adopted and enacted.

Section 1-9-2 Ordinance Exempt from Repeal

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

- A. Any special ordinance or ordinances regarding franchises, annexations, dedications or zoning.
- B. Any ordinance making an appropriation.
- C. Any ordinance affected any bond issue or by which any bond issue may have been authorized.
- D. The running of the statute of limitations in force at the time of this code becomes effective.

- E. The continued existence and operation of any department, agency, commission or office heretofore legally established or held.
- F. Any bond of any public officer.
- G. Any taxes, fees, assessments or other changes incurred or imposed.
- H. Any ordinance authorizing, ratifying, confirming, approving or accepting any compact or contract with any other municipality, the State of Arizona or any county or subdivision thereof, or with the United States or any agency or instrumentality thereof.

ARTICLE 1-10 EFFECTIVE DATE OF CODE

Each and every section of this code as herein contained and hereby enacted shall take effect and be in force on and after twelve o'clock noon on the 7th day of June, 1995, except that where a later effective date is provided it shall prevail.

CHAPTER 2

CORPORATE LIMITS, SEAL, DEPOSITORY, NEWSPAPER

2-1	CORPORATE LIMITS.....	2.1
2-2	CORPORATE SEAL.....	2.20
2-3	DEPOSITORY.....	2.20
2-4	NEWSPAPER.....	2.20

CHAPTER 2
CORPORATE LIMITS, SEAL, DEPOSITORY, NEWSPAPER

ARTICLE 2-1 CORPORATE LIMITS

- 2-1-1 Description
- 2-1-2 Annexations

Section 2-1-1 Description

DESCRIPTION: A description of the boundaries of the Town of Duncan shall be as follows:

Beginning at a point 660.00 ft. east of the NW corner of Sec. 19, Township 8 South, Range 32 east, G. & S.R.B. & M.; thence south 1 mile to the south line of Sec. 19; thence east 1980.00 ft. to the $\frac{1}{4}$ corner of Secs. 19-30; thence south $\frac{1}{2}$ mile of the center of said Sec. 30; thence east 4240.00 ft. more or less to a point 38 ft. west of the center line of the Southern Pacific R.R.; thence along a line (NW of and paralleling same) to a point 100.00 ft. south of the north line of Sec. 29, said Township and Range; thence N $53^{\circ}10'$ E 275.00 ft; thence N $36^{\circ}50'$ W 1120.00 ft; thence N $53^{\circ}10'$ E 470.00 ft.; thence N $36^{\circ}50'$ W 2600.00 ft.; thence S $53^{\circ}10'$ W 470.00 ft.; thence N $36^{\circ}50'$ W 1300.00 ft.; thence S $53^{\circ}10'$ W 275.00 ft.; more or less to a point 38.00 ft. west of the center line of said R.R.; thence N $36^{\circ}50'$ W to the north line of Sec. 19; thence west along said line to the place of beginning. (1961 Code)

Section 2-1-2 Annexations

ANNEXATIONS: The following described territory be and the same hereby is, annexed to the Town of Duncan, and that the present corporate limits be, and the same hereby are, extended and increased to include the following described territory contiguous to the present Town Limits, to wit:

(A) That part of Sections 5, 8, 9, 17, 18, 19, and 20, Township 8 south, Range 32 east, G & SRB & M, Greenlee County, Arizona, described as follows, and known as Hunter Estates Annexation:

Beginning at the point of intersection of the easterly Corporate Limit of the Town of Duncan and the easterly right of way line of State Highway 75, said point being S $20^{\circ}51'43''$ W 2716.05 ft. from the northeast corner of said Section 19; thence N $54^{\circ}19'00''$ E along said easterly right of way line a distance of 1240.31 ft.; thence S $35^{\circ}41'$ E along said easterly right of way line a distance of 10.0 ft.; thence N $54^{\circ}19'00''$ E along said easterly right of way line a distance of 701.89 ft.; thence along said easterly right of way line following a spiral curve to the left, the long

chord of which bears N 53°23'43" E 352.14 ft.; thence along said easterly right of way line following a circular curve to the left, the radius of which is 3324.05 ft. and the central angle of which is 27°14'26", a distance of 1580.38 ft. to the Section line between Sections 17 and 20; thence S 89°49'30" E along said easterly right of way line and said Section line a distance of 54.59 ft.; thence along said easterly right of way line following a circular curve to the left, the radius of which is 3374.05 ft. and the central angle of which is 29°00'41", a distance of 1708.43 ft. to the southerly right of way line of Carlisle Road; thence N 54°14'18" E along said southerly right of way line a distance of 894.65 ft.; thence along said southerly right of way line following a circular curve to the left, the radius of which is 5242.74 ft. and the central angle of which is 4°23'40", a distance of 401.18 ft.; thence N 49°50'38" E along said southerly right of way line a distance of 301.01 ft. to the south line of the SW¼ of the NE¼ of said Section 17; thence S 89°52'30" E along said south line a distance of 507.60 ft. to the southeast corner of said SW¼ of the NE¼; thence north along the east line of said SW¼ of the NE¼ a distance of 1320.00 ft. to the southeast corner of the NE¼ of the NE¼ of said Section 17; thence S 89°49' E along the south line of said NE¼ of the NE¼; thence north along the east line of said NE¼ of the NE¼ a distance of 1320.00 ft. to the section corner common to Sections 8, 9, 16, and 17; thence S 89°52' E along the south line of Section 9 a distance of 1321.65 ft. to the southeast corner of the W½ of the W½ of said Section 9; thence N 0°01' E along the east line of said W½ of the W½ a distance of 5280 ft. to the northeast corner of the NW¼ of the NW¼ of said Section 9; thence N 89°56' W along the north line of said Section 9 a distance of 1321.32 ft. to the section corner common to Sections 4, 5, 8, and 9; thence N 0°08' E along the east line of said Section 5 a distance of 1331.55 ft. to the northeast corner of the S½ of the SE¼ of said Section 5; thence N 89°45' W along the north line of said S½ of the SE¼ a distance of 2635.79 ft. to the northwest corner of said S½ of the SE¼; thence S 0°01'30" W along the west line of said S½ of the SE¼ a distance of 1327.01 ft. to the ¼ corner common to Sections 5 and 8; thence N 89°40' W along the north line of said Section 8 a distance of 1317.19 ft. to the northwest corner of the E½ of the W½ of said Section 8; thence S 0°01' W along the west line of said E½ of the W½ a distance of 3960.00 ft. to the southwest corner of the NE¼ of the SW¼ of said Section 8; thence S 89°44' E along the south line of said NE¼ of the SW¼ a distance of 1317.44 ft. to the northwest corner of the SW¼ of the SE¼ of said Section 9; thence S 0°01' W along the west line of said SW¼ of the SE¼ a distance of 1320.00 ft. to the ¼ corner common to Sections 8 and 17; thence south along the west line of the NE¼ of said Section 17 a distance of 2640.00 ft. to the center ¼ corner of said Section 17; thence S 89°52'30" E along the south line of said NE¼ a distance of 717.69 ft. to the northerly right of way line of said Carlisle Road; thence S 49°50'38" W along said northerly right of way line following a circular curve to the right, the radius of which is 5182.74 ft. and the central angle of which is 4°23'40", a distance of 397.50 ft.; thence S 54°14'18" W along said northerly right of way line a distance of 860.29 ft. to said easterly right of way line of State Highway 75; thence along

said easterly right of way line following a circular curve to the left, the radius of which is 3374.05 ft. and the central angle of which is 17°07'25", a distance of 1008.38 ft.; thence N 47°22'48" E along said easterly right of way line a distance of 53.04 ft.; thence along said easterly right of way line following a circular curve to the left, the radius of which is 3424.05 ft. and the central angle of which is 26°13'26", a distance of 1567.16 ft. to the south line of the NW ¼ of the NW ¼ of said Section 17; thence S 89°49' E along said south line a distance of 313.42 ft. to the southeast corner of said NW ¼ of the NW ¼; thence north along the east line of said NW ¼ of the NW ¼ a distance of 1320.00 ft. to the north line of said Section 17; thence N 89°45' W along said north line a distance of 1317.52 ft. to the section corner common to Sections 7, 8, 17, and 18; thence west along the north line of said Section 18 a distance of 1214.26 ft. to the westerly right of way line of said State Highway 75; thence S 53°44'25" E along said westerly right of way line a distance of 2184.06 ft.; thence along said westerly right of way following a spiral curve to the right, the long chord of which bears S 53°25'35" E 344.77 ft.; thence along said westerly right of way line following a circular curve to the right, the radius of which is 3174.05 ft. and the central angle of which is 72°53'36", a distance of 4038.12 ft. to the section line between Sections 17 and 20; thence S 89°49'30" E along said westerly right of way line and said section line a distance of 55.10 ft.; thence along said westerly right of way line following a circular curve to the right, the radius of which is 3224.05 ft. and the central angle of which is 26°27'11", a distance of 1488.52 ft.; thence along said westerly right of way line following a spiral curve to the right, the long chord of which bears S 53°17'55" W 347.30 ft.; thence S 54°19'00" W along said westerly right of way line a distance of 701.89 ft.; thence S 35°41' E along said westerly right of way line a distance of 10.0 ft.; thence S 54°19' W along said westerly right of way line a distance of 1240.11 ft. to said easterly Corporate Limit of the town of Duncan; thence S 36°50' E along said easterly Corporate Limit a distance of 80.0 ft. to the Point of Beginning. (7-25-74)

(B) That part of the E½ of the NW¼ of the SE½ of Section 30, Township 8 South, Range 32 East, G S R B & M, records of Greenlee County, Arizona more fully described as follows, and known as the Duncan Heights Annexation:

Beginning at the E1/16 corner of said section at a Brass Cap, which is also the true point of beginning; thence S 00°55'00" E a distance of 1319.09 ft. to a Brass Cap which is the SE1/16 corner of said Section; thence S 89°58'58" W a distance of 657.62 ft. to a point; thence N 00°44'19" W a distance of 1319.41 ft. to a point; thence S 89°59'02" E a distance of 653.53 feet to the true point of beginning. Containing 19.854 acres, more or less. (7-1-83)

(C) That part of the NW ¼ of Section 20, Township 8 South, Range 32 East, G S R B & M, Greenlee County, Arizona, described as follows, and known as the Fairgrounds Road Annexation:

Beginning at a point on the northwesterly right of way of the New Clifton-Duncan Highway that is S 89°49'30" E 1761.08 ft. from the NW corner of said Section 20; thence N 89°49'30" W 1741.08 ft. to the easterly right of way of the Old Duncan-Clifton Highway; thence S 0°02'30" W 898.57 ft. following said right of way; thence along the curve to the left having a radius of 794.13 feet for a distance of 370.27 ft. (having a central angle of 28°19'10" and a tangent of 189 ft.); thence S 28°16'40" E a distance of 136.45 ft.; thence along a curve to the right having a radius of 558.68 ft. for a distance of 178.47 ft. (having a central angle of 18°18'10" and a tangent of 90 ft.); thence S 9°36'08" E a distance of 72.01 ft.; thence along the New Clifton-Duncan Highway northwesterly right of way line to the point of beginning;

EXCEPT the following described property lying in the NW¼ of Section 20, Township 8 South, Range 32 East of the G S R B 7 M, described as follows:

Beginning at a point along the northwest right of way of the New Clifton-Duncan Highway, that is S 89°49'40" E 17961.08 ft. from the NW corner of said Section 20; thence N 89°49'30" W 745.94 ft.; thence S 0°10'30" W 1019.79 ft. to the northwest right of way of the New Clifton-Duncan Highway; thence in the northeasterly direction following said highway right of way to the true point of beginning. (7-11-83)

ARTICLE 2-2 CORPORATE SEAL

A reasonable facsimile of the Corporate Seal of the Town of Duncan shall be reproduced herein as follows:

ARTICLE 2-3 DEPOSITORY

The depository for the Municipal funds of the Town of Duncan shall be designated as Community First National Bank, Duncan, AZ, (and its successors) formerly Valley National Bank, Duncan, AZ, and Bank One Arizona, Duncan, AZ.

ARTICLE 2-4 NEWSPAPER

The Copper Era is hereby designated s the official newspaper of the Town of Duncan.

CHAPTER 3
MAYOR AND COUNCIL

3-1 COUNCIL.....3.1

3-2 MAYOR.....3.2

3-3 ELECTION.....3.4

3-4 COUNCIL PROCEDURE.....3.5

3-5 ORDINANCES, RESOLUTIONS AND CONTRACTS.....3.9

CHAPTER 3 MAYOR AND COUNCIL

ARTICLE 3-1 COUNCIL

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

Section 3-1-1 Elected Officers

A. The elected officers of the town shall be five councilmembers, one of whom shall be elected directly by the people as mayor in accordance with section 3-2-1. The mayor and councilmembers shall constitute the council and shall continue in office until assumption of duties of office by their duly elected successors.

B. The mayor and councilmembers shall serve four year overlapping terms in the manner provided by state statute.

Section 3-1-2 Corporate Powers

The corporate powers of the town shall be vested in the council and shall be exercised by ordinance, resolution, order or motion.

Section 3-1-3 Duties of Office

A. Assumption of office: The mayor and members of the council shall assume the duties of office at the regularly scheduled meeting next following the date of the general election at which, or effective as of the date of which, the mayor and councilmembers were elected.

B. Financial Obligations: All councilmembers shall be on the town accounts with authorization to sign checks. In the absence of the mayor or vice-mayor, councilmembers shall be called upon to sign checks as they are available.

Section 3-1-4 Vacancies in Council

The council shall fill by appointment for the unexpired term any vacancy that may occur for whatever reason.

Section 3-1-5 Compensation

The compensation of elected officers of the town shall be fixed from time to time by ordinance or resolution of the council.

Section 3-1-6 Oath of Office

Immediately prior to assumption of the duties of office, the mayor and each councilmember shall, in public, take and subscribe to the oath of office.

Section 3-1-7 Bond

Prior to taking office, the mayor and every councilmember shall execute and file an official bond, enforceable against the principal and his or her sureties, conditioned on the due and faithful performance of his official duties, payable to state and to and for the use and benefit of the town or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. A person so injured or aggrieved may bring suit on such bond under provisions identical to those contained in section 38-260 of the Arizona Revised Statutes. Bonds shall be in such sum as shall be provided by resolution, and the premium for such bonds shall be paid by the town.

Section 3-1-8 Financial Disclosure Statement

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

ARTICLE 3-2 MAYOR

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

Section 3-2-1 Mayor

The mayor shall be directly elected by the qualified electors of the town.

Section 3-2-2 Vice Mayor

At the same meeting at which the council assumes the duties of office as provided in Section 3-1-3, the council shall designate one of its members as vice-mayor, who shall serve at the pleasure of the council. The vice-mayor shall perform the duties of the mayor during absence or disability.

Section 3-2-3 Acting Mayor

In the absence or disability of both the mayor and vice-mayor, the council may designate another of its members to serve as acting mayor who shall have all the powers, duties and responsibilities of the mayor during such absence or disability.

Section 3-2-4 Powers and Duties of the Mayor

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

- A. He or she shall be the chief executive officer and chief financial officer of the town.
- B. He or she shall be the chairman of the council and preside over its meetings. He or she may make and second motions and shall have a voice and vote in all its proceedings.
- C. He or she shall execute and authenticate by his or her signature such instruments as the council, any statutes or this code shall require including, but not limited to: contracts, intergovernmental agreements or other financially binding documents. He or she shall be the primary signatory on all checks issued by the town.
- D. He or she shall make such recommendations and suggestions to the council as he may consider proper.
- E. He or she may, by proclamation, declare a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing or any other natural or man-made calamity or disaster or in the event of the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the town. After declaration of such emergency, the mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the town, including but not limited to:
 - 1. Imposition of a curfew in all or any portion of the town.
 - 2. Ordering the closing of any business.
 - 3. Closing to public access any public building, street or other public place.
 - 4. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.

F. He or she shall perform such other duties required by state statute and this code as well as those duties required as chief executive officer of the town.

G. The Town Manager reports directly to the Mayor, who is his or her direct supervisor, in accordance with all applicable provisions of the personnel policy manual.

H. The Mayor shall approve any and all agendas before posting. The Mayor shall also approve all public postings, meeting notices, resolutions and any or all information before their public dissemination.

Section 3-2-5 Absence of Mayor

The mayor shall not absent himself or herself from the town for a greater period than thirty consecutive days without the consent of the council.

Section 3-2-6 Failure to Sign Documents

If the mayor is absent or refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring his or her signature for five days consecutively, than a majority of the members of the council may, at any regular or special meeting, authorize the vice-mayor or, in his or her absence, an acting mayor to sign such ordinance, resolution, contract, warrant, demand or other document or instrument which, when so signed, shall have the same force and effect as if signed by the mayor.

ARTICLE 3-3 ELECTION

- 3-3-1 Primary Election
- 3-3-2 Non-Political Ballot
- 3-3-3 General Election Nomination
- 3-3-4 Election to Office
- 3-3-5 Candidate Financial Disclosure

Section 3-3-1 Primary Election

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

Section 3-3-2 Non-Political Ballot

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

Section 3-3-3 General Election Nomination

If at any primary election held as above provided there be any office for which no candidate is elected, then as to such office, said election shall be considered to be a primary election for nomination of candidates for such office, and the second or general municipal election shall be held to vote for candidates to fill such office.

Candidates to be placed on the ballot at such second or general municipal election shall be those not elected to any given office or less than that number if there be less than that number named on the primary election ballot, and persons who receive the highest number of votes for the respective offices at such first election shall be the only candidates at such second election, provided that if there be any person who, under the provisions of this article, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes therefore, then all such persons receiving an equal number of votes shall likewise become candidates for such office.

Section 3-3-4 Election to Office

The candidates equal in number to the persons to be elected who receive the highest number of votes shall be declared elected.

Section 3-3-5 Candidate Financial Disclosure

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

ARTICLE 3-4 COUNCIL PROCEDURE

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

3-4-10 Absence of Councilmember

Section 3-4-1 Regular Meetings

The council shall hold one regular meeting each month, unless the need for a second meeting arises, with dates and times to be set from time to time. If the day fixed for any regular meeting of the council falls upon a day designated by law as a legal holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday. All regular meetings of the council shall be held at a time, and location as determined by the mayor and as designated in the notice of the meeting.

Section 3-4-2 Special Meetings

The mayor, upon his or her own motion, or the vice-mayor upon the request of the town manager, may convene the council at any time by notifying the members of the date, hour, place and purpose of such special meeting. Notice of such meeting shall be made pursuant to state law.

Section 3-4-3 Meetings To Be Public

All proceedings of the council shall be open to the public, except that upon approval by a majority vote of the council, the council may meet in a closed executive session in the manner provided by state law.

Section 3-4-4 Quorum

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

Section 3-4-5 Agenda

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

Section 3-4-6 Order of Business

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

- A. Call to Order: The mayor shall take the chair precisely at the hour appointed for the meeting and shall immediately call the council to order. In the absence of both the mayor and vice-mayor, the clerk shall call the council meeting to order and an acting mayor shall be selected to chair the meeting. Upon the arrival of the mayor or the vice-mayor, the vice-mayor or the acting mayor shall immediately relinquish the chair upon the conclusion of the business immediately before the council. The mayor shall preserve order and decorum, decide all questions of order and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in the *Robert's Rules of Order* unless otherwise specified.
- B. Roll Call: Before proceeding with the business of the council, the clerk or his or her deputy shall call the roll of the members, and the names of those present shall be entered in the minutes. If a quorum is not present, the members present may adjourn pursuant to Section 3-4-4.
- C. Minutes: The clerk or his or her deputy shall read or present the minutes of the preceding council meeting, which shall be approved if correct. Any errors noted shall be corrected.
- D. Petitions: Petitions, remonstrances, communications and comments or suggestions from citizens present shall be heard by the council. All such remarks shall be addressed to the council as a whole, and not to any member thereof. Such remarks shall be limited to five minutes, unless additional time is granted by the council. No person other than the individual speaking shall enter into the discussion without the permission of the presiding officer. No questions shall be asked a councilmember except through the presiding officer.
- E. Report by Officers: Town officials and committees shall present any reports required by the council.
- F. Unfinished Business: The council shall consider any business that has been previously considered and which is still unfinished.
- G. New Business: The council shall consider any business not heretofore considered, including the introduction of ordinances and resolutions.
- H. Claims: The clerk shall present any claims against the town which will then be approved or disapproved by the council.
- I. Miscellaneous Business: Prior to adjournment, the council shall, as it deems necessary, consider such business as is not specifically provided herein.

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

Section 3-4-7 Committees and Commissions

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

Section 3-4-7.1 Appointment; Term

The Duncan Public Library shall be managed by an Administrative Board consisting of seven (7) members. Each member shall represent a specific area of Southern Greenlee County served by the library.

Administrative board members may serve on said board until they resign or until they have three (3) consecutive unexcused absences.

The administrative board will appoint new members to said board as necessary and shall notify the Town as to all new appointments.

Section 3-4-7.2 Organization; Meetings

The administrative board shall have charge of the library and all library property. They shall meet for business purposes on the first Tuesday of each month, and at such other times as they shall appoint, at a place to be provided for the purpose. They may elect from their body a president, vice-president, secretary and treasurer; and any other officers deemed necessary. They may also adopt an official seal. The secretary shall keep a full statement and account of all property and a record of all proceedings of the board. All library board meetings must be posted 24 hours prior to the meeting. The treasurer shall keep all financial records; bank statement, receipts, expenditures, savings accounts, special funds and trust funds. The administrative boards shall appoint the librarians needed to operate the library.

Section 3-4-7.3 Powers of Administrative Board

The board by a majority vote of their members may:

- A. Make and enforce all rules, regulations and by-laws, necessary for the administration and government of the library and all library property.
- B. Exercise and administer any trust declared or created for the library.

- C. Define the powers and prescribe the duties of officers and elect and remove at will officers and assistants.
- D. Purchase necessary books, journal, publications and other personal property.
- E. Order the drawing and payment, upon property authenticated vouchers, certified by the President and Treasurer, of money out of library funds for any liability authorized.
- F. Fix the salary of the librarians.
- G. With the knowledge of the governing board of the town, purchase real property and erect and equip buildings as may be necessary for the library and reading room. (A.R.S.)
- H. Designate a board member to attend all meetings of the governing board of the town. This person shall act as liaison between the governing board of the town and the administrative board of the library.

Section 3-4-8 Voting

- A. The mayor shall vote as a member of the council.
- B. Upon the request of any member, the ayes and nays upon any questions shall be taken and entered in the minutes.

Section 3-4-9 Suspension of Rules

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

Section 3-4-10 Absence of Councilmembers

Councilmembers shall not absent themselves from the town for a greater period than thirty consecutive days without the consent of the council.

ARTICLE 3-5 ORDINANCES, RESOLUTIONS AND CONTRACTS

- 3-5-1 Prior Approval
- 3-5-2 Reading of Proposed Ordinance
- 3-5-3 Requirements for an Ordinance
- 3-5-4 Effective Date of Ordinance
- 3-5-5 Signatures Required

- 3-5-6 Publishing Required
- 3-5-7 Posting Required

Section 3-5-1 Prior Approval

All ordinances, resolutions and contract documents shall, before presentation to the council, have been reviewed as to form by the attorney and shall, when there are substantive matters of administration involved, be referred to the person who is charged with the administration of the matters. Such person shall have an opportunity to present to the passage of the ordinance, resolution or acceptance of the contract.

Section 3-5-2 Reading of Proposed Ordinance

All ordinances shall have at least one reading. The council shall be in possession of printed copies of said ordinance. Upon the request of any member of the council, the ordinance shall be read in full.

Section 3-5-3 Requirements for an Ordinance

Each ordinance should have but one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this code or to an existing ordinance, and, in such case, the title of the sections to be amended shall be included in the ordinance.

Section 3-5-4 Effective Date of Ordinances

No ordinance, resolution or franchise shall become operative until thirty days after its passage by the council and approval by the mayor, except measures necessary for the immediate preservation of the peace, health or safety of the town. Such an emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become operative, and unless it is approved by ayes and nays.

Section 3-5-5 Signatures Required

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

Section 3-5-6 Publishing Required

Only such orders, resolutions, ordinance, motions, regulations or proceedings of the council shall be published as may be required by state statutes or expressly ordered by the council.

Section 3-5-7 Posting Required

Every ordinance imposing any penalty, fine, forfeiture or other punishment shall, after passage, be posted by the clerk in three public places within the town and affidavit of the person who posted the ordinance shall be filed in the office of the clerk as proof of posting.

CHAPTER 4

ADMINISTRATION

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CHAPTER 4 ADMINISTRATION

ARTICLE 4-1 OFFICERS IN GENERAL

- 4-1-1 Officers
- 4-1-2 Additional Officers
- 4-1-3 Bond
- 4-1-4 Vacancies; Holding More Than One Office
- 4-1-5 Additional Powers and Duties

Section 4-1-1 Officers

A. There are hereby created the offices of town manager, town clerk, police marshal, town attorney and town magistrate who shall be appointed by the council and who shall serve at the pleasure of the council, with the exceptions provided in Section 4-2-6 and 4-2-5.

B. The town manager is authorized to act as the town clerk and treasurer.

Section 4-1-2 Additional Officers

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

Section 4-1-3 Bond

The council may require each officer of the town to give bond for the due discharge of his or her duties in such sums and with such security as it may direct and approve as determined by resolution. The town shall pay the costs of such bond.

Section 4-1-4 Vacancies; Holding More Than One Office

Any vacancy that shall occur in any town office shall be filled by appointment by council, provided that one person may hold more than one office and that at the discretion by a deputy or another town official, or an otherwise qualified individual not holding office but employed at the pleasure of the council.

Section 4-1-5 Additional Powers and Duties

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

ARTICLE 4-2 OFFICERS

- 4-2-1 Town Manager
- 4-2-2 Town Clerk
- 4-2-3 Town Marshall
- 4-2-4 Town Attorney
- 4-2-5 Town Magistrate
- 4-2-6 Removal of Officers

Section 4-2-1 Town Manager

4-2-1.1 Appointment: The office of the town manager is hereby created and established. The town manager shall be appointed by the council wholly on the basis of his or her administrative and executive ability and qualifications and shall hold office for and at the pleasure of the council. The town manager may hold more than one town position simultaneously as directed by the council.

4-2-1.2 Bond: The town manager shall furnish a corporate surety bond to be approved by the council, and shall be conditioned upon the faithful performance of the duties imposed upon the manager as herein prescribed. Any premium for such bond be a proper charge against the town.

4-2-1.3 Compensation: The town manager shall receive such compensation as the council shall fix from time to time and shall accrue a vacation privilege as provided in the Personnel Policy Manual.

4-2-1.4 Removal Procedure: The town manager may be removed by a majority vote of the council, with or without cause. If the removal is for cause and if requested, the council shall grant the individual a public hearing within thirty days following notice of removal. If the removal is without cause, it shall become operative thirty days from the date of the notice of removal. During the interim the council may suspend the manager from duty, but shall continue his or her salary for three months following the removal date, provided however that the manager shall have been in the service of the town for at least one calendar year.

4-2-1.5 Powers and Duties: The town manager shall be the administrative head of the government of the town under the direction and control of the council except as otherwise provided in this chapter. He or she shall be responsible to the council for the proper administration of all affairs of the town. In addition to his or her general powers as administrative head and not as a limitation thereon, it shall be his or her duty and he or she shall have the powers set forth in the following subsections.

Prepare the budget annually and submit it to the council together with a message describing the important features and be responsible for its administration after adoption.

Prepare and submit to the council at the end of the fiscal year a complete report on the finances and administrative activities of the town of the preceding year.

Keep the council advised of the financial condition and future needs of the town and make such recommendations as he or she may deem desirable.

Recommend to the governing body a standard schedule of pay for each position in the town service, including minimum, intermediate and maximum rates. Authorize the payment of overtime pay for such employees as may work in excess of a normal work period. Such rates of pay and period of work shall be in conformity with wages and salaries enacted by the town council.

Recommend to the governing body from time to time adoption of such measure as he or she may deem necessary or expedient for the health, safety or welfare of the community or for the improvement of administrative services.

The town manager shall have the supervisory authority over all departments and shall therefore have authority to direct the activities of and to hire and terminate all employees including department heads, with cause, after consultation with his immediate supervisor.

Attend all meetings of the council unless excused therefrom, and take a part in the discussion of all matters coming before the council. He or she shall be entitled to notice of all regular and special meetings of the council. In the event that the manager will not be able to attend a council meeting, he or she will give the mayor 24 hours notice and state the reason therefore.

Supervise the purchase of all materials, supplies and equipment for which funds are provided in the budget; let contracts necessary for operation or maintenance of the town services for amounts up to and including two thousand dollars, receive sealed bids for purchases or contracts in excess of two thousand dollars and present them to the council for approval, and advise the council on the advantages or disadvantages of contract and bid proposals. No contract in excess of two thousand dollars and no contract for new construction shall be let except by the council. The manager may issue such rules governing purchasing procedures within the administrative organization as the council shall approve.

In case of accident, disaster or other circumstances creating a public emergency, the manager may award contracts and make purchases for the purpose of meeting said emergency; but he or she shall file promptly with the council certificate showing

such emergency and the necessity for such action, together with an itemized account of all expenditures.

Investigate the affairs of the town or any department or division thereof. Investigate all complaints in relation to matters concerning the administration of the government by the town and in regard to service maintained by the public utilities in the town, and see that all franchises, permits and privileges granted by the town are faithfully observed.

Perform such other duties as may be required by the council, not inconsistent with state law or town ordinances.

See that all laws and ordinances are duly enforced.

Section 4-2-2 Town Clerk

A. Records: The clerk shall keep a true and correct record of all business transacted by the council and any other records that either pertain to the business of the town or that the council directs. The clerk shall number, plainly label and file separately in a suitable cabinet all resolutions, ordinances, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders and other documents of whatever nature.

B. Public Inspection of Records: The clerk shall keep convenient for public inspection all public records and public documents under his or her control, as provided by the state statute.

C. Monthly Reports: The clerk shall prepare and collect from town officers and employees such monthly reports prepared in such manner and to include such information as may be directed by the council.

D. Minutes: The clerk shall prepare or cause to be prepared all minutes of council proceedings and ensure their correctness and accuracy.

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

F. Duties As Treasurer: The clerk shall hold the office of town treasurer and receive and safely keep all moneys that shall come to the town and pay out the same when authorized by council and/or town manager. The town clerk shall be the primary signatory for all town accounts. The town manager and assistant town clerk (in that order) shall function as secondary signatories in his or her absence. He or she shall keep separate records and accounts of each different fund provided by the

council, apportion the moneys received among the different funds as prescribed by the council and keep a complete set of books showing: every money transaction of the town, the state of each fund, from what source the money in each fund was derived and for what purpose expended, and he or she shall make monthly reports to the council of all receipts and disbursements and the balance in each fund.

At the end of the fiscal year, he or she shall make a full and detailed statement of the receipts and expenditures of the town during the year, specifying the different sources of revenue and the amount received from each, all appropriations made by the mayor and council, and the object for which they were made, indebtedness issued, and what portion remains thereof outstanding, with the rate and amount of interest due thereon, and the amount of cash on hand.

G. Election Official: The clerk shall be the town election official and perform those duties required by state statute.

H. Licenses: The clerk shall issue or cause to be issued all licenses that may be prescribed by state statute or this code.

I. Administrative Duties: The clerk shall perform those administrative responsibilities and duties that are conferred upon him or her by the council in addition to those specified in this code.

Section 4-2-3 Police Chief

The chief of police shall perform such duties as may be required of him or her by law and as the council may deem necessary. In the event the Town of Duncan does not have a marshal or police chief acting as a peace officer certified by the Arizona Peace Officer Standards and Training Board, the Greenlee County Sheriff's Department may assume the aforementioned duties through an intergovernmental agreement.

Section 4-2-4 Town Attorney

The attorney shall act as the legal counselor and advisor of the council and other town officials and, as such, shall give his or her opinion in writing when requested by the council. He or she shall draft all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when required by the council. He or she shall approve as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the council. He or she shall return, within ten days, all ordinances and resolutions submitted to him or her for consideration by the council, with his or her approval or disapproval as to form noted thereon. He or she shall prosecute and defend all suits, actions or causes where the town is a party, and shall report to the council meetings at the request of the town manager.

Section 4-2-5 Town Magistrate

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

Section 4-2-6 Removal of Officers

Officers appointed by the council as set forth in Section 4-1-1 may be removed from office upon the majority vote of all members elected or appointed to the council.

Section 4-2-7 Contract for Services

The council may, by a two-thirds vote, elect to enter into a contract for services with any of its officers on such terms or conditions as may be agreed upon in the contract.

ARTICLE 4-3 PERSONNEL

4-3-1 Rules and Regulations

4-3-2 Political Contributions

Section 4-3-1 Rules and Regulations

The council may adopt by resolution personnel rules and regulations, which may be modified or changed from time to time, but such rules and regulations shall follow the generally accepted principles of good personnel administration.

Section 4-3-2 Political Contributions

No officer, official or employee of the town shall use any influence or pressure upon any employee to obtain any assessment or contribution of money or time, either direct or indirect, for any political campaign or personal gain.

ARTICLE 4-4 PURCHASING

Sections:

Article I. Generally

- 4-4-1 Generally**
- 4-4-2 Definitions**

Article II. Purchasing Policy

- 4-4-3 Council approval – When required.**
- 4-4-4 Purchasing director – Duties.**
- 4-4-5 Purchases in general.**
- 4-4-6 Exclusive service.**
- 4-4-7 Bidding procedure.**
- 4-4-8 Award of bid.**
- 4-4-9 Performance bond.**
- 4-4-10 Emergency purchases.**
- 4-4-11 Forms.**
- 4-4-12 Professional and technical services.**
- 4-4-13 Local preference.**
- 4-4-14 Purchase orders.**
- 4-4-15 Expenditures; Signatures on Checks**
- 4-4-16 Cooperative purchasing.**
- 4-4-17 Promotion of maximum practicable competition.**
- 4-4-18 Construction projects.**

Article III. Bid Protest – Procedures and Resolution

- 4-4-19 Protest procedure.**
- 4-4-20 Stay of purchase during protest.**
- 4-4-21 Resolution of solicitation and contract award protests.**
- 4-4-22 Remedies by the purchasing director.**

Article IV. Disposal of Surplus Property

- 4-4-23 Surplus supplies and equipment.**

Article I. Generally

4-4-1 Scope of article.

This article shall govern the purchase of supplies, materials and equipment at the lowest possible cost commensurate with the quality needed. All purchases shall be in accordance with appropriate standards and specifications as promulgated by the purchasing director in Town of Duncan purchasing policy.

4-4-2 Definitions.

“Lowest responsive bid or offer” shall mean the bid or offer that adheres to the established needs of the Town, as expressed in the solicitation for products or services, at the lowest net cost to the Town.

“Most advantageous bid or offer” shall mean the submitted proposal, offer or bid that conforms most favorably in terms of the requirements for price, delivery, quality or other evaluation criteria as set forth in the solicitation for products or services.

“Services” means any and all services, including, but not limited to, the repair or maintenance of equipment, machinery and other Town owned or operated property, and other technical services. The term does not include public works projects or services rendered by Town officers or employees, or professional services, as set forth in Section 4-4-12, and other contractual services which are in their nature unique or not subject to competition, as set forth in 4-4-6.

Article II. Purchasing Policy

4-4-3 Council approval – When required.

Council approval of the annual municipal budget shall be construed to include authority for the making of municipal expenditures as set forth in said budget except as may be otherwise provided by the Council by resolution. Town council approval shall be required for any purchase that exceeds \$50,000 (except for emergency purchases made in accordance with Section 4-4-10).

4-4-4 Purchasing director – Duties.

- A. The Town manager shall be designated as purchasing director.
- B. The purchasing director, or the purchasing director’s designee, shall:
 - 1. Maintain sufficient documentation of all purchase transactions to provide evidence of compliance with the requirements of state and federal law, and the provisions of this code;
 - 2. Approve or deny all purchase requests and shall report to the council on any purchase requiring council approval;

3. Have the authority to resolve solicitation and contract award protests.

C. No purchase or contract for services of any kind or description, payment for which is to be made from funds of the Town, shall be made by the purchasing director, or any officer, employee or agent of the Town, except in the manner set forth in this article, and unless said purchase is in accordance with the adopted Town budget.

4-4-5 Purchases in general.

A. *Purchases under Ten Thousand Dollars (\$10,000).* Whenever any contemplated purchase or contract for services is for the sum of less than ten thousand dollars (\$10,000), the purchasing director, or the purchasing director's designee, may order the item as needed without further formality, subject to Section 4-4-14, if applicable.

B. *Purchases from Ten Thousand Dollars (\$10,000) to Fifty Thousand Dollars (\$50,000).* Whenever any contemplated purchase or contract for services is for the sum of at least ten thousand dollars (\$10,000) but not more than fifty thousand dollars (\$50,000), the purchasing director, or the purchasing director's designee, shall obtain at least three written quotes on vendor letterhead, if possible. The purchasing director may solicit quotes or advertise for quotes using the procedure provided in this article. Upon review of the quotes, the purchasing director shall award the purchase or contract to the most advantageous bidder.

C. *Purchases in Excess of Fifty Thousand Dollars (\$50,000).* No single purchase or contract in an amount in excess of fifty thousand dollars (\$50,000), where the purchase was not approved by council in the budget or as a separate item, shall be awarded without prior council approval. Unless otherwise exempted under this article, all such purchases shall be made in accordance with Section 4-4-7.

D. *Purchases of Utilities.* Purchases of water, sewer, electrical, and telephone services where the purchasing manager has determined that the services can only be obtained from one provider under Section 4-4-6 are exempt from the requirements of this section.

4-4-6 Exclusive service.

A. In the event that there is only one firm or company or individual capable of reasonably providing a particular service or commodity and such services or commodities cannot be secured from other persons or companies, the requirement of this article concerning bidding procedures shall not be applicable. The purchasing director shall make a determination of exclusive service following extensive research and shall maintain documentation of such determination.

B. The use of this article may be considered unreasonable if the purchasing director determines, after a good faith review of available resources, that there may be more than one source for the required good or service but:

1. The firm, company or individual is the single provider of goods or services which have unique characteristics essential to the operational needs of the Town and no other product or service will be suitable for use; or
2. The firm, company or individual has unique historical, institutional knowledge and experience which will provide a continuity of service, efficiency and cost effectiveness not available from any other vendor; or
3. The unique and specialized expertise of one source of services is unlikely to be obtained from any other source.

4-4-7 Bidding procedure.

Except as provided in Section 4-4-6, 4-4-12 and 4-4-16, the purchasing director shall follow the procedure set forth in this section for all purchases and contracts subject to the bidding process:

- A. A notice or solicitation for bids shall state the date, time and place of opening, and the place and time period within which bids shall be submitted.
- B. The notice shall state with particularity the goods or services required and shall state the place where specifications may be examined.
- C. Bids shall be submitted as designated in the notice or solicitation for bids. Any bid not received within the time period allowed shall be rejected.
- D. The purchasing director or the council shall have the right to reject any and all bids and parts of bids and to readvertise or resolicit for bids.

4-4-8 Award of bid.

Unless the council or the purchasing director, as appropriate, shall exercise the right of rejection, all goods and services in an amount in excess of fifty thousand dollars (\$50,000) shall be awarded to the lowest responsive bidder or most advantageous offeror. In determining the lowest responsive bidder or most advantageous offeror, the council or the purchasing director may consider:

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required in a timely manner as specified in the scope of services.
- B. The quality of performance in previous contracts with the Town together with previous and existing compliance with the ordinances of the Town.
- C. The financial resources and ability of the bidder.

D. The quality, availability and adaptability of the goods or service.

E. Qualities and/or characteristics that the Town deems highly desirable which are (1) not offered by another lower bidder and (2) will result in advantages not previously realized and, therefore, not called out in the bid specification form.

4-4-9 Performance bond.

The purchasing director shall have the authority to require a performance bond, in such amount as it may find reasonably necessary to protect the interests of the Town, and the form and amount of such bond shall be specified in the notice inviting bids, or if none is specified in the notice inviting bids, the usual and customary form of bond for the contract to be awarded.

4-4-10 Emergency purchases.

In case of an emergency which requires immediate purchases of supplies, materials, equipment or services the Town manager may delegate the authority to secure, by informal procedure, at the lowest obtainable or advantageous price, any supplies, materials, equipment or services regardless of the amount of the expenditure. An emergency shall be deemed to exist if:

A. There is a great public calamity;

B. There is immediate need to prepare for national or local defense;

C. There is a breakdown in machinery or an essential service which requires the immediate purchase of supplies or services to protect the public health, welfare and safety; or

D. An essential departmental operation affecting the public health, welfare and safety would be greatly hampered if the prescribed purchasing procedure would cause an undue delay in procurement of the needed item or service.

4-4-11 Forms.

The purchasing director shall prescribe and maintain such forms as may be necessary for the proper administration of this article, including but not limited to the following:

A. *Bid Specification Form.* The bid specification form shall state the specifications for the goods or service required and shall be available for inspection by prospective bidders as of the first publication of the notice of bid.

B. *Notice to Bidders.* The notice to bidders shall set forth the goods or services sought, the day, time and place when bids will be opened, the dates and times within which bids will be received, when

specifications may be reviewed and where available and such other information as may be required to secure the most advantageous bids.

4-4-12 Professional and technical services.

A. The provisions of Section 4-4-7, unless required by law or contract, shall not apply to the procurement of professional or technical services, but the purchasing director, or the purchasing director's designee, shall determine the scope of the services required and may, at the purchasing director's option, require the submission of proposals prior to engaging such services. For the purposes of this article, "professional or technical services" means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the person(s) rendering the services are of primary importance. Professional and technical services shall include, but not be limited to, services provided by architects, attorneys, accountants, construction and project managers, dentists, design professionals, engineers, geologists, physicians, nurses, psychologists, teachers, veterinarians and health care providers, which provide a combination of professional and paraprofessional services or any other professions and services defined as professional services by state law.

B. No person or firm practicing in a professional or technical field for which a license is required by state law shall be engaged by the Town unless possessing a current license in good standing.

C. Upon engagement the Town shall enter into a written agreement or memorandum of understanding for the performance of the services for which engaged, setting forth the scope of services and the unit or total price therefor.

D. Professional and technical services shall be procured in accordance with federal or state law whenever applicable.

4-4-13 Local preference.

A. All purchases of supplies and equipment where the estimated value of the transaction does not exceed fifty thousand dollars (\$50,000) shall be evaluated under the local vendor preference criteria under this section. As used in this section, a "local vendor" shall be defined as a business that has an established physical location within the Town limits.

1. For purchases with a value between ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) where the informal bidding procedure is followed, a local vendor shall be given a credit of one percent of its submitted bid in the determination of lowest responsible bidder.
2. There shall be no local vendor preference for purchases where the formal bidding procedure is followed.
3. To qualify for credit under this section, the local vendor must comply with all applicable provisions of this article, and the local vendor's price quote or informal bid must be found to be responsive.

4. The purchasing director, or the purchasing director's designee, shall make all reasonable efforts to solicit price quotations and informal bids from local vendors.

B. This preference shall not be used where state law or any applicable federal statute or regulation forbids the granting of such preference, or requires another method for competitive bidding. This section shall not apply to contracts for professional services pursuant to this article, nor to purchases made pursuant to Section 4-4-16.

4-4-14 Purchase orders.

A. *In General.* The purchasing director shall provide forms of purchase order which shall be used for the purchase of all goods and services for or on behalf of the Town. Any purchase order in an amount over \$10,000 shall require council approval.

B. *Open Purchase Orders.* An open purchase order shall be limited to a single source.

4-4-15 Expenditures; Signatures on Checks

A. Payments for purchases shall be made by check or credit card.

B. All checks for expenditures of Town monies shall bear two signatures:

1. A signature of the Town Clerk, or Town Manager; and
2. A signature of the Mayor or one Town Council member.

4-4-16 Cooperative purchasing.

This article shall not apply to purchases made by, through or with agencies of the United States Government, the state of Arizona or its political subdivisions. The Town may make purchases or award contracts for services without a formal bidding process whenever other governmental units have completed a formal bidding process, or updated the underlying contract, for the same item or service and if, in the opinion of the purchasing director, a separate bidding process is not likely to result in a lower price for such items or services.

4-4-17 Promotion of maximum practicable competition.

A. *Maximum Competition Encouraged.* All specifications for bids or proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs. Specifications shall not be unduly restrictive.

1. To the extent practicable and unless otherwise permitted by this section, all specifications shall

describe the Town's requirements in a manner that does not unnecessarily exclude a specific material, service or construction item.

2. To the extent practicable, the Town shall use accepted commercial specifications and shall procure standard commercial materials and, absent significant justification, avoid proprietary specifications.

B. *Brand Name or Approved Alternate.* Proprietary or brand name specifications shall not be used unless the purchasing director determines, in writing, that such specifications are required by demonstrable technological justification, that it is not practicable or advantageous to use a less restrictive specification, that the use of such a specification is in the best interests of the Town, and if the solicitation provides for the submission of equivalent products.

1. A brand name or approved alternate specification shall designate as many different brands as are practicable as "approved alternate" references.

2. A brand name or approved alternate specification shall include a description of the particular design, functional or performance characteristics that are required, unless the purchasing director determines, in writing, that the essential characteristics of the brand names designated in the specifications are commonly known.

3. A solicitation that uses a brand name or approved alternate specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

4-4-18 Construction projects.

A. Provided the cost of the project exceeds the statutorily established amount, the procurement of both horizontal and vertical construction projects shall be governed by state law. The purchasing director shall consult and adhere to the Arizona Revised Statutes when procuring goods and services related to construction.

B. When the cost of a construction project falls below the statutorily established amount, the project shall be procured pursuant to the provisions of this code.

C. Alternative delivery methods, such as design bid build, construction manager at risk, design build, and job order contracting, may be utilized for applicable purchases. These purchases must be in compliance with Arizona Revised Statutes.

Article III. Bid Protest – Procedures and Resolution

4-4-19 Protest procedure.

- A. Any interested party may protest a determination of not susceptible for award or the award of a contract.
- B. The interested party shall file a protest in writing with the purchasing director including the following minimal information:
 - 1. The name, address and telephone number of the interested party;
 - 2. The signature of the interested party or the interested party's representative;
 - 3. Identification of the solicitation or contract number;
 - 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - 5. The form of relief requested.
- C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D. In cases other than those covered in subsection (C) of this section, the interested party shall file the protest within 10 days after the purchasing director makes the purchasing file available for public inspection.
- E. The interested party may submit a written request to the purchasing director for an extension of the time limit for protest filing set forth in subsection (D) of this section. The written request shall be submitted before the expiration of the time limit set forth in subsection (D) of this section and shall set forth good cause as to the specific action or inaction of the Town that resulted in the interested party being unable to submit the protest within the 10 days. The purchasing director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.
- F. If the interested party shows good cause, the purchasing director may consider a protest that is not timely filed.
- G. The purchasing director shall immediately give notice of a protest to all offerors.

4-4-20 Stay of purchase during protest.

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, and a stay is requested by an offeror the purchasing director shall make a written determination to either:
 - 1. Proceed with the award or contract performance; or
 - 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld

or that a stay is in the best interest of the Town.

B. The purchasing director shall provide the protestor and other interested parties with a copy of the written determination.

4-4-21 Resolution of solicitation and contract award protests.

A. The purchasing director shall issue a written decision within 14 days after a protest has been filed under Section 4-4-19. The decision of the purchasing director shall contain the basis for the decision and a statement that the decision shall be final and binding on the parties.

1. Such decision shall be delivered to the appellant by certified U.S. Mail or by any other method that provides evidence of receipt.

B. If the purchasing director fails to issue a decision within the time limits set forth in this article, the interested party may proceed as if the purchasing director had issued an adverse decision.

4-4-22 Remedies by the purchasing director.

A. If the purchasing director sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with state statutes, this code, or purchasing policies and procedures, the purchasing director shall implement an appropriate remedy.

B. In determining an appropriate remedy, the purchasing director shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
2. The degree of prejudice to other interested parties or to the integrity of the purchasing system;
3. The good faith of the parties;
4. The extent of performance;
5. The costs to the Town;
6. The urgency of the purchase;
7. The impact on the Town's mission; and
8. Other relevant issues.

C. The purchasing director may implement any of the following appropriate remedies:

1. Decline to exercise an option to request a renewal of the contract;

2. Recommend that the Town council terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Recommend the award of a contract consistent with this code; or
6. Render such other relief as determined necessary to ensure compliance with this code.

Article 4-5 Disposal of Surplus Property

4-4-23 Surplus supplies and equipment.

- A. All departments and offices shall submit to the purchasing director, at such time and in such form as shall be prescribed, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing director, or the purchasing director's designee, shall dispose of such supplies and equipment pursuant to the provisions of A.R.S. §9-402.
- B. Surplus supplies may be leased or donated pursuant to a written contract approved by the council; provided, that the Town receives adequate consideration for the surplus supplies, as determined by the purchasing director.
- C. The amount received for any property sold pursuant to this article shall be deposited in the general fund or other fund so designated by the purchasing director.
- D. Town officials or employees may purchase property only if it is sold through sealed bids or public auction.

CHAPTER 5

BUSINESS REGULATIONS

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CHAPTER 5
BUSINESS REGULATIONS

ARTICLE 5-1 BUSINESS LICENSE TAX

5-1-1	License Required
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Section 5-1-1 License Required

It is unlawful for any person to carry on any trade, calling, professional occupation or business, specified in this article, without having procured a license from the town and complying with any and all regulations of such trade, calling, profession, business or occupation specified in this article.

Section 5-1-2 Issuance of License

A. It shall be the duty of the clerk to prepare and to issue a license under this article for every person, firm, company or corporation liable to pay a license hereunder, and to state in each license the amount thereof, the period of time covered, the name of the person, firm or corporation for whom issued, the trade, calling, profession, occupation or business licensed, and the location or place of business where said trade, calling, profession, occupation or business is carried on.

B. In no case shall any mistake of the clerk in stating the amount of the license prevent or prejudice the collection for the town of what shall be actually due from anyone carrying on a trade, calling, profession, occupation or business, subject to license under this article.

Section 5-1-3 Payment

A. No greater or less amount of money shall be charged or received for any license than is provided for in this chapter, and no license shall be issued for any period of time

other than is provided in this article. All license fees required by this article shall be paid, in legal currency of the United States, at the office of the town treasurer.

B. Licensees shall pay their license fees annually.

1. Annual Payment. Annual licenses shall be due and payable on or before the first business day of January each year and shall expire on the last day of December the same year.

C. Any person, firm, company or corporation who discontinues the business, trade, calling, profession or occupations during the period covered by the current license shall not be entitled to any refund of license fee for that portion of the period remaining after discontinuing the business, trade, calling profession or occupation.

D. License fees provided for in this chapter shall become delinquent fifteen days after they become due. Refer to 5-1-10C for punishment for delinquency.

Section 5-1-4 License Not Transferable

No license granted or issued under the provisions of this article shall be in any manner assignable or transferable to any other person, firm, company or corporation other than is herein mentioned or named, without permission from the council.

Section 5-1-5 Exemption

Any person wishing to sell any form of agricultural product produced by himself within the town shall be exempted from paying any license tax hereunder for the privilege of selling such products only. Before receiving the exemption, an affidavit of the facts entitling the seller to make exemption must be filed with the clerk. Wholesalers who only make sales to retail dealers, for re-sale by them are exempt. Newspaper carriers are exempt from the provisions of this article for the sale of newspaper subscriptions.

Section 5-1-6 Business License Fees

All businesses, occupations, professions, trades or callings shall pay a license tax of twenty-five dollars per year, except that:

A. Circuses, carnivals, theatrical or other similar exhibitions and amusements shall pay a business license of one hundred dollars per day.

B. Each stand, concession or game located in a circus, carnival, theatrical or other exhibition or amusement shall pay a business license fee of one hundred dollars per quarter.

C. Fortune tellers, clairvoyants, astrologers, palmists and similar undertaking shall pay a business license fee of three hundred dollars per month.

D. Hawkers and peddlers shall pay a business license fee of twenty-five dollars per quarter.

E. Itinerant photographers shall pay a license tax of one hundred dollars per quarter.

Section 5-1-7 Liquor License Fees

The following liquor license fees shall be paid to the clerk annually in the amount of \$75.00.

A. To sell beer and wine in containers only and for consumption off premises where sold.

B. To sell beer and wine only for consumption on premises where sold, which shall include occasional sales in containers for off premises consumption.

C. To sell liquors other than beer and wine in original containers for consumption off premises where sold.

D. To sell liquors other than beer and wine for consumption upon the premises where sold.

E. For on-sale and off-sale of liquors of all kinds.

Section 5-1-8 Licenses To Be Exhibited

Every person, firm, company or corporation having a license under the provisions of this article and carrying on a trade, calling, profession, occupation or business at a fixed place of business, shall keep such license posted and exhibited, while in force, in some conspicuous part of said place of business. One not having a fixed place of business, shall carry such a license with him at all times, while carrying on the trade, calling, profession, occupation or business for which the same was granted. Every person, firm, company or corporation having a license under the provisions of this article shall produce and exhibit the same whenever requested to do so by any officer authorized to issue, inspect or collect licenses.

Section 5-1-9 Inspection of Licenses

The town clerk shall be inspector of licenses for the town and is hereby required to see that such licenses are obtained.

Section 5-1-10 Duties of Inspector

The town clerk in the discharge and performance of his official duties shall have and may exercise the power:

- A. To enter, free of charge, at any time, any place of business for which a license is required by this article and to demand the exhibition of such license for the current term from any person engaged or employed in the transaction of such business and if such person shall then fail to exhibit such license, such person shall be liable for the penalty provided for a violation of this article.
- B. It is hereby made the duty of the town clerk, to cause complaints to be filed against all persons violating any of the provisions of this article.
- C. When any license fee provided for herein shall become delinquent, the town clerk shall, on the day the same becomes delinquent, add an amount equal to twenty-five percent to the total amount of the delinquent fee as a penalty, and no license shall be issued by the town clerk until the delinquent fee and the penalty added thereto have been paid in full.

Section 5-1-11 Deliveries Within Town

For the purpose of this article, making deliveries within the town from a plant or establishment located outside the town limits shall constitute doing business within the town.

ARTICLE 5-2 PAWNBROKERS

- 5-2-1 Duty to Report
- 5-2-2 Inspection of Premises, Records and Stock
- 5-2-3 Fruits of Crime
- 5-2-4 Display of Regulations

Section 5-2-1 Duty to Report

Every person engaged in the business of pawnbroker within the corporate limits of the town shall make out and deliver to the town marshal a true, correct, complete and legible report of all goods and articles received on deposit or consignment, in pawn, pledge, trade or exchange or by purchase. Said report shall be made on forms furnished by the police department on Monday of each week. The report shall be a list of all goods and articles received in pawn, pledge, trade or exchange or by purchase during the previous week, Monday through Sunday. Each sheet shall contain for each item:

- A. A description of the property including brand name and serial number, if any.

- B. The amount loaned or paid for the property or amount allowed in trade.
- C. The number of the pawn ticket.
- D. The date and time when the property was received.
- E. The signature of the person from whom the property was received along with his name (printed), address and date of birth. The reporting party shall require each such person to show proof of his identification by exhibiting state or federal identification, unless such person is personally known by the reporting party.
- F. A description of such person, consisting of height, weight, complexion and hair color.

Section 5-2-2 Inspection of Premises, Records and Stock

The business premises of any pawnbroker along with the transaction records and stock of goods and articles shall be open at reasonable hours to reasonable inspection by representatives of the marshal's office.

Section 5-2-3 Fruits of Crime

Upon notification by representatives of the marshal's office that goods and articles received on deposit or consignment, in pawn, pledge, trade or exchange or by purchase are the fruits of a crime, no pawnbroker shall dispose of such property. Interest upon such goods and articles pawned or pledged shall cease to accrue on the date of such notification.

Section 5-2-4 Display of Regulations

Every person engaged in the business of a pawnbroker shall prominently display a copy of this article in a conspicuous place on the premises of the business.

ARTICLE 5-3 REGULATION OF FOREIGN MONEY EXCHANGE

- 5-3-1 Definitions
- 5-3-2 Business License Fee and Permit
- 5-3-3 Operation; Zoning Regulations
- 5-3-4 Periodic Reporting Penalties

Section 5-3-1 Definitions

In this article unless the context otherwise requires:

- A. "Currency" means coined money and such banknotes or other money as are authorized by law and that circulate from hand to hand as the medium of exchange.
- B. "Dealer" means an individual in the act of buying and selling currency for a profit as the sole or primary basis of his business.
- C. "Exchange" means verbal or written agreement between two or more parties to deliver one currency in exchange for another.
- D. "Foreign exchange" means conversion of one country's currency into the currency of another country.
- E. "Money exchange business" means a commercial business exchanging currency of one country for that of another.

Section 5-3-2 Business License Fee and Permit

- A. Annual Fee. The operation of a money exchange business shall require a two thousand dollar business license fee and permit annually, and the amount of said fee may be changed by resolution of the council. Application for a money exchange business license and payment of the fee shall be made at the town hall.
- B. Application. An application for operation of a money exchange business shall contain the exact address of the proposed business and the following information for all owners, partners or corporations officers:
 - 1. The full true name and any other names used by the applicant;
 - 2. The present address and telephone number of the applicant;
 - 3. Each resident and business address of the applicant for the three years immediately preceding the date of the application, and the inclusive dates of each such address;
 - 4. Applicant's age, date of birth, weight, height, color of eyes and hair;
 - 5. Driver's license and social security number;
 - 6. Applicant's business occupation and employment history for the three years immediately preceding the date of application, and the inclusive dates of each such occupation;
 - 7. All criminal convictions, except traffic violations, and a statement of the dates and places of such convictions.
- C. Fingerprints. The applicant shall furnish fingerprints for the purpose of establishing identification.

D. Issuance of Revocation of Permit. Except as otherwise provided in this code, upon completion of the background investigation of the applicant, the town manager or his designated representative may issue the permit which may be revoked following thirty days written notice setting forth violations of one or more of the following:

1. The applicant has knowingly made false or misleading statements of a material fact or omission of a material fact in the application.
2. The operation of the business as proposed pursuant to the issuance or renewal of a permit will not be in compliance with the building, fire, health, zoning, sign or other requirements of the town.
3. The applicant has had a similar permit or license previously revoked or denied for good cause within one year immediately preceding the date of the filing of the application or at any time after the receipt of the permit and license.
4. The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of any of the following offenses:
 - a. Any offense involving the use of force or violence upon the person of another.
 - b. Any offense of theft, embezzlement or receiving stolen property.
5. The applicant has paid a criminal or civil penalty for violation of federal currency reporting laws and regulations.

E. Appeal of Revocation. The notice of revocation may be repealed by filing written notice, within ten days of the notice of revocation, that appropriate judicial review of the same has been requested. The notice of revocation shall be suspended until judicial review has been completed.

F. Permit Not Transferable. Each permit issued hereunder shall be issued to a specific person, partnership or corporation to conduct business as a money exchange business at a specific location. In no event shall the permit be transferred from one owner to another or from one location to another without prior approval of the town manager or his designated representative.

G. All ordinances, regulations and requirements affecting the public peace, health and safety of the town, as well as any applicable state or federal laws must be completely complied with before issuance of a business license to a money exchange business or dealer.

H. Violation of any provisions of this code, including ordinances, regulations and requirements affecting the public peace, health and safety shall constitute grounds for revocation of a money exchange business license.

Section 5-3-3 Operation; Zoning Regulations

A. It is unlawful for any person engaged in the business of currency exchange to conduct such business on the streets, sidewalks or right-of-way of the town.

B. A money exchange business must comply with the provisions of the Uniform Building Code adopted in Chapter 6 of this code, and with all provisions of zoning regulations in effect or that may be adopted by the town.

Section 5-3-4 Periodic Reporting Penalties

A. A monthly report shall be required from all business license holders under this article which shall be on a form approved by the town manager. The report shall be due on or before the tenth day of each succeeding month for which said report is to cover. The report shall include all transaction involving exchange of currency, including foreign currency, involving ten thousand dollars or more. Multiple transactions by or for any person, which in one day total ten thousand dollars or more, should be treated as a single transaction. The form shall include daily transactions in excess of said amount and shall positively identify all individuals to the transaction, together with their current addresses and the basis for verification of their identity together with the amount of said transaction. The social security number of the individual or the taxpayer identification number, if an entity, shall also be provided. If the individual is a non-resident alien who does not have a social security number, the report shall so indicate. The report shall also fully identify the occupation, profession or business of the individual conducting the transaction. In the event that there are multiple individuals or organizations involved in the transaction, each shall be required to supply the foregoing information. The individual completing the report shall be identified on each report so filed.

B. It is unlawful to violate any provision of this article. Failure to file the monthly report for each transaction required shall be considered a separate offense, as shall be the failure to supply information required in the report or the filing of a false or fraudulent report.

ARTICLE 5-4 TELECOMMUNICATIONS SERVICE

5-4-1 Definitions

5-4-2 License Required

5-4-3 License Proposal

Section 5-4-1 Definitions

In this article, unless the context otherwise requires:

A. "Cable services" and "cable system" means a system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios, and other conductors, converters, equipment or facilities, designed and constructed for the primary purpose of distributing video programming to home subscribers, and the secondary purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electronic or electrical signals.

B. "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.

C. "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 town and used in the provision of telecommunications services.

D. "Public highway" or "highway" means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the town.

E. "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.

F. "Telecommunications corporation" means any public service corporation to the extent that it provides telecommunications services in this state.

G. "Telecommunications services" means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

Section 5-4-2 License Required

A. No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the town, or provide telecommunications service by means of such facilities unless a license to provide telecommunications services has first been granted by the town council under this chapter.

B. Notwithstanding Subsection A, any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 21, 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 the

that state grant, until the state grant is lawfully repealed, revoked or amended, and need not obtain any further authorization from the town to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements in Title 9, Chapter 5, Article 7, Arizona Revised Statutes.

C. Nothing in this ordinance shall be deemed to affect the terms or conditions of any franchise, license or permit issued by the town 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 town manager, with the consent of the town council, may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license or agreement.

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 authorized 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 town, or permit such entity to provide telecommunications services by means of such facilities without obtaining a license hereunder.

E. Any license granted shall not be exclusive.

Section 5-4-3 License Proposal

A. A telecommunications corporations desiring a license to occupy the streets and other highways of the town to provide telecommunications service shall file a proposal with the town clerk, in the form prescribed by the town, and shall pay a fee determined by the town council.

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 town may deem necessary in order to ensure that the applicant will comply with requirements for use of the highways; (2) identify the applicant, its name, 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.

C. Upon receiving an application for a license that satisfies the conditions of Section B, the town shall promptly proffer 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 license, the 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.

D. As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the city may require that:

1. The applicant shows that it has received a Certificate of Public Convenience and Necessity from the Arizona Corporation Commission;
2. The applicant agrees to comply with the highway use requirements that the town may establish from time to time;
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 town, and to comply with such other mapping requirements as the town may establish from time to time;
4. The applicant obtains the insurance, and provide proof of insurance as required by the town; posts the performance bonds and security fund required by the town; agrees to fully indemnify the town, its officers, agents, boards and commissions, in a form satisfactory to the town; and agrees that it shall have no recourse against the town for monetary damages as a result of any damage that may result from the town's exercise of its rights under the license, or applicable provisions of law.
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 town with may include:
 - a. provisions covering assignment
 - b. the right to inspect records to determine compliance by the licensee
 - c. provisions for renewal
 - d. fees and charges contemplated by A.R.S 9-582 (C) may be charged by the town pursuant to Section 5-3-2 of the town code.

E. Any license granted by the town 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 years, and subject to the conditions and restrictions provided in the instrument and this chapter.

F. Every licensee shall be subject to the town's exercise of such police, regulatory and other powers as the town 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 60 days of the notice, except where the town finds that the

defect in performance is due to intentional misconduct, 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.

G. The issuance of a license by the town 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.

CHAPTER 6

MARSHAL'S OFFICE AND FIRE DEPARTMENT

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CHAPTER 6
MARSHAL'S OFFICE & FIRE DEPARTMENT

ARTICLE 6-1 TOWN MARSHAL'S OFFICE

- 6-1-1 Created; Composition
- 6-1-2 Appointment of Officers
- 6-1-3 Compensation of Officers
- 6-1-4 Departmental Rules & Regulations
- 6-1-5 Duties of Marshal's Office
- 6-1-6 Answering Calls Outside the Town
- 6-1-7 Curfew

Section 6-1-1 Created; Composition

There is hereby created a town marshal for the town which shall consist of a chief marshal and as many deputy marshals as may from time to time be deemed necessary by the council for the safety and good order of the town.

Section 6-1-2 Appointment of Officers

The chief marshal shall be appointed by the council and shall serve at the pleasure of the council.

Section 6-1-3 Compensation of Officers

The chief marshal and the deputy marshals of the town shall be compensated as determined by the council. The chief marshal shall not receive any perquisites, commissions or compensation for his services as chief marshal, except as the council may prescribe.

Section 6-1-4 Departmental Rules & Regulations

The marshal's office shall be operated and managed in accordance with such department rules and regulations as may from time to time be recommended by the chief marshal and town manager and adopted by the council. In the event the marshal or police chief, if any, is not certified by the Arizona Peace Officer Standards and Training Board his or her duties, other than collection of taxes pursuant to Arizona law, may be assumed by the Greenlee County Sheriff's Department pursuant to an intergovernmental agreement.

Section 6-1-5 Duties of Marshal's Office

- A. It is the duty of the Marshal's Office, under the direction of the chief marshal, to:

1. Enforce this code and state statutes (Arizona Revised Statutes) within jurisdictional limits as conferred by law and to arrest and charge the violators thereof.
2. Deliver any persons who may be confined in the jail upon conviction of a crime committed under the jurisdiction of the magistrate court to any authorized officer of the town who shall at any time demand such prisoners. Any such authorized person so demanding and receiving such prisoners shall work such prisoners on the street or alleys of the town or on any and all authorized work as may be determined by the council.
3. Render such account of the marshal's office, its duties and receipts as may be required by the council, and keep records of the office open to inspection by the council at any time.
4. Shall enforce traffic regulations within the corporate limits of the town according to Arizona Revised Statutes, Title 28.
5. Inspect and ascertain the condition of traffic control devices of every description which have been erected within the town on the authority of the council and notify the council of any defects found therein.
6. Perform such additional duties as may be required by the council.

B. Any deputy marshal or duly authorized agent of the town may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any provision of this code, and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this code.

C. In the event the Town of Duncan does not have a marshal or police chief acting as a peace officer certified by the Arizona Peace Officer Standards and Training Board, the Greenlee County Sheriff's Department may assume the aforementioned duties through an intergovernmental agreement.

Section 6-1-6 Answering Calls Outside the Town

The members of the marshal's office of the town are duly authorized to answer calls for aid and assistance beyond the corporate limits of the town pursuant to mutual aid agreements and state statutes.

Section 6-1-7 Curfew

A. Persons under the age of eighteen (18): It is unlawful for any juvenile under the age of eighteen (18) years to be, remain or loiter in, about or upon any place in the town away from the dwelling, house or usual place of abode of said juvenile, between the hours of 10:00 pm and 5:00 am each day, Sunday through Thursday, and between the hours of 12:00 midnight and 5:00 am each Friday and Saturday, and holiday, but the provisions of this section shall not apply to any emancipated minor, to a juvenile

accompanied by his parent, guardian or other adult having the care, custody or supervision of said juvenile, where said juvenile is on an emergency errand, or where said juvenile is on reasonable, legitimate and specific business or activity directed or permitted by his parent, guardian or other adult person having the care, custody or supervision of said juvenile.

B. Liability of Parents and Guardians: It is unlawful for the parent, guardian or other adult person having the care, custody or supervision of a juvenile to permit such juvenile to be, remain or loiter in, about or upon any place in the town away from the dwelling, house or usual place of abode of said juvenile in violation of section 6-1-7 A, but the provisions of this section shall not apply when the juvenile is accompanied by his parent or other persons having the care, custody or supervision of the juvenile, or when the juvenile is on reasonable, legitimate and specific business or activity directed or permitted by his parent, guardian or other person having the care, custody or supervision of said juvenile.

C. Lack of Knowledge Not a Defense: It shall not constitute a defense to the provisions of this article that such parent or guardian or other adult person having the care, custody or supervision of such juvenile coming within the provisions of section 6-1-7 did not have actual knowledge of the presence of such juvenile in, about or upon any place in the town away from the dwelling, house or usual place of abode of said juvenile, if said parent, guardian or other person having the care, custody or supervision of such juvenile or juveniles, in the exercise of reasonable care and diligence, should have known of the aforementioned unlawful acts of such juvenile or juveniles.

ARTICLE 6-2 FIRE DEPARTMENT

6-2-1	Created; Composition
6-2-2	Departmental Rules & Regulations
6-2-3	Compensation
6-2-4	Appointment, Powers & Duties of Chief
6-2-5	Appointment & Duties of Firefighters
6-2-6	Entry Upon Adjacent Property
6-2-7	Equipment
6-2-8	Providing Fire Protection Outside the Town
6-2-9	Acknowledgment of Right-of-Way
6-2-10	Fire Alarms
6-2-11	Order of Fire Chief

Section 6-2-1 Created; Composition

There is hereby created a volunteer fire department for the town which shall consist of a chief, an assistant chief and as many firefighters as may deemed necessary from time to time by the council.

Section 6-2-2 Departmental Rules & Regulations

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

Section 6-2-3 Compensation

The fire chief, assistant fire chief and volunteer firefighters shall be compensated as may be determined by the council.

Section 6-2-4 Appointment, Powers & Duties of Chief

The chief of the fire department shall be appointed by the council and shall serve at the pleasure of the council. It shall be the duty of the chief to:

- A. Be accountable to the council for the personnel, morale and general efficiency of the fire department.
- B. Direct the operations of the fire department subject to the rules and regulations thereof.
- C. Be present at all fires, if possible, and plan and direct the extinguishment thereof. During the progress of a fire, the authority of the fire chief shall be absolute in all matters directly concerning the extinguishment of the fire and disposition of property endangered by it.
- D. Conduct suitable drills or instruction in the operation and handling of equipment, first aid and rescue work, salvage, a study of buildings in the town, water supplies and all other matters generally considered essential to good firemanship and safety of life and property from fire.
- E. Assist the proper authorities in suppressing the crime of arson by investigating or causing to be investigated the cause, origin and circumstances of all fires.
- F. Inspect building and premises and serve written notice upon the owner or occupant to abate, within a specified time, any and all fire hazards that may be found. Any person served with such written notice shall comply and notify the chief of his compliance within a reasonable time. For the purpose of conducting such inspection, the chief is hereby empowered to enter any and all buildings and premises within the town at any reasonable hour.

G. Keep complete records of all fires, inspections, apparatus and equipment, personnel and other information about the work of the department open to council inspection and furnish to the council such information upon request.

H. Make a complete annual report, in writing, to the council at such time as may be specified by the council. Such report shall include the information specified in subsection G of this section, together with comparative data for previous years and recommendations for improving the effectiveness of the department.

I. Enforce or cause to be enforced all ordinances, laws and regulations of the town and state, insofar as they pertain to fire and safety.

J. Demote, dismiss or expel any officer or member of the department for neglect or refusal to perform departmental duties, subject to the right of any members so demoted, dismissed or expelled to appeal to the council.

Section 6-2-5 Appointment and Duties of Firefighters

Firefighters shall be appointed at such time and in such manner as the council may deem necessary. Such appointees shall have telephones in their homes. Firefighters shall be subject to supervision by the fire chief or the assistant fire chief.

Section 6-2-6 Entry Upon Adjacent Property

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

Section 6-2-7 Equipment

The department shall be equipped with such apparatus and other equipment as may be required from time to time to maintain its efficiency and properly protect life and property from fire. Recommendations concerning apparatus and equipment needed shall be made by the fire chief, and after approval by the council, such apparatus and equipment shall be purchased in such manner as may be designated by the council. All equipment of the department shall be safely and conveniently housed in such places as may be designated by the council. No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully take away or conceal any article used in any way by the department. No person shall enter any place where the fire apparatus is housed or handle any apparatus or equipment belonging to the department unless accompanied by or having special permission of an officer or authorized member of the department. No fire apparatus and equipment shall be hired out or permitted to leave the fire station

except in response to a call for aid at a fire within the corporate limits of the town, or in response to a call for aid at a fire in an area unauthorized for fire protection services or mutual aid under provisions of Section 6-2-8.

Section 6-2-8 Providing Fire Protection Outside the Town

The council may enter into agreements or contracts to furnish fire protection outside the town or enter into mutual aid agreements, and the fire department is authorized to render fire fighting services pursuant to the terms of such agreements or contracts.

Section 6-2-9 Acknowledgments of Right-of-Way

Each member of the department who drives a private motor vehicle shall be issued suitable insignia which shall be attached to such motor vehicle. All motor equipment of the department shall have right-of-way over all other traffic when responding to an alarm. No unauthorized vehicle shall follow within five hundred feet of any apparatus belonging to the department nor park any vehicle or otherwise cause any obstruction to be placed within twenty feet of the driveway entrance to any fire station or other place where fire apparatus is stored and on the side of a street opposite the entrance or within fifteen feet of any fire hydrant. No person shall drive any vehicle over fire hose except upon specific orders from the chief or other officer in charge where the hose is used.

Section 6-2-10 Fire Alarms

Suitable arrangements or equipment shall be provided for citizens to turn in an alarm and for notifying all members of the department so that they may promptly respond. It is unlawful for any person knowingly to turn in or cause to be turned in a false alarm.

Section 6-2-11 Orders of Fire Chief

It is unlawful for any firefighter or citizen to refuse to obey an order issued by the fire chief pursuant to his authority.

ARTICLE 6-3 UNIFORM FIRE CODE

That certain code entitled Uniform Fire Code, 1988 edition, published by the International Conference of Building Officials, is hereby adopted as the Uniform Fire Code of the Town of Duncan and made a part of this chapter the same as though said code was specifically set forth in full herein. At least three copies of said code shall be filed in the office of the town clerk and kept available for public use and inspection.

ARTICLE 6-4 MAGISTRATE COURT ESTABLISHED; JURISDICTION

There is hereby established in the town a magistrate court which shall have jurisdiction of all violations of this code, and jurisdiction concurrently with justices of the peace of precincts in which the town is located of violation of laws of the state committed within the limits of the town.

ARTICLE 6-5 TOWN MAGISTRATE

6-5-1 Appointment; Compensation

6-5-2 Assistant Magistrate

6-5-3 Powers & Duties

6-5-4 Hearing Officers

Section 6-5-1 Appointment; Compensation

The presiding officer of the magistrate court shall be the town magistrate. The council shall appoint and may remove for the cause the town magistrate. The town magistrate shall be appointed for a period of tow years, with his compensation to be determined by the council.

Section 6-5-2 Assistant Magistrate

The office of assistant magistrate is hereby created. The assistant town magistrate shall be appointed by the council for a term of tow years at such salary as may be determined by the council and may be removed by the council for cause. He shall perform the duties of the town magistrate in the absence of the town magistrate in such manner as the council may direct.

Section 6-5-3 Powers & Duties

The powers and duties of the magistrate shall include:

- A. The powers and duties set forth and conferred upon him under the provisions of the state constitution and statutes, this code and the ordinances and resolutions of the town.
- B. The keeping of a docket in which shall be entered each action and the proceedings of the court therein.
- C. The responsibility for fixing and receiving all bonds and bails and receiving all fines, penalties, fees and other moneys as provided by law.

D. The payment of all fines, penalties, fees and other moneys collected by the court to the town treasurer.

E. Submitting a monthly report to the council summarizing court activities for that month.

F. Preparation of a schedule of traffic violations not involving the death of a person listing specific bail for each violation.

Section 6-5-4 Hearing Officers

The council may appoint one or more hearing officers to preside over civil traffic violation cases when the appointment of such hearing officers are necessary to assure prompt disposition of civil traffic violation cases. Hearing officers may hear and dispose of civil traffic violation cases under supervision of the presiding officer of the Duncan Magistrate Court which are appealable to the Superior Court pursuant to Title 22, Chapter 2, Article 4, Arizona Revised Statutes.

ARTICLE 6-6 PROCEEDINGS OF COURT

The proceeding shall be conducted in accordance with the state constitution, the applicable state statutes and rules of the state supreme court pertaining to police courts. The proceedings shall also be conducted in accordance with the rules of criminal procedure for the superior court, unless otherwise prescribed, and providing this code and resolutions of the town are not in conflict therewith.

CHAPTER 7

BUILDING

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CHAPTER 7 BUILDING

ARTICLE 7-1 BUILDING CODES

- 7-1-1 Adoption of Building Codes
- 7-1-2 Conformance to Zoning Ordinance
- 7-1-3 Adoption of Adobe Code
- 7-1-4 Building Permit Fees

Section 7-1-1 Adoption of Building Codes

Those certain codes entitled the 2006 International Building Code are hereby adopted and made a part of this chapter the same as though said codes were specifically set forth in full herein, and at least three copies of said codes shall be filed in the office of the clerk and kept available for public use and inspection.

Section 7-1-2 Conformance to Zoning Ordinance

Whenever a building permit is issued and a building inspection performed, such building must conform to the provisions of the Zoning Ordinance of Duncan in addition to the provisions of this chapter.

Section 7-1-3 Adoption of Adobe Code

That certain code entitled "Adobe Code" is hereby adopted as a supplement to the Uniform Building Code and made a part of this chapter the same as though said was specifically set forth in full herein; and at least three copies of said code shall be filed in the office of the clerk and kept available for public use and inspection.

Section 7-1-4 Building Permit Fees

Building permit fees shall be set from time to time by resolution of the council.

ARTICLE 7-2 PLUMBING CODE

That certain code entitled Uniform Plumbing Code, current edition, published by the International Association of Plumbing and Mechanical Officials is hereby adopted and made a part of this chapter the same as though said code was specifically set forth in full herein; and at least three copies of said code shall be filed in the office of the clerk and kept available for public use and inspection.

ARTICLE 7-3 ELECTRICAL CODE

That certain code entitled National Electrical Code, current edition, published by the National Fire Protection Association, is hereby adopted and made a part of this chapter the same as though said code was specifically set forth in full herein; and at least three copies of said code shall be filed in the office of the clerk and kept available for public use and inspection.

ARTICLE 7-4 MECHANICAL CODE

That certain code entitled Uniform Mechanical Code, current edition, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted and made a part of this chapter the same as though said code was specifically set forth in full herein; and at least three copies of said code shall be filed in the office of the clerk and kept available for public use and inspection.

ARTICLE 7-5 ADDITIONAL CODES

Those certain codes entitled Uniform Solar Energy Code and Uniform Sound Transmission Control Code are hereby adopted and made a part of this chapter the same as though said code was specifically set forth in full herein, and at least three copies of said code shall be filed in the office of the clerk and kept available for public use and inspection.

ARTICLE 7-6 BUILDING OFFICIAL

The building official and administrative authority, as such may be referenced in any section of this chapter for all matters pertaining to any building, plumbing, electrical or any other inspections, shall be vested in the office of the town manager, provided that the council may authorize such deputies as needed to perform any inspection work or other functions that may be required by this chapter.

ARTICLE 7-7 ASBESTOS

- 7-7-1 Compliance With State and Federal Law
- 7-7-2 Punishment for Violation
- 7-7-3 Conflicts Repealed
- 7-7-4 Validity of Remaining Portions

7-7-1 Compliance With State and Federal Law

The Town of Duncan may have older commercial buildings within the Town limits that contain asbestos containing materials (ACM). The Town of Duncan will enforce the policy

that all State and Federal laws will be followed in the renovation, demolition or removal of commercial buildings within the Town limits.

Any person, persons, group, contractor, company, corporation, non-profit organization, government or other agency wishing to renovate, demolish or remove a commercial building in the Town of Duncan must first obtain a Building Permit from the Town Hall. Issuance of said Building Permit is contingent on proof that ACM will be handled in accordance with applicable Federal and State laws and regulations. Some of these requirements include, but are not limited to:

- A. Compliance with State and Federal safety regulations for persons working in and around ACM.
- B. Proper notification and coordination with the Arizona Department of Environmental Quality.
- C. An asbestos survey to be completed by an Arizona State Licensed ACM Contractor.
- D. Handling and removal of all ACM by Arizona State Licensed ACM Contractor.
- E. ACM to be disposed of in a State Approved ACM landfill.

Upon application for a Building Permit for renovation, demolition or removal of a building containing ACM, the Town of Duncan will provide information to the applicant containing information regarding current Federal and State laws and regulations pertaining to ACM. Before issuance of the Building Permit, the Town requires proof of compliance with these applicable Federal and State laws pertaining to ACM.

The Building Inspector of the Town of Duncan shall be trained in recognition of and compliance with Federal and State laws and regulations pertaining to ACM. Said training shall be completed within the first ninety (90) days of employment and be renewed not less than annually.

Section 7-7-2 Punishment for Violation

Any person found guilty of violating any provision of this ordinance shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 7-7-3 Conflicts Repealed

All ordinances or parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed, effective as of the 11th day of June, 2001.

Section 7-7-4 Validity of Remaining Portions

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

CHAPTER 8 FLOODPLAIN MANAGEMENT

ARTICLE 8-1 FLOOD DAMAGE PREVENTION

- 8-1-1 Statutory Authorization
- 8-1-2 Findings of Fact
- 8-1-3 Statement of Purpose
- 8-1-4 Methods of Reducing Flood Losses
- 8-1-5 Definitions
- 8-1-6 General Provisions
- 8-1-7 Administration
- 8-1-8 Provisions for Flood Hazard Reduction
- 8-1-9 Variance Procedure

Section 8-1-1 Statutory Authorization

In A.R.S. § 48-3610, the legislature of the State of Arizona has enabled the town to adopt regulations in conformance with A.R.S. 48-3603 designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Town Council of Duncan, Arizona, does ordain as follows:

Section 8-1-2 Findings of Fact

A. The flood hazard areas of Duncan are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by the cumulative effect of obstruction in areas of special flood hazards which increase flood heights and velocities, and when inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

Section 8-1-3 Statement of Purpose

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

A. To protect human life and health;

- B. To minimize expenditures of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize blight areas caused by flooding;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard;
- H. To insure that those who occupy the areas of special flood hazard assume responsibility for their action; and
- I. To maintain eligibility for state disaster relief.

Section 8-1-4 Methods of Reducing Flood Losses

In order to accomplish its purpose, this ordinance includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which results in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling, filling, grading, dredging and other development which may increase flood damage;
- D. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas; and
- E. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters.

Section 8-1-5 Definitions

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

“APPEAL” – a request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance or a request for a variance.

“AREA OF SHALLOW FLOODING” – a designated AO Zone on the Flood Insurance Rate Map (FIRM). The base flood depth range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.

“AREA OF SPECIAL FLOOD HAZARD” – the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. These areas are designated as Zone A, AE, AO, AH and A1-30 on the Flood Insurance Rate Map and other areas determined by the criteria adopted by the Director of ADWR. (See definition for “SPECIAL FLOOD HAZARD AREA”)

“BASE FLOOD” – the flood having a one percent chance of being equaled or exceeded in any given year.

“BASEMENT” – any area of the building having its floor subgrade (below ground level) on all sides.

“BUILDING” – see “STRUCTURE”.

“COMMUNITY” – any state, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

“DEVELOPMENT” – any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of materials or equipment.

“ENCROACHMENT” – the advance or infringement of uses, plant growth, fill excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“EROSION” – the process of the gradual wearing away of landmasses. This peril is not, per se, covered under the program.

“FLOOD OR FLOODING” – a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of floodwaters, (2) the unusual and rapid accumulation or runoff of surface waters from any source, and/or (3)

the collapse or subsidence of land along the shore of a lake or other body of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual unforeseeable event which results in flooding as defined in this definition.

"FLOOD BOUNDARY FLOODWAY MAP (FBFM)" – the official map on which FEMA or the Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

"FLOOD INSURANCE RATE MAP (FIRM)" – the official map on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"FLOOD INSURANCE STUDY" – the official report divided by FEMA that includes flood profiles, FIRM, FBFM, and the water surface elevation of the base flood.

"FLOODPLAIN OR FLOOD-PRONE AREA" – any land area susceptible to being inundated by water from any source (see definition of "FLOOD OR FLOODING").

"FLOODPLAIN ADMINISTRATOR" – the individual appointed to administer and enforce the floodplain management regulations.

"FLOODPLAIN BOARD" – the board of directors of the Flood Control District of Greenlee County, or the Duncan Town Council, at such times as they are engaged in the enforcement of this ordinance. (Floodplain Board as defined in A.R.S. § 48-3601 for counties)

"FLOODPLAIN MANAGEMENT" – the operation of an overall program of corrective and prevention measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

"FLOODPROOFING" – any combination of structural and non-structural additions, changes or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"FLOOD-RELATED EROSION" – the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unforeseeable event which results in flooding.

“FLOODWAY” – the area of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as “regulatory floodway.”

“FLOODWAY FRINGE” – that area of the floodplain on either side of the “regulatory floodway” where encroachment may be permitted.

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

“GOVERNING BODY” – the local governing unit (i.e., county or municipality), which is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

“HARDSHIP” – Related to Section 8-1-8, “VARIANCE”, of this ordinance means the exceptional hardship which would result from a failure to grant the requested variance. The governing body requires that the variance be exceptional, unusual and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one’s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

“HIGHEST ADJACENT GRADE” – the highest natural elevation of the ground surface prior to construction next to the proposed walls of structure.

“HISTORIC STRUCTURE” – any structure that is:

A. Listed individually in the national register of historic places, a listing maintained by the department of the interior, or preliminarily determined by the secretary of the interior (secretary) as meeting the requirements for individual listing on the national register;

B. Certified or preliminarily determined by the secretary as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary, or;

D. Individually listed on a local inventory of historic placed in communities with historic preservation programs that have been certified either:

a. As an approved state program as determined by the secretary; or

- b. directly by the secretary in states without approved programs.

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

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

"MANUFACTURED HOME" – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "RECREATIONAL VEHICLE."

"MANUFACTURED HOME PARK OR SUBDIVISION" – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

"MEAN SEA LEVEL" – for purposes of the National Flood Insurance Program, The National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988, to which base flood elevations shown on a community's FIRM are referenced.

"NEW CONSTRUCTION" – for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial firm or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "NEW CONSTRUCTION" means structures for which the "START OF CONSTRUCTION" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"NEW MANUFACTURED HOME PARK OR SUBDIVISION" – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"OBSTRUCTION" – includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location,

its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

“ONE-HUNDRED YEAR FLOOD” – the flood having a one percent chance of being equaled or exceeded in any given year. (See “BASE FLOOD” definition)

“PERSON” – an individual or his agent, firm, partnership, association or corporation, or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

“RECREATIONAL VEHICLE” – a vehicle, which is:

- A. Built on a single chassis;
 - B. 400 square feet or less when measured at the largest horizontal projection;
 - C. Designed to be self-propelled or permanently towable by a light duty truck;
- and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

“REGULATORY FLOOD ELEVATION” – an elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the director of water resources for all other watercourses.

“REGULATORY FLOODWAY” – the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

“SHEET FLOW AREA” – (See “AREA OF SHALLOW FLOODING”)

“SPECIAL FLOOD HAZARD AREA” – an area having special flood or flood-related erosions hazards, as shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

“START OF CONSTRUCTION” – includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial

improvement, the actual start of constructions means the first alteration affects the external dimensions of the building.

“STRUCTURE” – a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

“SUBSTANTIAL DAMAGE” – damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“SUBSTANTIAL IMPROVEMENT” – any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “START OF CONSTRUCTION” of the improvement. This term includes structures which have incurred “SUBSTANTIAL DAMAGE,” regardless of the actual repair work performed. The term does not, however, include either

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a “HISTORIC STRUCTURE,” provided that the alteration would not preclude the structure’s continued designation as a “HISTORIC STRUCTURE”.

“VARIANCE” – a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

“VIOLATION” – the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

“WATER SURFACE ELEVATION” – the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988 of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“WATERCOURSE” – a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Section 8-1-6 General Provisions

8-1-6.1 **LANDS TO WHICH THIS ORDINANCE APPLIES.** In A.R.S. § 48-3610, the Arizona State Legislature enabled the Town to adopt regulations in conformance with

A.R.S. § 48-3603 designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Town Council of Duncan, Arizona, does ordain as follows:

8-1-6.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The area of special flood hazard identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for Duncan," Dated February 2, 2007, with accompanying Flood Insurance Rate Maps and floodway maps dated February 2, 2007 and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the Director of Water Resources. The FIS, FIRM and floodway panels are on file at 506 SE Old West Highway.

8-1-6.3 COMPLIANCE. All development of land, construction of residential, commercial or industrial structures, or future development within delineated floodplain areas is subject to the terms of this ordinance and other applicable regulations.

8-1-6.4 ABROGATION AND GRADER RESTRICTIONS. This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance and another ordinance, easement, covenant or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

8-1-6.5 INTERPRETATION. In the interpretation and application of this ordinance, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

8-1-6.6 WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this ordinance is considered for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Duncan, any officer or employee thereof, the State of Arizona

or FEMA, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

8-1-6.7 **STATUTORY EXEMPTIONS**

In accordance with A.R.S. 48-3609(H), unless expressly provided, this and any regulation adopted pursuant to this article do not affect:

- A. Existing uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for twelve months, or destroyed to the extent of 50 percent of its value as determined by a competent appraiser, any further use shall comply with this article and regulations of the Town of Duncan.
- B. Reasonable repair or alteration of property for the purposes for which such property was legally used on August 3, 1984, or any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50 percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation;
- C. Reasonable repair of structures constructed with the written authorization required by A.R.S. § 48-3613; and
- D. Facilities constructed or installed pursuant to a Certificate of Environmental Compatibility issued pursuant to A.R.S. Title 40, Chapter 2, Chapter 6.2.

Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the Floodplain Board for review and comment. In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the Floodplain Board prohibit:

- E. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, road and streets intersecting or crossing a watercourse;
- F. The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by A.R.S. Title 45, Chapter 6;
- G. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the Floodplain Board pursuant to regulations adopted by the Floodplain Board under this article;

- H. Other construction upon determination by the Floodplain Board that written authorization is unnecessary;
- I. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under A.R.S. Title 48, Chapter 21, Article 1;
- J. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; and
- K. The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.

8-1-6.8 DECLARATION OF PUBLIC NUISANCE. All development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this ordinance is a public nuisance per se and may be abated, prevented or restrained by actions of this political subdivision.

8-1-6.9 ABATEMENT OF VIOLATIONS. Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the Floodplain Board which shall include all information available to the Floodplain Administrator which is pertinent to said violation. Within 30 days receipt of this report, the Floodplain Board shall either:

- A. Take any necessary action to effect the abatement of such violation; or
- B. Issue a variance of this ordinance in accordance with the provisions of Section 8-1-9.1 herein; or
- C. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the Floodplain Board within 20 days. At their next

regularly scheduled public meeting, the Floodplain Board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section 8-1-9.1 herein; or

D. Submit to FEMA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended.

8-1-6.10 **UNLAWFUL ACTS.**

A. It is unlawful for any person to engage in any development or to divert, retard or obstruct the flow of waters in any watercourse if it creates a hazard to life or property without securing the written authorization of the Floodplain Board. Where the watercourse is a delineated floodplain, no development shall take place in the floodplain without written authorization of the Floodplain Board.

B. Any person violating the provisions of this section shall be guilty of a class 2 misdemeanor.

8-1-6.11 **SEVERABILITY.** This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

Section 8-1-7 Administration

8-1-7.1 **ESTABLISHMENT OF DEVELOPMENT PERMIT.** A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 8-1-5.2. Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location and elevation of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing. Specifically the following information is required:

A. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing grade and proposed elevation of lowest habitable floor of all structures;

B. Proposed elevation in relation to mean sea level to which any structure will be floodproofed;

C. Certification by a registered professional engineer or architect that floodproofing criteria in Section 8-1-7.1.C;

D. Require base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres; and

E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

8-1-7.2 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR. The town manager or designee is hereby appointed to administer, implement and enforce this ordinance by granting or denying development permits in accordance with its provisions.

8-1-7.3 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR. Duties of the Floodplain Administrator shall include, but not be limited to:

A. Review all development permits to determine that:

1. The permit requirements of this ordinance have been satisfied;
2. All other required state and federal permits have been obtained;
3. The site is reasonable safe from flooding;
4. The proposed development does not adversely affect the carrying capacity of the floodway. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point.

B. Use of Other Base Flood Date. When base flood elevation data has not been provided in accordance with Section 8-1-6.2, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer the Section 8-1-8.1. Any such information shall be submitted to the Floodplain Board for adoption.

C. Obtain and maintain for public inspection and make available as needed for Flood Insurance Policies:

1. The certified elevation required in Section 8-1-8.1.C.1;
2. The certification required in Section 8-1-8.1.C.1;
3. The floodproofing certification required in Section 8-1-8.1.C.3; and
4. The certified elevation required in Section 8-1-8.C.4.

D. Whenever a watercourse is to altered or relocated:

1. Notify adjacent communities and ADWR prior to such alteration or relocation of a watercourse, and submit evidence of such notification to FEMA through appropriate notification means; and
2. Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

E. Within one hundred twenty days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of water resources.

F. Advise the Flood Control District of Greenlee County and any adjacent jurisdiction having responsibility for floodplain management in writing and provide a copy of development plan of all applications for floodplain use permits or variances to develop land in a floodplain or floodway within one mile of the corporate limits of the Town of Duncan. Also, advise the Flood Control District of Greenlee County in writing and provide a copy of any development plan which could affect floodplains, floodways, or watercourses within the District's area of jurisdictions. Written notice and a copy of the plan of development shall be sent to the District no later than three working days after having been received by the District.

G. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 8-1-9.1.

H. Take actions on violations of this ordinance as required in Section 8-1-6.9 herein.

I. Notify FEMA and ADWR of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

J. Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but no later than six months after the date such information becomes available, the floodplain administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

Section 8-1-8 Standards of Construction

8-1-8.1 STANDARDS OF CONSTRUCTION. In all areas of special flood hazards the following standards are required:

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and
2. All manufactured homes shall meet the anchoring standards of Section 8-1-8.5.A.

B. Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
2. All new construction and substantial improvements shall be using methods and practices that minimize flood damage;
3. All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
4. Require within Zones AH or AO adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

C. Elevation and Floodproofing

1. Residential constructions, new or substantial improvement, shall have the lowest floor, including basement,
 - a) In an AO Zone, elevated to or above the regulatory flood elevation, or elevated at least two feet above the highest adjacent grade if no depth number is specified.
 - b) In an A Zone where a BFE has not been determined, elevated to or above the regulatory base flood elevation or be elevated in accordance with the criteria developed by the Director of Water Resources.
 - c) In Zones AE, AH and A1-30, elevated to or above the regulatory base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and verified by the community's building inspector to be

- properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.
2. Nonresidential construction, new or substantial improvement, shall either be elevated in conformance with Section 8-1-8.1.C.1 or .2 or together with attendant utility and sanitary facilities:
 - a. be floodproofed below the elevation recommended under Section 8-1-8.1.C so that the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Floodplain Administrator.
 3. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must meet or exceed the following criteria:
 - a. have a minimum of two openings, on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or
 - b. be certified by a registered professional engineer or architect.
 4. Manufactured homes shall meet the above standards and also the standards in Section 8-1-8.5.

8-1-8.2 STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT.

- A. The storage or processing of materials that could be injurious to human, animal or plant life is prohibited.
- B. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

8-1-8.3 STANDARDS FOR UTILITIES.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

C. Waste disposal system shall not be installed wholly or partially in a regulatory floodway.

8-1-8.4 **STANDARD FOR SUBDIVISIONS.**

A. All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall

1. Identify the area of the special flood hazard area and the elevation of the base flood.

2. Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.

B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

D. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

8-1-8.5 **STANDARDS FOR MANUFACTURED HOMES.** All new and replacement manufactured homes and additions to manufactured homes shall:

A. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and

B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

8-1-8.6 **FLOODWAYS.** Located within areas of special flood hazard established in Section 8-1-6.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or

architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If this section is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 8-1-8.

8-1-8.7 STANDARDS FOR RECREATIONAL VEHICLES. All recreational vehicles placed on site with either:

A. Be on site for fewer than 180 consecutive days, or

B. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

C. Meet the permit requirements of Section 8-1-7 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 8-1-8.5.

8-1-8.8 FLOOD RELATED EROSION-PRONE AREA

A. The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.

B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

C. If a proposed development is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

D. Within Zone E on the FIRM, a setback is required for all new development from the lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures and depending upon the geologic, hydrologic, topographic and climatic characteristics of the land. The buffer may be used for suitable open space purposes such as agricultural, forestry, outdoors recreation and wildlife habitat areas and for other activities using temporary and portable structures only.

Section 8-1-9 Variance Procedure

8-1-9.1 NATURE OF VARIANCES. The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements

of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

It is the duty of the Town of Duncan to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation is so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

8-1-9.2 APPEAL BOARD.

A. The Town Council of Duncan and the Greenlee County Floodplain Board shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Town Council of Duncan and the Greenlee County Floodplain Board shall hear and decide appeals when it is alleged there is an error in any requirements, decision or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

C. In passing upon such applications, the Town Council of Duncan and the Greenlee County Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger of life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of areas to the property in time of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and,
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water system, and streets and bridges.

D. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
2. Such construction below the base flood level increases risks to life and property; and
3. The land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange provided by A.R.S. Title 26, Chapter 2, Article 2. A copy of the notice shall be recorded in the office of the Greenlee County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

E. Upon consideration of the factors of Section 8-1-8.1.C.4 and the purposes of this ordinance, the Town Council of Duncan and the Greenlee County Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

F. The Floodplain Administrator shall maintain the records of all appeal actions and report any variance to the Federal Insurance Administration upon request.

8-1-9.3 **CONDITIONS FOR VARIANCES.**

A. Variances may be issued for the repair, rehabilitation or restoration of structure listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

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

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

D. Variance shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
3. A determination that the granting of variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances; and
4. A showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 8-1-5 of this ordinance in the definition of "FUNCTIONALLY DEPENDENT USE."

E. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 8-1-9.1.c.1 through 11 of the ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

CHAPTER 9

SALES TAX

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CHAPTER 9 SALES TAX

ARTICLE 9-1 SALES TAX

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Section 9-1-1 Definitions

In this chapter, unless the context otherwise requires:

“Business” – The term “Business” shall include 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 not casual activities or sales.

“Gross Income” – The terms “Gross Income” shall mean the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding from or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses. Cash discounts allowed and taken on sales shall not be included as gross income. Gross income shall not include goods, wares or merchandise or the value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the article is included in the gross income.

“Gross Receipts” – The term “Gross Receipts” shall mean the total amount of the sales, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or

otherwise, including all receipts, cash credits and property of every kind and nature and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense, but does not include cash discounts allowed and taken nor the sale price of property, returned by customers when the full sale price thereof is refunded either in cash or by credit.

“Person or Company” – The term “Person or Company” shall mean individual, firm, partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit.

“Retailer” – The term “Retailer” includes every person engaged in the business of making sales at retail, and when in the opinion of the council it is necessary for the efficient administration of this chapter, include dealers, distributors, supervisors, employees and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

“Sale” – The word “Sale” shall mean any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible property, for a consideration, and includes:

A. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

B. The fabrication of tangible personal property for consumers who furnish either directly or indirectly the material used in the fabrication work and the furnishing, preparing or serving for the consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.

“Tangible Personal Property” – The term “Tangible Personal Property” shall mean personal property which may be seen, weighed, felt, touched or is in any other manner perceptible to the senses.

“Taxpayer” – The word “Taxpayer” shall mean any person liable for any tax imposed by this chapter.

“Sale at Retail” – The term “Sale at Retail” shall mean a sale for any purpose other than for resale in the form of tangible personal property.

“Wholesaler or Jobber” – The term “Wholesaler or Jobber” shall mean any person who sells tangible personal property for resale and not for consumption by the purchaser.

Section 9-1-2 Exclusion of Tax From Gross Income, Receipts or Proceeds

For the purpose of this chapter the total amount of gross income, gross receipts, or gross proceeds of sales shall be deemed to be the amount received, exclusive of the tax imposed by this chapter, if the person upon whom the tax is imposed established to the satisfaction of the council that the tax has been added to the sale price and not absorbed by him, but in no event shall the person upon whom the tax is imposed, when an added charge is made to cover the tax levied by this chapter, remit less than the amount so collected to the town clerk.

Section 9-1-3 Records

Records and account shall be kept by the town clerk showing separately the taxes collected under and pursuant to this chapter. The town clerk shall keep full and accurate records of all moneys received and shall show how such moneys were disbursed, and shall preserve all returns filed for a period of four (4) years.

Section 9-1-4 Rules and Regulations

The council is authorized and directed to formulate rules and regulations and prescribe forms and procedure necessary to the efficient enforcement of this chapter.

Section 9-1-5 Examination Powers

The council or its authorized agents may examine books, papers, records or other data bearing upon the correctness of any return or for the purpose of making a return where none has been made as required by this chapter and may require the attendance of any person and take his testimony under oath with respect to such matters. Any person summoned as a witness who fails to obey a summons to appear or answer any material question, or to produce any book, record, paper or other data when required to do so, may be compelled to do so by the Council in any manner prescribed by the laws of the State of Arizona relating to compelling the attendance of witness and the production of documents and records before and administrative agency or governing body.

Section 9-1-6 Confidential Nature of Reports

The council, its authorized agents, or the town clerk, shall not divulge the gross income, gross proceeds of sales or the amount of tax paid by any person as shown by the reports filed as required by this chapter, except to members and employees of the council for the purpose of checking, comparing and correcting returns, or to the authorized representative of the town in any action pertaining to the tax due under this chapter.

Section 9-1-7 Privilege Licenses; Violations; Penalty

Every person who receives gross proceeds of sales or gross income from and which a privilege tax is imposed upon this chapter, desiring to engage or continue to engage in business, shall make application to the town clerk for a privilege license accompanied by a fee of one dollar (\$1.00). Such a person shall not engage or continue in business in the town until he has obtained a privilege license.

If the applicant is not in arrears in payment of any tax imposed by this chapter, the town clerk shall issue a license authorizing the person to engage and continue in such business, upon a condition that he complies with this chapter. The license shall be continuous, but shall not be transferable upon a change of ownership or change of location of a business. A person engaging in or conducting a business in two (2) or more locations shall procure a license for each location.

A person who violates any provision of this section is guilty of a misdemeanor, punishable by a fine for each offense of not less than ten dollars (\$10.00) or by imprisonment for not less than ten (10) days.

Section 9-1-8 Levy of Tax; Purposes

There is levied and there shall be collected by the town clerk for the purpose of raising public money to be used in liquidating the outstanding obligations of the Municipal Government of the town and to aid in defraying the necessary and ordinary expenses thereof, annual privilege taxes measured by the amount of volume of business transacted by persons on account of their business activities and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income as the case may be in accordance with the following schedule.

A. At an amount equal to two percent (2%) of the gross proceeds of sales or gross income from the business upon every person engaging or conducting or continuing within the town in the following businesses:

1. Producing and furnishing, or furnishing to consumers, electricity, electric lights, current, power or gas, natural or artificial, and water.
2. Contracting, however payments paid by the contractor for labor employed in construction, improvements or repairs shall not be subject to such tax.
3. The sale of sand, gravel, cinders, aggregate, or premixed cement or concrete, exclusive of payments paid for labor employed in digging, loading, mixing, hauling, spreading or pouring and finishing said materials.
4. Conducting restaurants, dining rooms, lunchrooms, soda fountains, or similar establishments where articles of food or drink are sold for consumption on the premises.

5. Hotels, guest houses, rooming houses, apartment houses office buildings, motels, automobile storage garages, trailer parks or any other business or occupation charging storage fees or rents.
6. Operating or conducting theaters, movies, shows of any type or nature, exhibitions, concerts, carnivals, circuses, fairs, races, games, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches and nay business charging admission fees for exhibitions, amusement or instruction, other than projects of bona fide religious, service or educational institutions.
7. Slaughtering animals for food, packaging, processing or compounding meat or meat products.
8. Selling poultry or stock feed to poultrymen or producers of poultry and poultry products, or to stockmen or feeders of stock at wholesale prices for their own use and not for resale.
9. Conducting or operating the business of selling any tangible personal property whatever at retail, but the tax shall not apply to the gross proceeds of sales or gross income from:
 - a. professional or personal service occupations, or businesses which involve sales or transfers of tangible personal property only as inconsequential elements thereof.
 - b. services rendered in connection with or in addition to the sale of tangible personal property at retail other than those to which the subsections of this section apply.

B. When any person is engaged in an occupation or business to which subsection A of this section is applicable, such person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from services; provided, however, that in the event such person holds a valid transaction privilege license from the State of Arizona, and reports to the State of Arizona for the purposes of determining the tax to be imposed by the State of Arizona, pursuant to the provisions of Title 42, Chapter 8, Arizona Revised Statutes, the amount of gross proceeds of sales of tangible personal property and gross income from services contained or set forth in said report shall be conclusive for the purposes of this chapter.

C. When a person is engaged in the business of selling tangible personal property at both wholesale and retail, the retail rate shall be applied only to the gross proceeds of the sales made other than at wholesale when such person's books are so kept as to show separately the gross proceeds of sales of each class, and when such books are not so kept the retail rate shall be applied to the gross proceeds of every sale so made, subject to the qualifications set forth in subsection B of this section.

Section 9-1-9 Deductions

This chapter shall not apply to:

- A. Sales of gasoline.
- B. Common or contract motor carriers.
- C. Sales of tangible personal property to a person licensed as a contractor under the laws of the State of Arizona who holds a valid privilege license for engaging or continuing in the business of contracting under this chapter when tangible personal property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement in fulfillment of a contract thereof.
- D. Sales to the United States Government, the State of Arizona or the Town of Duncan, or any agencies, departments or political subdivisions thereof.

Section 9-1-10 Monthly Return; Time for Payment; Extension of Time

- A. The taxes levied under this chapter shall be due and payable monthly on or before the fifteenth (15th) day of the month in which the tax accrues, and shall be delinquent five (5) days thereafter.
- B. The taxpayer shall on or before the fifteenth (15th) day of the month prepare a return upon the form provided therefor by the council showing the amount of the tax for which he is liable for the preceding month, and shall mail or deliver the return together with remittance for the amount of the tax to the office of the town clerk. The return shall be verified by the oath of the taxpayer or an authorized agent. No remittance other than cash shall be final discharge of liability for the tax levied by this chapter until it has been paid in cash to the town clerk.
- C. Any taxpayer who fails to pay such tax within five days from the date upon which the payment becomes due shall be subject to and shall pay a penalty of ten percent (10%) of the amount of the tax, plus interest at the rate of one half of one percent (1/2 of 1%) per month or fraction of month from the time the tax was due and payable until paid.
- D. The council, for good cause shown, may extend the time for making any return required by the chapter, and may grant such reasonable additional time within which to make return as it deems proper but the time for filing shall not be extended beyond the fifteenth (15th) day of the second month next succeeding the regular due date.

Section 9-1-11 Deficiencies; Penalty; Notice; Payment

A. If a taxpayer fails to file a return, or if the council is not satisfied with the return and payment of the amount of the tax required by this chapter to be paid by any person, it may examine the return and re-compute and re-examine the amount required to be paid, based upon the facts contained in the return and upon any information which may be within its possession. All additional amounts determined to be due under the provisions of this section shall bear interest at the rate of one-half of one percent (1/2 of 1%) per month or fraction of a month from the time the additional tax was due and payable until paid.

B. If any part of the deficiency for which a determination of an additional amount due is made is found to be due to negligence or intentional disregard for this chapter but without intent to defraud, a penalty of ten percent (10%) of such amount shall be added, plus interest at the rate of one-half of one percent (1/2 of 1%) per month or fraction of month from the time the additional tax was due and payable until paid; provided, however, that if said deficiency is found to be fraud, or to have been done with an intent to evade this chapter, a penalty of twenty-five percent (25%) of such amount shall be due and added, plus interest as set forth above.

C. The council shall give the taxpayer written notice of the determination of a deficiency by mail and such deficiency plus interest and penalties shall be due and payable thirty (30) days after receipt of the notice and demand, or if an appeal is taken to the council, within ten (10) days after the order or decision of the council has become final.

Section 9-1-12 Appeal to Council

A. Any person from whom an amount is determined to be due and payable under this chapter, may apply to the council for hearing by a petition in writing within thirty (30) days after notice required by subsection C of section 9-1-11 is received by him. The petition shall set forth the reasons why such hearing should be granted and the amount of the tax reduced. The council shall promptly consider the petition and may grant or deny the hearing. Notice in writing of the council's decision to either grant or deny the petition for a hearing shall be given to the petitioner.

B. If the petition for hearing, correction or re-determination of the tax is not filed within such thirty (30) day period, or any due extension of time thereof, the amount determined to be due shall become final, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.

Section 9-1-13 Tax Shall Be a Lien

The tax imposed by this chapter shall be a lien upon the property of any person subject to the provisions of this chapter who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under Section 9-1-10 of this chapter within thirty (30) days after the date he sold out his business or stock of goods, or quit business and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the town clerk showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the thirty (30) day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

Section 9-1-14 Tax Lien; Notice; Priority of Lien

A. Any tax, penalty or interest imposed under this chapter which has become final, or as provided in this chapter shall become a lien upon the person issuing a notice and claim of lien setting forth the same by giving the name of the taxpayer, the amount of the penalty and interest, the periods for which due, the date of accrual thereof and stating that the town claims a lien therefor.

B. The notice and claim of lien shall be issued under the official seal of the town and signed by its mayor and shall be recorded in the office of the county recorder of any county in which the taxpayer owns property. After the notice and claim of lien is filed, the taxes, penalties and interest in the amounts specified therein shall be a lien on all real and personal property of the taxpayer located in such county superior to all other liens and assessments placed of record subsequent to filing of the notice and claim of lien, except liens for ad valorem taxes.

Section 9-1-15 Collection of Delinquent Taxes

After notice and claim of lien as provided in Section 9-1-14 of this chapter has been recorded, or concurrently therewith, the town clerk may issue a warrant directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property of the delinquent taxpayer found within said county, for the payment of the amount of such tax with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the town clerk and pay to him the money collected by virtue thereof by a time to be therein specified, not more than ninety (90) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the county recorder a copy thereof and the county recorder shall thereupon file of record and index among recorded liens the name of the delinquent taxpayer mentioned in the warrant and the date when such copy is filed. Thereupon the

amount such warrant shall become, as of the date of filing, a lien upon the title to any interest in real and personal property of the delinquent taxpayer against whom it is issued in the same manner as an abstract of judgment duly recorded in the office of the county recorder, the said sheriff shall thereupon proceed upon the same manner prescribed by law in respect to execution issued against property on the judgment of a court of record, and shall be entitled to the same fee for his services in executing the warrant, to be collected in the same manner. If a warrant is returned not satisfied in full, the town clerk shall have the same remedies to enforce the claim for taxes against the delinquent taxpayer as if the town had recovered judgment against the delinquent taxpayer for the amount of the tax.

Section 9-1-16 Penalties

A. It is unlawful for any person to:

1. Fail or refuse to make any return required by this chapter.
2. Fail or refuse to furnish any supplemental return or other pertinent and available data required by the council.
3. Make or cause to be made a false or fraudulent return.
4. Fail or refuse to permit any lawful examination of any book, paper, account, record or other memoranda by the council or any of its authorized agents or employees.

B. A person violating any provision of subsection A of this section shall be punished by a fine of not more than three hundred dollars (\$300.00), by imprisonment for not more than three (3) months, or both.

Section 9-1-17 Personal Liability for Tax

Every tax imposed by this chapter and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the town, and may be collected by action in court instituted in the name of the town by the town attorney upon request of the council. Such remedies shall be in addition to existing remedies or those provided in this chapter.

CHAPTER 10

ANIMALS

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CHAPTER 10 ANIMALS

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Section 10-1-1 Definitions

In this article unless the context otherwise requires:

“Animal” – means any live vertebrate creature, domestic or wild.

“At Large” – means not under the restraint of the owner or other persons acting for the owner.

“Animal Control Authority” – means the animal control officer, town marshal, town manager or delegate.

“Animal Control Officer” – means the enforcement agent designated by the town manager.

“Animal Shelter” – means any establishment authorized by the town for the confinement, maintenance, safekeeping and control of animals that come into the custody of the animal control officer or the animal control authority.

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

“Dog” – means a member of the *Canis familiaris* family.

“Exposed To Rabies” – means an animal if it has been bitten by or exposed to any animal known to have been infected with rabies.

“Fowl” – means chicken, cock, hen, duck, goose, peafowl or other generally accepted domesticated commercial bird.

"Kennel" – means any premises wherein any person, group of persons or corporations engages in breeding, buying, selling or boarding dogs or cats and specifically the keeping of three or more dogs or cats four months of age or older.

"Livestock" – means horses, mules, asses, cattle, oxen, swine, sheep and goats.

"Neutered Male" – means any dog or male cat which has been operated upon to prevent conception.

"Owner" – means any person, partnership or corporation owning, keeping, possessing, harboring or maintaining one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.

"Public Nuisance" – means any animal which:

1. Molests passersby or passing vehicles.
2. Attacks other animals.
3. Trespasses on public property.
4. Is repeatedly at large.
5. Damages private or public property.
6. Disturbs the peace, comfort or health of any person residing in the town by excessive or continuous noise.

"Restraint" – means an animal is controlled by a leash or lead, at "heel" beside a competent person and obedient to that persons commands, on or within a vehicle being driven or parked on the street or within the property limits of its owner.

"Spayed Female" – means any bitch or female cat which has been operated upon to prevent conception.

"Stray Cat" – means any cat four months of age or older running at large.

"Stray Dog" – means any dog four months or age or older running at large or that is not wearing a valid license tag.

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

"Vicious Animal" – means any animal that constitutes a physical threat to human beings or other animals.

Section 10-1-2 Enforcement Of Chapter

The provisions of this chapter shall be enforced by the animal control officer or animal control authority. The animal control officer or animal control authority is hereby given authority to file civil complaints in the name of the town for any violation of this chapter.

Section 10-1-3 Cruelty

It is unlawful for any person to:

A. Maliciously kill, maim, poison or wound an animal which is the property of another, or who, having charge or custody of an animal as owner or otherwise, overdrives, overloads, drives when overloaded, overworks, torments, tortures, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates or cruelly kills an animal, or subjects an animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses an animal when unfit for labor.

B. Abandon an animal, or drop or leave an animal on a street, road or highway, in a public place or on private property with intent to abandon. An animal shall be deemed abandoned when the owner fails to claim it from a boarding facility or veterinarian within ten days of the date a certified letter is mailed to such person from the boarding facility or veterinarian requesting that the owner reclaim the animal.

Section 10-1-4 Public Nuisance

It is unlawful for any person to harbor or keep any animal that is a public nuisance or poses a serious health or sanitation threat as determined by the animal control authority or appropriate health department official.

Section 10-1-5 Livestock And Poultry; Within Town Limits

A. No animals or livestock shall be yarded, maintained, penned or kept within two hundred feet (200') of any residence, dining room, sleeping room or other place of human habitation other than that of the owner.

B. The maintaining or keeping of all animals and livestock within the town shall be allowed as stated in subsection A hereof only so long as they do not cause, create or contribute to or become a health nuisance due to the presence of noise, flies, mosquitoes, insects, varmints, rodent harborage, odors, dust, ponded waters, accumulation of manure, garbage refuse or other obnoxious or putrescible material or for any other like reason. Also, shall be subject to all pertinent statutes, rules and regulations of the state of Arizona, County of Greenlee and the rules of the Greenlee County Department of Health.

Section 10-1-6 Animal Waste

The owner of every animal shall be responsible for the removal and sanitary disposal of any excreta deposited by the animal on public or private property.

Section 10-1-7 Killing Of Dangerous Or Vicious Animals

A. The members of the marshal's office, the animal control officer or animal control authority are authorized to kill any dangerous animals of any kind when it is necessary for the immediate protection of any person or property.

B. The animal control officer authority shall destroy a vicious animal upon an order of the town magistrate. The town magistrate may issue an order after notice to the owner, if any, and a hearing.

Section 10-1-8 Destruction Of Injured Animals

Any animal, whether licensed or unlicensed, which apparently is suffering from serious injuries and is in great pain and probably would not recover, or which is a danger to other animals or to man, may be destroyed by the animal control officer or animal control authority in as humane a manner as possible after reasonable efforts to notify the owner have failed.

Section 10-1-9 Diseased Animals

A. It is unlawful to allow any domestic animal afflicted with a contagious or infectious disease to run at large or to be exposed in any public place whereby the health of a man or best may be affected. It is unlawful for such diseased animal to be shipped or moved from the premises of the owner thereof, except under the supervision of the animal control officer or animal control authority.

B. It is hereby made the duty of the animal control officer or animal control authority to secure the disposition of any diseased animal and the treatment of affected premises to prevent the communication and spread of the contagion or infection, except in cases when the State Department of Health Services, the Arizona Livestock Board and the State Veterinarian are empowered to act.

Section 10-1-10 Restraint

A. The owner shall keep his animal under restraint at all times and shall not permit such animal to be at large.

B. The owner shall exercise proper care and control of his animals to prevent them from becoming a public nuisance.

C. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with a male animal of the same species except for planned breeding.

D. The owner shall confine within a building or secure enclosure every vicious animal and not take such animal out of such building or secure enclosure unless such animal is

securely muzzled or otherwise prevented from posing a physical threat to humans or other animal. A sign must be posted in a conspicuous place at the entrance to the premises advising the public of the nature of the animal maintained therein.

Section 10-1-11 Housing

It is unlawful to cause or allow any stable or place where any animal is to be kept to become unclean or unwholesome. The premises upon which the animals are kept shall be sanitary and subject to inspection and regulations by the animal control authority or other public agencies empowered to act.

ARTICLE 10-2 IMPOUNDMENT OF ANIMALS

10-2-1	Impounding Of Animals At Large
10-2-2	Notice To Owners Of Impoundment
10-2-3	Reclamation By Owner
10-2-4	Report Of Impounded Animals
10-2-5	Conditions And Duration Of Impoundment
10-2-6	Confinement Of Wild Animals
10-2-7	Sale Of Unreclaimed Animals
10-2-8	Impeding Animal Control Officer
10-2-9	Impoundment Fees

Section 10-2-1 Impounding Of Animals At Large

A. Except as provided in subsection B, unlicensed, at large or nuisance animals shall be impounded by the animal control officer or the animal control authority in the shelter designated as the town animal shelter, and there confined in a humane manner. Except as provided in section 10-2-2, if said animal is not claimed before the expiration of three days, it shall become the property of the animal control authority and may be disposed of in a humane manner or sold at the discretion of the said authority.

B. When dogs or cats are found running at large and their ownership is known to the animal control officer or the animal control authority, such dogs or cats may be returned to their owner, but the officer will cite the owners of such dogs or cats to appear in court to answer to charges of violations of this chapter.

C. Upon impoundment, all dogs and cats will be given distemper, hepatitis leptospirosis and any other emergency treatment at cost to the owner.

Section 10-2-2 Notice To Owners Of Impoundment

A. Immediately upon impounding animals, the animal control officer or the animal control authority shall make every reasonable effort to identify the owners of such animals so impounded, and inform such owners of the conditions whereby they may regain custody of such animals.

B. If the owner of any impounded animals shall be known to the animal control officer and shall reside or have a known place of business in the town, the animal control officer shall notify the owner, in writing, personally or by certified mail within twenty-four hours after such animal has been impounded. The notice shall contain a description of the animal and shall state that, unless reclaimed within 72 hours of the date of the notice, such animal shall be disposed of in accordance with this chapter. Copies of the notice shall be posted at the place of impoundment and at the town hall.

Section 10-2-3 Reclamation By Owner

A. The owner shall be entitled to reclaim any impounded dog or cat upon compliance with the license provisions of Article 10-4 and the payment of impoundment fees as set forth in this article.

B. Any other animal impounded under the provision of this chapter may be reclaimed by the owner upon the payment of impoundment fees set forth in this article.

C. Any animal impounded under the provisions of this chapter and not reclaimed by its owner within three days may be humanely destroyed by a veterinarian, animal control officer or the animal control authority; sold; or placed in the custody of some person deemed to be a responsible and suitable owner.

D. The owner of an animal impounded and not reclaimed shall be responsible for all fees incurred, provided the owner has been notified pursuant to Section 10-2-2.

E. When in the judgment of a licensed veterinarian and the animal control officer or animal control authority an animal should be destroyed for humane reasons, such animals may not be reclaimed.

Section 10-2-4 Report Of Impounded Animals

The animal control officer or animal control authority shall, within twenty-four hours after taking up and impounding any animal, make a report to the chief of police and other appropriate officials as required by law stating the kind of animal and describing it by color or otherwise or by any marks or brands that may be on it, and when it was impounded.

Section 10-2-5 Conditions And Duration Of Impoundment

The animal control officer shall provide for the keeping of all animals impounded in a safe, convenient and comfortable place within or conveniently near the town limits and shall feed such animals at least once every twenty-four hours and treat them in a humane manner during the time they are impounded.

Section 10-2-6 Confinement Of Wild Animals

A. No wild animal may be kept within the town limits, except under such conditions as shall be fixed by the town or the animal control authority, provided, however, that wild animals may be kept for exhibition purposes by circuses, zoos and educational institutions, in accordance with such regulations as shall be established by the town or the animal control authority.

B. Notwithstanding Section 10-2-3, any animals, described in subsection A of this section, found at large shall be impounded by the animal control officer or the animal control authority and may not be reclaimed by the owner, unless such reclamation is authorized by any court having jurisdiction.

Section 10-2-7 Sale Of Unreclaimed Animals

The animal control officer may, at the time provided in notice of sale, sell at public auction animals impounded under the provisions of this chapter, which have not been reclaimed by the owner. The animal shall be sold to the highest cash bidder and the animal control officer shall immediately pay to the clerk the proceeds of the sale of any such animal. In no instance shall the animal control officer be or become interested, either directly or indirectly, in the purchase of any animal sold by him.

Section 10-2-8 Impeding Animal Control Officer

It is unlawful for any person to in any manner intervene, impede, prevent, obstruct or intimidate any member of the animal control authority or delegate in the discharge of his duties in taking up or attempting to take up and impound any and all animals which it shall be his duty to impound under the provisions of this chapter, or who shall rescue or attempt to rescue any animal so taken up or to release any animal so impounded.

Section 10-2-9 Impoundment Fees

Each animal impounded may be reclaimed as provided in this chapter upon payment to the animal control officer of the following fees when applicable.

Impoundment fee per animal	\$25.00 1 st Offense, \$50.00 2 nd Offense, \$75.00 3 rd Offense, Not returned after 3 rd Offense
Daily boarding per animal	10.00 per day
Posting notice of impoundment	2.00
Serving or mailing personal notice	2.50
Publication of notice of sale if animal is to be sold	Cost of publication
Owner requested euthanasia for dogs	15.00
Owner requested euthanasia for cats	15.00
Vaccinations and emergency treatment	Cost of services

ARTICLE 10-3 RABIES CONTROL

10-3-1	Vaccination Required
10-3-2	Handling And Reporting Of Biting Animals
10-3-3	Town-Wide Quarantine
10-3-4	Responsibilities Of Veterinarians

Section 10-3-1 Vaccination Required

A. Before a license is issued for any dog or cat, the owner must present an anti-rabies vaccination certificate signed by a veterinarian stating the owner's name and address and giving the animal's description, date of vaccination and type, manufacturer and serial number of the vaccine and date that re-vaccination is due. No dog or cat shall be licensed unless it is vaccinated in accordance with the provisions of this article and the regulations promulgated hereunder.

B. If a dog or cat is impounded and found to be unvaccinated, the animal control officer or animal control authority is hereby authorized to cause such animal to be vaccinated at a cost to be borne by the owner. The vaccination shall be performed by a veterinarian, who shall issue a certificate of vaccination.

Section 10-3-2 Handling And Reporting Of Biting Animals

A. Every animal which bites a person shall be promptly reported to the animal control officer or the animal control authority, and the animal shall thereupon be securely quarantined at the direction of the animal control officer or animal control authority for a period of ten days, and shall not be released from such quarantine except by written permission of the animal control officer or animal control authority. At the discretion of the animal control officer or animal control authority, such quarantine may be on the premises of the owner, at the shelter designated as the town animal shelter or, at the owner's option and expense, in a veterinary hospital of the owner's choice. In the case of stray animals or in the case of animals whose ownership is not known, such quarantine shall be at the shelter designated as the town animal shelter.

B. Upon demand made by the animal control officer or animal control authority, the owner shall surrender any animal which has bitten a human, or which is suspected of having been exposed to rabies, for supervised quarantine which expense shall be borne by the owner. The animal may be reclaimed by the owner, if adjudged free of rabies, upon payment of fees set forth in Section 10-2-9 of this chapter and upon compliance with licensing provisions set forth in Article 10-4 of this chapter.

C. When an animal under quarantine has been diagnosed as being rabid or suspected by a licensed veterinarian of being rabid and dies while under observation, the animal control officer, animal control authority or licensed veterinarian shall immediately send the head of such animal to the Arizona Department of Health Services laboratory for rabid

determination by pathological examination and shall notify the proper public health officer of reports of human contacts and the diagnosis made of the suspected animal.

D. No person shall kill or cause to be killed any rabid animal suspected of having been exposed to rabies or any animal biting a human, except as herein provided, nor shall such person remove same from the town limits without written permission from the animal control officer or animal control authority.

E. The carcass of any dead animal exposed to rabies shall upon demand be surrendered to the animal control officer or animal control authority.

F. The animal control officer or animal control authority shall direct the disposition of any animal found to be infected with rabies.

G. It shall be the duty of every physician or other practitioner to report to the animal control officer or animal control authority the names and addresses of person treated for bites inflicted by animals, together with such other information as will be helpful in rabies control.

Section 10-3-3 Town-Wide Quarantine

A. When a laboratory report, either preliminary or final, gives a positive diagnosis of rabies, the local town or county health officer or the animal control authority may declare a town-wide quarantine for a period of ninety days and, upon the invoking of such a quarantine, no animal shall be permitted to be at large except on a leash (the maximum length to be no more than six feet) and accompanied by a responsible person.

B. During such quarantine:

1. No animal may be taken or shipped from the town without written permission of the animal control officer or animal control authority.

2. The local town or county health officer shall require all dogs, four months of age and older, to be vaccinated against rabies with a canine rabies vaccine approved by the Biologies Control Section of the U.S. Department of Agriculture. The local health officer may extend this requirement beyond the quarantine period if he deems it necessary.

3. All vaccinated dogs shall be restricted (leashing or confinement on enclosed premises) for thirty days after vaccination. During the quarantine period, the local health officer shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency canine rabies vaccination clinics strategically located throughout the area of jurisdiction.

4. No dog which has been impounded by reason of its being a stray, which is unclaimed by its owner, is allowed to be adopted from the animal shelter, except by

special authorization of the public health official and the animal control officer or animal control authority.

5. Every animal bitten by an animal adjudged to be rabid shall be destroyed, or at the owner's expense and option, shall be treated for rabies infection by a licensed veterinarian, or held under ten days quarantine by the owner in the same manner as other animals are quarantined.

6. In the event there are additional positive cases of rabies occurring, such period of quarantine may be extended for an addition six months.

Section 10-3-4 Responsibilities of Veterinarians

It shall be the duty of every licensed veterinarian to report to the animal control officer or animal control authority his diagnosis of any animal observed by him as a rabies suspect.

ARTICLE 10-4 LICENSES

10-4-1	License Required
10-4-2	Kennels
10-4-3	License Fees
10-4-4	Expiration And Transferability
10-4-5	Revocation

Section 10-4-1 License Required

A. No person shall own, keep or harbor any dog or cat four months of age or older within the town limits unless such dog or cat is licensed as provided in this article.

B. Written application for such license shall be made to the animal control officer and shall state the name and address of the owner, and the name, breed, color, age and sex of the dog or cat. The owner shall present a valid anti-rabies certificate at the time of application. The license fee shall be paid at the time of making application, a numbered receipt given to the applicant, and numbered tag shall be issued to the owner.

C. The provision of this article shall not apply to any person visiting in the town for a period not exceeding thirty days and owning or possessing a dog or cat currently licensed and bearing a license issued by another municipality or other licensing authority except the owner may be required to present a valid anti-rabies certificate to the animal control officer or animal control authority.

D. Each dog licensed under the terms of this article shall receive, at the time of licensing, a tag on which shall be inscribed the name of the town, the number of the license and the year in which it expires. The tag shall be attached to a collar or harness that shall be worn by the dog at all times except as otherwise provided in this article. Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a one-dollar fee to the town.

E. Any person who falsifies information on the application, who counterfeits or attempts to counterfeit an official dog or cat tag, who removes such tag from any dog for the purpose of willful and malicious mischief, or who places a dog tag upon a dog unless the tag was issued to that dog is guilty of a misdemeanor.

F. The animal control officer or animal control authority shall impound any dog found without a current valid license tag.

Section 10-4-2 Kennels

A. Every person, group of persons or corporations engaged in the commercial business of buying, selling, breeding or boarding, and who owns, harbors or keeps five or more dogs or cats, four months of age or older, in a kennel shall make application for a license and upon issuance of the license pay an annual license fee of thirty dollars. All local, county and state laws or ordinances concerning the licensing, vaccinating, excreta removal, sanitation inspection, restraint and other applicable ordinances will apply to kennels.

B. It shall be a condition of the issuance of any license that the animal control authority shall be permitted to inspect all animals and the premises where animals are kept at any time and shall, if permission for such inspections is refused, revoke the license of the refusing owner.

C. If the applicant has withheld or falsified any information on the application, the animal control authority shall revoke or refuse to issue a license.

D. No person who has been convicted of cruelty to animals shall be issued a license under this section.

E. Any person having been denied a license may not reapply for a period of thirty days. Each reapplication shall be accompanied by a ten-dollar fee.

Section 10-4-3 License Fees

A. The council may from time to time fix the rates and classification for license fees within the town and shall make such rules and regulations as may be necessary to properly administer and enforce this chapter by resolution of the town council. The following is a list of possible items to charge for:

	One Year
1. for each unneutered male dog or cat	\$8.00
2. for each unspayed female dog or cat	\$8.00
3. for each neutered male dog or cat	\$5.00
4. for each spayed female dog or cat	\$5.00
5. for each kennel	\$50.00

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

Section 10-4-4 Expiration And Transferability

A. All dog or cat licenses and kennel licenses shall be issued for one year beginning with the first day of January. Applications for licenses may be made three months after the start of the licensing year without penalty, but when application is made after three months of the licensing year have elapsed, the applicant shall be assessed a penalty of fifty percent of the license fee, which amount shall be added and collected with the regular license fee, except if the dog, cat or kennel did not become subject to licensing until after the start of the licensing year, then no penalty shall be assessed.

B. If there is a change in ownership of a dog, cat or kennel during the license year, the new owner may have the current license transferred to his name upon the payment of a transfer fee of one dollar.

Section 10-4-5 Revocation

A. The animal control authority may revoke any license if the person holding the license refuses or fails to comply with this chapter, the regulations promulgated by the animal control authority or any law governing the protection and keeping of animals.

B. Any person whose license is revoked shall, within ten days thereafter, humanely dispose of all animals owned, kept or harbored by such person, and no part of the permit or license fee shall be refunded.

ARTICLE 10-5 RECORDS, REPORTS AND INVESTIGATIONS BY ANIMAL CONTROL OFFICER

10-5-1	Records To Be Kept
10-5-2	Reports By Animal Control Officer
10-5-3	Investigations

Section 10-5-1 Records To Be Kept

A. The animal control officer shall keep in a suitable book an account of all moneys received, when and from whom received and the amount paid to the clerk. Also included shall be the date of payment, a complete description of all animals impounded showing the time when impounded and by whom redeemed or when sold and to whom sold, and if destroyed, when and by whom. The book or record shall be the property of the town and be open to the inspection of the public at all reasonable times.

B. It shall be the duty of the animal control officer or animal control authority to keep, or cause to be kept, accurate and detailed records of all bite cases reported to him and his investigation of same.

Section 10-5-2 Reports By Animal Control Officer

The animal control officer shall within tow working days after the collection of any monies whatsoever, pay over to the clerk all money received and take the clerk's receipt therefor. Said money shall be credited to the general fund.

Section 10-5-3 Investigations

A. For the purpose of discharging the duties imposed byt his chapter and to enforce its provisions, the animal control authority with any police officer is empowered to enter upon any premises with a search warrant upon which an animal is kept or harbored and to demand the exhibition by the owner of such animals, or the license, if required for such animals.

B. It is further provided that the animal control authority may enter the premises with a police officer and search warrant where any animal is kept in a reportedly cruel or inhumane manner, and demand to examine such animals and to take possession of such animal when, in his opinion, it requires humane treatment.

CHAPTER 11

GARBAGE AND TRASH COLLECTION

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CHAPTER 11
GARBAGE AND TRASH COLLECTION

ARTICLE 11-1 GARBAGE AND TRASH COLLECTION

11-1-1	Definitions
11-1-2	Award of Contract
11-1-3	Collection Agency
11-1-4	Collection Hours
11-1-5	Rates
11-1-6	Policies

Section 11-1-1 Definitions

In this chapter unless the context otherwise requires:

- A. "Garbage" means all putrescible wastes, except sewage and body wastes, including all organic wastes that have been prepared for, or intended to be used as, food or have resulted from the preparation of food, including such substances from all public and private establishments and residences.
- B. "Refuse" means all garbage and trash.
- C. "Trash" means all nonputrescible wastes.

Section 11-1-2 Award of Contract

The council may by resolution award a contract for the collection and disposal of garbage, swill, refuse and waste matter to any person which the council believes best qualified and equipped to perform the work. The contract shall require the contractor to collect, remove and dispose of garbage, swill, refuse and waste matter in the town in accordance with such regulations as may be prescribed by the council. It shall require the contractor to carry worker's compensation insurance and property damage and public liability insurance in such sums as shall be fixed by resolution.

Section 11-1-3 Collection Agency

The town or other collector authorized by the town, shall collect all residential and commercial garbage within the town. No person, except as provided in this chapter, shall collect or gather garbage within the town.

Section 11-1-4 Collection Hours

The town manager is hereby authorized to establish the hours of collection of refuse within the town.

Section 11-1-5 Rates

A. The council may from time to time fix the rates and classifications for garbage and trash collection within the town and shall make such rules and regulations as may be necessary to properly administer and enforce this chapter.

B. Trash removal by Town Employees: When a citizen of the Town of Duncan asks to have refuse removed from their property by the Town of Duncan, the citizen shall have the refuse piled up and easily accessible. When convenient for the Town, such refuse will be removed. The owner of the refuse/property shall pay in advance the cost of the landfill charges per load, and a flat rate of thirty dollars (\$30) per load.

Section 11-1-6 Policies

Refuse collection within the town limits, whether by the town or a contractor, shall at all times be in accordance with all current county, state and federal regulations.

Collection of trash is subject to county, state and federal regulations including, but not limited to, proper disposal in an authorized landfill and is the responsibility of the individual.

It is the policy of the town to promote a clean and attractive community through proper regulation of refuse services.

Each occupied residence within the town shall have an approved container for refuse services and shall be charged the standard rate for same.

The town may provide refuse services to senior citizens at a reduced rate.

Handling of garbage containers for handicapped residents will be handled on a case-by-case basis.

The town shall provide, at no additional cost, a roll-off container on a regular basis to receive trash and other large and bulky items for the benefit of the residents.

ARTICLE 11-2 PREPARATION OF REFUSE FOR COLLECTION

11-2-1	Preparation of Refuse
11-2-2	Location for Pick-Up
11-2-3	Lids and Covers
11-2-4	Use of Containers

Section 11-2-1 Preparation of Refuse

All refuse shall be prepared for collection or disposed of as follows:

A. Garbage. Containers shall be tightly covered and be of rust resistant metal or plastic and shall have handles on the outside. All garbage must be wrapped in paper or placed in paper or plastic bags and sealed. This will prevent flies from laying eggs, or if eggs are laid, this will keep the maggots from migrating out of the garbage. This will also help keep garbage from accumulating in the bottom of cans, thereby reducing odors and additional fly breeding material. The maximum capacity of each container shall not exceed twenty gallons. Such containers shall be kept in good repair and in a sanitary condition. Containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition may be condemned by the town for further use. Legal notice of such condemnation shall consist of a label or tag affixed to the container, which tag shall contain the following or similar wording: The "container" to which this label is attached is no longer serviceable through disrepair or is maintained in an unsanitary condition, and for that reason it is condemned for further use. The label is notice that the receptacle will be removed and destroyed by the town unless replaced or placed in a satisfactory condition within fifteen days from its date. You may request a hearing as to the condition of the receptacle by calling 359-2791, or by writing to Town of Duncan, PO Box 916, Duncan, AZ 85534. If you request a hearing, the receptacle will not be destroyed until completion of the hearing and a determination by the hearing officer. If you do not request a hearing, the receptacle will be destroyed after fifteen days from the date of this notice. Dated this _____ day of _____, 199_. Town of Duncan, by authorized signature.

B. Trash. Trash shall be placed in container or tied in bundles by the customer and set out for collection. Containers may be garbage containers described above, or boxes no exceeding three square feet by four feet depth or plastic bags of at least three mil strength. In any event, the weight of a loaded container or bundle shall not exceed fifty pounds. Customer wishing to retain disposal boxes should mark the box "SAVE" in a readily seen manner.

C. Brush. Brush shall be cut into such a size that one person can readily load the individual pieces into a truck or chipper, be piled in neat order with all long branches parallel to one another and shall have all metal or foreign materials removed to facilitate chipping.

D. Rubbish. Rubbish shall be neatly piled or bundled and placed at a point easily accessible to the collection service. Tree limbs and other foliage waste shall be cut in lengths no to exceed four feet and not over fifty pounds in weight.

E. Appliances and Vehicles. The customer shall remove or cause to be removed all appliances, vehicles or equipment classed as refuse from their premises or the public right-of-way.

F. Building Materials. All owners, contractors and builders of structures shall upon the completion of any structure, gather up and haul away, at their sole cost and expense, all refuse of every nature, description or kind, which has resulted from the building of such structures, including all lumber scraps, shingles, plaster, brick, stone, concrete and other construction in a slightly condition. Residential customers may dispose of small amounts of building materials from time to time, providing it is placed in a container as described above and contains no concrete, masonry or soil.

G. Disposal of Industrial and Construction Rubbish. It shall be the responsibility of the owner, tenant, lessee or contractor to dispose of all industrial and construction rubbish and waste accumulated as a result of construction and industrial operating.

H. Dangerous Waste. Dangerous wastes shall be placed in a proper container, plainly marked "DANGER". The town reserves the right to deny service for certain dangerous wastes and to require the customer to properly dispose of it by other means.

I. Soil and Concrete. Waste soil, concrete, masonry blocks, sod and rocks shall be disposed of by the owner, tenant or occupant of the premises.

Section 11-2-2 Location for Pick-Up

All refuse prepared for collection shall be placed at the front of the property line on the sidewalk or parkway. All containers and piles of refuse shall be so located as to not block the street, sidewalk or gutter, or otherwise be a hazard to pedestrian or vehicular traffic.

Section 11-2-3 Lids and Covers

The lids or covers of all containers shall at all times be kept secure so that flies and other insects may not have access to the contents and shall only be removed while the containers and receptacles are being filled, emptied or cleaned.

Section 11-2-4 Use of Containers

A. It is unlawful for any person to deposit, or cause to be deposited, any refuse in any container that he does not own or is not entitled to use as a tenant. This does not apply to public containers.

B. Only town residents shall dispose of locally generated residential garbage or trash in containers furnished by the town or other collector for the accumulation, storage and collection of all locally generated residential garbage or trash.

C. Any non-resident of the town who disposes of any refuse or trash in any container furnished by the town or other collector for the accumulation, storage and collection of all locally generated garbage or trash in violation of this section shall be punishable as a petty offense.

ARTICLE 11-3 OTHER METHODS OF GARBAGE AND TRASH REMOVAL

- 11-3-1 Vehicles and Receptacles to be Spillproof
- 11-3-2 Spilled Refuse
- 11-3-3 Dumping Refuse

Section 11-3-1 Vehicles and Receptacles to be Spillproof

It is unlawful for any person to haul or cause to be hauled on or along any public street in the town any garbage, unless such garbage is contained in strong, watertight vehicles or vehicles with watertight receptacles, constructed to prevent any such garbage from falling, leaking or spilling and any odor from escaping.

Section 11-3-2 Spilled Refuse

Any person hauling any refuse along the street of the town shall immediately replace in the conveyance used for such hauling any refuse which may fall upon any street.

Section 11-3-3 Dumping Refuse

It is unlawful for any person to place or cause to be placed any refuse upon any public or private property within the town, except as specifically permitted in this chapter.

ARTICLE 11-4 NUISANCES

- 11-4-1 Containers for Manure Required
- 11-4-2 Privies Prohibited
- 11-4-3 Abatement of Flies
- 11-4-4 Obnoxious Places
- 11-4-5 Removal
- 11-4-6 Owner to Pay Charges

Section 11-4-1 Containers for Manure Required

It shall be the duty of every person owning, controlling, operating or having in charge any public or private corral, stable, barn or place where horses, mules, asses, cattle, sheep, goats, poultry or other livestock are kept, to have and maintain at all times upon the premises in or adjacent to such corral, stable, barn or place a receptacle of sufficient dimensions which shall be fly tight, for the purpose of containing the droppings of manure from such stock, which said receptacle shall have a top or lid so arranged and maintained as to be fly tight and exclude therefrom all flies; and such owner, tenant or occupant shall promptly deposit therein all the droppings from such stock, and shall keep the lid thereof closed, except when necessary to open for the purpose of depositing therein or removing therefrom, and every such owner, tenant or occupant shall cause the contents of such receptacle to be removed from the premises at least once a week, and more often if required by the Health Officer.

Section 11-4-2 Privies Prohibited

No person shall suffer, permit or have upon his premises any privy, cess pool, vault, pit or like place within the corporate limits.

Section 11-4-3 Abatement of Flies

No owner, tenant or occupant of any premises within the town shall permit or have upon such premises any animal manure, garbage, trash, litter, rags or other thing in which flies breed or multiply, unless the same shall be so protected as to prevent the attraction, breeding and multiplying of flies.

Section 11-4-4 Obnoxious Places

Every person owning or occupying any premises within the town in or upon which are kept any animals or livestock which is or may become noxious or offensive to the senses, 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, or which are allowed to become a breeding place for flies and insects, or to become offensive or obnoxious to the residents in the immediate neighborhood, are hereby declared to be nuisances and subject to summary abatement and cleaning, and in addition to such abatement and cleaning, the person or persons in charge or control thereof, or responsible therefore, shall be guilty of a misdemeanor.

Section 11-4-5 Removal

Should any owner, tenant or occupant of any premises wherein a cess pool, open vault or privy is maintained fail to remove the same, or should any person fail to keep any water

closet, sink, wash basin or tub clean, sanitary and in good working order, the chief marshal, or his agent, is hereby authorized to fill in and remove or clean the same and prepare a verified statement of account of all expenses incurred by such removal or cleaning and file said statement with the clerk.

Section 11-4-6 Owner to Pay Charges

All expenses incurred in and incident to the removal, filling up and abatement of any cess pool, open vault or privy, and in causing any toilet, lavatory, urinal, water closet, sink, wash basin or tub to be cleaned, flushed and placed in good state and condition of repair and operation, as fixed and determined by said verified and itemized statement of account filed with the clerk and hereby declared to be a lien upon and against the property and the buildings and improvements thereon, and shall be collected at the same time and in the same manner as other town taxes are collected.

CHAPTER 12
SEWER, SEWAGE

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CHAPTER 12

SEWER, SEWAGE

ARTICLE 12-1 DEFINITIONS

12-1-1 Definitions

Section 12-1-1 Definitions

- A. "Town" means Town of Duncan.
- B. "Council" means a five person board elected by town residents.
- C. "Proper Town Authority" means the town council, mayor or one charged with the responsibility to carry out the objectives of the town as outlined by the council.
- D. "Shall" means mandatory.
- E. "Permit" means any written authorization required pursuant to this or any other regulation of the town for the installation of any sewage works.
- F. "Sewage" or "Sanitary Sewage" means any and all waste substances, liquids or solids associated with human habitation, but excluding storm, surface and ground waters and industrial waste.
- G. "Industrial Wastes" means all wastewaters of the community excluding sanitary sewage and uncontaminated water.
- H. "Sewer" means a pipe or conduit for carrying sewage.
- I. "Public Sewer" means a sewer controlled by public authority.
- J. "Private Sewer" means a sewer, generally on private land, connecting a sewage source to the public sewer.
- K. "Storm Sewer" or "Storm Drain" means a sewer which carries storm and surface waters and drainage, but excludes sewage and polluted industrial wastes.
- L. "Sanitary Sewer" means a sewer which carries sewage and to which a storm, surface and ground waters are not intentionally admitted.
- M. "Natural Outlet" means any outlet into a watercourse, ditch or other body of surface or ground water.

N. "Watercourse" means a channel in which a flow of water occurs either continuously or intermittently.

O. "Sewer Works" means all facilities for collecting, pumping, treating and disposing of sewage.

P. "Sewage Treatment Plant" means any arrangement of devices and structures used for treating sewage.

Q. "Sewer Connection" means the connection to the public sewer and the extension therefrom of the sewer to the property line at the alley or curb line of the street whichever is applicable, depending on the location of the public sewer.

R. "Sewer Connection Fee" means the initial sewer connection charge as set forth in this chapter and shall apply to all sewer connection to the public sewer after the effective date of this code.

S. "Garbage" means solid wastes from the preparation, cooking and dispensing of food and the handling, storage and sale of produce.

T. "Properly Shredded Garbage" means garbage that has been shredded to a degree that all particles will be carried freely under the flow conditions prevailing in the town's sewers, with no particles greater than one fourth (1/4") of an inch in any dimension.

U. "Suspended Solids" means solids that either float on the surface of, or are suspended in water, sewage or other liquids and which are removable by laboratory filtering.

V. "B.O.D." denoting biochemical oxygen demand, means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at twenty (20) degrees centigrade expressed in parts per million (PPM) in weight.

W. "pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

X. "User Charge" means the charge made to the recipient of sanitary sewer services by the town to defray the costs of operation, maintenance and replacement of the sewage collection and treatment facilities of the town.

Y. "User" means the person or persons using or required to use the town's sanitary sewer system whether or not the user is the owner of the property upon which are located the improvements that are connected to the sewer.

ARTICLE 12-2 GENERAL CONDITIONS GOVERNING SEWER INSTALLATIONS AND USE

- 12-2-1 Duties of the Duncan Town Council
- 12-2-2 Connection

Section 12-2-1 Duties of the Duncan Town Council

It shall be the duty of the Duncan Town Council to control and manage all matters pertaining to the sewage collection and disposal system of the Town of Duncan in conformity with all applicable federal, state, county and local laws and regulations set forth in this chapter, and any other Ordinances or Resolutions of the Town of Duncan, Greenlee County, Arizona. The council shall have general supervision over the town's sewer system, all real and personal property connected therewith and the employees thereof.

Section 12-2-2 Connection

It shall be unlawful for any person to connect a private sewer line or lines to any portion of the town's sewer system unless said person has first made proper application for a permit to connect to said sewer system, has paid all fees required by the town to accompany said application and said application has been approved by the proper town authorities. All connection to the town sewer shall be made pursuant to any rules, regulations or resolutions pertaining to the payment of hook-up fees. Further, all connections shall be made in compliance with the Standard Specifications adopted by the town and the current edition of the Uniform Plumbing Code, and be subject to inspection and approval of by the town, its agents or assignees, at the time of the connection. A sewer connection shall be deemed to have occurred when a lateral from the sewer located within the sewer right of way is continuous from the sewer to any point within the vertical plane of any boundary of the property.

ARTICLE 12-3 REGULATION OF PRIVATE SEWAGE DISPOSAL SYSTEMS

- 12-3-1 Property Exempt
- 12-3-2 Septic Tanks or Other Means of Disposal Prohibited
- 12-3-3 Building Subject to Article
- 12-3-4 Private Sewage Systems

Section 12-3-1 Property Exempt

Any developed or improved parcel of property within the town as of the date of adoption of this chapter; or one upon which a dwelling unit has been erected which does not lie adjacent to or within one hundred (100) feet of a collector sewer, interceptor sewer or other sewer of the Town of Duncan is exempt from the operation of this section.

Section 12-3-2 Septic Tanks or Other Means of Disposal Prohibited

The use of septic or other local means of sewage disposal, within the town, except where such tanks presently exist, is hereby declared to be a public nuisance and is declared to be abated.

Section 12-3-3 Building Subject to Article

All buildings, except those exempt in section 12-3-1, within the town inhabited or used by human beings are to be connected with the sewage system of the Town of Duncan, unless the town is unable to provide sewer.

Section 12-3-4 Private Sewage Systems

In the event that the Town of Duncan is for any reason unable to provide sewer service to a parcel of property, a subdivision or other development, the town council may approve the installation of private sewage collection, treatment and disposal facilities provided that they meet, at a minimum, the requirements set forth hereafter and that the town will not within a reasonable period of time, be able to provide such sewer services:

A. No private sewage treatment plant may be approved by the Town of Duncan, installed or operated within the boundaries of the town unless the design and installation of said plant has been approved by the engineers for the Town of Duncan for conformity with the Standard Specification of the town. Further, such treatment plants must meet all standards of the Arizona Department of Health Services and Greenlee County.

B. No private treatment plant shall be allowed to discharge untreated sewage effluent into any surface or ground water within the Town of Duncan, and further, that all discharges from the plant when in full operation must meet all standards of the United States Environmental Protection Agency, Arizona Department of Health Services, Greenlee County and the Town of Duncan.

C. The responsibility for the operation and maintenance of any private sewage treatment plant located within the boundaries of the town shall be the responsibility of the installer of the plant and not the responsibility of the Town of Duncan. In the event any plant fails to operate properly or meet the specifications of the town, the Town of Duncan will immediately revoke the permit to operate said treatment plant.

ARTICLE 12-4 SEWER USE REGULATIONS

12-4-1	Water Other Than Sewage Prohibited
12-4-2	Certain Substances Prohibited
12-4-3	Oil or Sand Interceptions, Lint and Grease Traps
12-4-4	Maintenance of Interception
12-4-5	Sewage Requiring Special Treatment or Handling
12-4-6	Maintenance of Special Treatment Facilities
12-4-7	Control Manholes for Sampling and Measuring
12-4-8	Sampling and Measuring Procedures
12-4-9	Special Agreements
12-4-10	Check Valves
12-4-11	Improvements
12-4-12	Lift Stations and Special Facilities
12-4-13	Penalties

Section 12-4-1 Water Other Than Sewage Prohibited

No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof run-off, sub-surface drainage, cooling water, water used for air cooling purposes or unpolluted process water to any sanitary sewer.

Section 12-4-2 Certain Substances Prohibited

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- A. Any liquid or vapor having a temperature higher than 150 degrees F.
- B. Any water or waste which may contain more than 100 parts per million, by weight, or fat, oil or grease.
- C. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- D. Any garbage that has not been properly shredded.
- E. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer works.

F. Any water or wastes have a pH lower than 5.5 or higher than 8.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.

G. Any water or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewage treatment plant.

H. Any water or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

I. Any noxious or malodorous gas or substance capable of creating a public nuisance.

J. Any substance whose physical, chemical or electrical operation might be such as to interfere with any phase of the operation of a sewage treatment plant of the Town of Duncan.

Each user that discharges any of the waters or wastes set forth in section 12-4-2, which causes an increase in the cost of managing the effluent or the sludge of the town's treatment works, shall pay for such increased costs.

Section 12-4-3 Oil or Sand Interceptors, Lint and Grease Traps

Grease traps shall be required at all public premises where food is served, such as restaurants, cafeterias and boarding houses.

Grease, oil or sand interceptors shall also be provided when, in the opinion of the proper town authorities, they are necessary for the proper handling of liquid wastes containing grease in excess of limits set forth in 12-4-2 of this section, or any flammable wastes, sand and other harmful ingredients. All interceptors shall be of a type and capacity approved by the proper town authorities and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, equipped with easily removable covers which, when bolted in place, shall be gas-tight and watertight.

Lint traps, approved by the town, shall be required on all lateral lines which contain or carry wastewater discharge from washing machines into the sewer system, except for private homes, apartments or condominiums.

Section 12-4-4 Maintenance of Interceptors

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

Section 12-4-5 Sewage Required Special Treatment or Handling

In cases where the character of sewage or industrial waste from any manufacturing or industrial plant, building, or premises is such that it will damage the sewer system, or cannot be treated satisfactorily in the wastewater treatment plant, the town shall require such users to dispose of such waste and prevent it from entering the system.

In such cases where the character of the sewage or industrial waste from any manufacturing or industrial plant, building or premises, is such that it imposes an unreasonable burden upon said sewer system or treatment plant greater than imposed by the average sewage entering said sewer system, the town shall, if deemed advisable, require such manufacturing or industrial plant, building or premises, to pretreat such sewage in such a manner as defined in this section.

The admission into the public sewers of any waters or wastes having:

- A. A five (5) day B.O.D. greater than two hundred fifty (250) parts per million by weight, or
- B. Containing more than two hundred fifty (250) parts per million by weight of suspended solids, or
- C. Containing any quantity or substances having characteristics described in 12-4-2 of this section, or
- D. An average daily flow greater than two percent (2%) of the average daily sewage flow of the town, shall be subject to the review and approval of the proper town authorities, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:
 - 1. Reduce the B.O.D. to two hundred fifty (250) parts per million and the suspended solids to two hundred fifty (250) parts per million by weight, or
 - 2. Reduce objectionable characteristics of constituents to within the maximum limits provided for in section 12-4-2 of this article, or
 - 3. Control the quantities and rates of discharge of such water or wastes.

Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of proper town authorities and the Department of Health of the State of Arizona; and no construction of such facilities shall

be commenced until said approvals are obtained in writing. Federal pretreatment regulations shall be enforced as applicable.

Prior to the connection of any industry's sewer to a sewer of the town, the industry and the Town of Duncan will develop and enter into an agreement that complies with the current U.S. EPA regulations and which has the approval of the EPA.

Section 12-4-6 Maintenance of Special Treatment Facilities

Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation, by the owner at his expense.

Section 12-4-7 Control Manholes for Sampling and Testing

When required by the proper town authorities, the owner of any property served by a private sewer carrying industrial wastes shall install and suitable control manhole in the private sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the proper town authorities. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times. Such analysis as may be required to insure compliance with sections 12-4-2 and 12-4-5 herein shall be provided by the owner, whenever deemed necessary by the proper town authorities.

Section 12-4-8 Sampling and Measuring Procedures

All measurements, tests and analysis of the characteristics of water and wastes to which reference is made in sections 12-4-2 and 12-4-5 herein shall be determined by the proper town authorities, in accordance with "Standard Methods for the Examination of Water and Sewage," and shall be determined at the control manhole provided for in section 12-4-7, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be nearest downstream manhole in the public sewer from the point at which the private sewer is connected.

Section 12-4-9 Special Agreements

No statements contained in this section shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment therefore by the industrial concern.

Section 12-4-10 Check Valves

All property owners connected to the sewer system shall install check valves in their home's laterals or sign a waiver absolving the Town of Duncan of any liability for damage caused by sewage backing up into their homes and property because of their failure to install check valves. The Town of Duncan authorizes that notice be given to all property owners of this requirement to either install a check valve in the lateral to their property or to sign a waiver absolving the Town of Duncan of any responsibility or liability for damage to their property caused by a backup of sewage, which could have been prevented by the installation of a check valve. The Town of Duncan or its agents or employers shall not be responsible for the decision made by the property owner to properly install a check valve.

Section 12-4-11 Improvements

The owners of all property lying adjacent to a sewer of the Town of Duncan shall connect the improvements located upon their property directly to the sewer system of the town upon the payment of a hookup fee and an inspection fee. Said fees to be in an amount as approved from time to time by the Town Council in cash at the time of the connection to the sewer.

Section 12-4-12 Lift Stations and Special Facilities

If the hookup in any new subdivision requires a lift station or other special facility, said lift station or other special facility shall be installed in accordance with the standard specifications of the town at the expense of the owner. Such lift station or other facility shall be maintained and operated by the town at no cost to the owner when said lift station are installed in utility easements or dedicated rights-of-way.

Section 12-4-13 Penalties

Any person, firm or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed \$500. Each and every day such violation continues shall be deemed and considered a separate offense. Any person, firm or corporation violating any provision of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such violation.

ARTICLE 12-5 CONNECTION PERMITS AND NEW SEWER CONSTRUCTION IN NEW DEVELOPMENT

12-5-1 Standards Governing Connection Permits

12-5-2 Standards Applying To New Developments – Require Developer Pay For All Lines To the Sewer and Give Easements

Section 12-5-1 Standards Governing Connection Permits

All applications for new connections to the sewer system and for the development of new sewage collection and transmission systems with the town shall be made on a form of application approved by the town council. The following standards, rules and regulations shall govern the issuance of connection permits:

A. Adequacy of Design. The responsibility for the adequacy of the design or the materials used shall rest solely with the permittee and the issuing of a permit shall not relieve him of the responsibility. The issuance of a permit shall not be construed as approval of the concept or construction details of the proposed facilities and shall not absolve the permittee, or design engineer, if any, of their respective responsibilities.

B. Joint Construction and Operation Permits. Unless otherwise stated by special conditions, the issuance of this permit shall be a joint construction and operation permit provided that the permittee complies with all general, standard and special conditions of the town.

C. Allowable Discharges. Discharges into the sanitary sewer system constructed under this permit shall consist of sanitary sewage only. Unless otherwise stated by the special permit conditions, there shall be no discharge of industrial wastes under the permit. Storm water shall not be permitted to enter the sanitary sewer systems.

D. Construction Inspection. All sewer construction shall be inspected and approved by the town. No sewer trenches shall be backfilled except as authorized by the town after having been inspected and approved and the sewer installed.

E. Maintenance. The sewer connections, lines, systems or facilities constructed hereunder, or serving the facilities constructed hereunder, shall be properly maintained and operated at all times in accordance with all applicable requirements. It is understood that the responsibility for maintenance shall run as a joint and several obligations against the property served, the owner or the operator of the facilities, and said responsibility shall not be discharged nor in any way affected by change of ownership of said property.

F. Indemnification. The permittee shall be solely responsible for and shall defend, indemnify and save harmless the town from and against any and all claims, incur, sustain or become liable for an account of any injury to, or death of, any person or persons, or any damage to or destruction of, any real or personal property that may be caused by the construction, use, state of repair, operation and maintenance of the proposed facilities, arising out of or in consequence of the issuance of this permit. Without limiting the generality of the preceding sentence, the provisions of this paragraph shall extend to indemnify and save harmless the town from any claims or damages arising out of or in connection with the termination or revocation of this permit.

- G. Third Parties. This permit does not grant the right or authority to the permittee:
1. To construct or encroach upon any lands of the town or of any other parties, or
 2. To construct outside of the territorial boundaries of the town.
- H. Costs. It is expressly stipulated and clearly understood that the sewer system or facilities for which the permit is issued shall be constructed, operated and maintained at no cost to the town.
- I. Other Construction. The town reserves the right, privilege and authority to permit others to reconstruct, change, alter and replace all sewers and appurtenances thereto at the point of connection of any sewage system to a town interceptor or in public rights-of-way or town easements, and to introduce additional sewage flow through this connection into the intercepting sewer of said town.
- J. Change of Use. This permit shall be incorporated in the building permit for the building or building served under this permit. The owner or occupant of any building served under this permit shall not cause or permit a change of use of the building to a use other than that indicated in this permit without first having obtained written permission from the town.
- K. Interceptors Overloading. The town serves notice that its interceptors may flow full and may surcharge, and flooding of the proposed system may occur. The permittee is put on notice that the proposed systems shall be constructed, operated and maintained at the sole risk of the permittee.
- L. Nontransferability. This permit may not be assigned or transferred without the written consent of the town.
- M. Agreement. The permittee, in consideration of the town providing sewer services, agree to pay all sewer use charges levied by the town within twenty days of the mailing of the statement for the same by the town or its agents. In the event the permittee fails to make such payment when due, the permittee agrees that the town may record a lien against the interest of the permittee affected by this permit and that said lien may be foreclosed in the same manner as a mechanic's or materials man's lien. For purposes of this permit and any actions taken thereunder, the permittee hereby waives any claim of homestead or other exemption now or hereafter granted by law.
- N. Termination. It is understood and agreed that except as provided in section 12-6-7 for non-payment, in the event the permittee shall default in or fail to perform and carry out any of the covenants, conditions and provisions of this permit and such default or violation shall continue for sixty (60) days after receipt of notice thereof, in writing, given by the town, then it shall be lawful for the town, at or after the expiration of said sixty

(60) days, to declare said permit terminated. The permittee agrees that immediately upon receipt of written notice of such termination it will stop all operations, discontinue any discharges and disconnect the sewerage system or facilities constructed under this permit. If the permittee fails to do so, the town shall have the right to disconnect said system. The permittee hereby agrees to pay for any costs incurred by the town for said disconnections. The various rights and remedies of the town contained in this permit shall be construed as cumulative, and no one of them shall be construed as exclusive of any one or more of the others or exclusive of any other rights or remedies allowed by applicable rules, regulations, ordinance and laws. An election by the town to enforce any one or more of its rights or remedies shall not be construed as a waiver of the rights of the town to pursue any other rights or remedies provided under the terms and provisions of this permit or under any applicable rules, regulations, ordinances or laws.

O. Expiration. This permit shall expire if construction has not started within six (6) months from the date of issue. Construction under an expired permit is deemed construction without permit. All construction under this permit shall be completed within one (1) year after start of construction. If conditions so warrant, an extension may be granted.

P. Revocation. In issuing this permit, the town has relied upon the statements and representations made by the permittee or his agent. Any incorrect statements or representations shall be cause for revocation of this permit, and all the rights of the permittee hereunder shall immediately become null and void.

Q. Advance Notice. Prior to commencement of construction under this permit, the permittee shall give the town an advance notice of at least two working days, when advance notice is given, the permittee shall provide the permit number.

R. Compliance with Plans and Specifications. All construction shall be in accordance with the plans and specifications, if any submitted for this permit, the general specifications of the town and the Uniform Plumbing Code. No changes in, or deviation from the plans and specifications which effect capacity, maintenance, design requirements, service area or permit requirements shall be permitted unless revised plans shall have been submitted to and approved by the town. The permit, together with a set of the plans and specifications, if any, (revised plans and specifications, if any,) shall be kept on the job site at all times during construction until final inspection and approval by the town.

S. Testing and Approval. All construction under this permit shall be subject to inspection, testing and approval by the town. Upon satisfactory completion of construction, the permittee and the owner shall submit or cause to be submitted, a request for approval on the form prescribed by the town. No sewer or other facilities shall be put in services until all the conditions of the permit have been satisfactorily met.

T. Compliance with Rules and Regulations. The permittee is responsible for meeting the requirements of all applicable rules, regulations, ordinances and laws of local, state and federal authorities. Issuance of this permit shall not constitute a waiver of any applicable requirements.

U. Required "As Built" Plans. All parties receiving a permit for connection of sewage facilities to the Town of Duncan's shall provide the town upon completion of the installations of the sewer system, installed by such parties a copy of reproducible, "as built" plans and specifications for the sewer system installed in accordance with the plans and specifications submitted at the time of application for the permit.

V. Required County Building Permit. All parties applying for a permit for connection of sewage facilities to the Town of Duncan's shall either have a valid, current building permit at the time of application for the sewer construction permit, or be qualified in all respects to receive said building permit; in such case, however, the applicant must have received the building permit from the Town of Duncan prior to making the physical connection to the sewer.

Section 12-5-2 Standards Applying To New Developments – Require Developer Pay for All Lines To the Sewer and Give Easements

In addition to the conditions set forth in section 12-5-1 herein, the following conditions apply to all new developments, subdivisions, all non-residential facilities, condominiums and apartments.

A. All applicants seeking to develop or improve any real property through the construction of any improvement greater in density and use than a single family dwelling on an already planted subdivision lot shall first submit to the town for preliminary approval copies of the preliminary plans for review by the town to insure compliance with its rules and regulations. In the case of any new subdivision, the preliminary plans for the subdivision must be submitted to the town at the same time it is submitted to the county for county approval.

B. Before the town will approve or execute an agreement to accept sewage acceptable to the Arizona Department of Health Services, the applicant shall have complied with all applicable rules and regulations of the town and paid all fees as required by the town pursuant to its rules and regulations.

C. It shall be the duty of the applicant developing the property to provide or construct all sewer lines connecting the improvements located upon the property to the existing town sewer systems, including the construction of new collector sewers, both on and off site, to extend the town's sewer lines to the property under development. The applicant must provide to the town all such sewer lines, as well as all easements necessary to insure a continuous public right-of-way along all sewers to be maintained and operated by the town, at no cost to the town.

ARTICLE 12-6 FEES AND CHARGES

12-6-1	Monthly Fees (Sewer Charge)
12-6-2	Connection Fees
12-6-3	Inspection Fees
12-6-4	Special Provisions Regarding New Subdivisions and Developments
12-6-5	Preliminary and Final Plan Check Fees
12-6-6	User Charge System
12-6-7	Responsibility for Payment of Sewer Charges
12-6-8	Disconnect for Delinquency
12-6-9	Reconnect Charge

Section 12-6-1 Monthly Fees (Sewer Charge)

The base rate to each user will be \$25.00.

Based on the water usage during the winter months there will be an additional charge of \$1.28 per every 1,000 gallons used, with no minimum.

The initial connect charge on a newly constructed residence will be \$650.00 and \$1,000.00 on a newly constructed commercial building with or without multiple units.

The above rates will be in effect upon adoption of this code and at which time they will be reviewed and adjusted as needed.

Section 12-6-2 Connection Fees

A. Residential Connections:

1. single-family unit \$650.00 per first 20 ft.
2. multiple-family unit \$850.00 per first 20 ft.
3. condominium unit \$1000.00 per first 20 ft.
4. after the first twenty (20) feet, an additional fee of six dollars will be charged.

The fees for a permit to connect any improvement to the Town of Duncan's sewer system shall be six hundred and fifty dollars (\$650.00) plus six dollars (\$6.00) per foot in excess of twenty feet required for connection. The council may from time to time fix the rates and classification for connection fees within the town and shall make such rules and regulations as may be necessary to properly administer and enforce this chapter by resolution of the town council.

Said fees are payable at the time of application for the connection permit and are to be used to pay all or part of the costs of operation and maintenance, bond retirement, contract fees or installing other main line sewer in the town as and when designated by the Duncan Town Council.

All new hookups to the sewer occurring after the date of adoption of the code shall be required to pay any and all fees in accordance with this chapter.

Section 12-6-3 Inspection Fee

The inspection fee for each connection shall be \$25.00. This inspection fee shall be payable in addition to the connection fee described in section 12-6-2 and payable at the time of payment of the connection fee.

Section 12-6-4 Special Provisions Regarding New Subdivisions and Developments

The provisions of this section shall apply to any new subdivision, business or industrial development in addition to the other provisions of these rules and regulations.

- A. For services of residential subdivisions, the connection fee shall be the sum of \$300.00 per lot payable in cash at the time of execution of the written agreement between the subdivision owner and the Duncan Town Council for sewer services.
- B. Acceptance by the Town of Duncan and any proposed agreement for sewer service pursuant to the provisions of paragraph A. above is conditioned upon the economic feasibility or providing sewer service as may be determined by the Duncan Town Council.
- C. Where pipe size is greater than those necessary to serve the entire development as required by the town, the Town of Duncan shall credit against the connection fee the costs over and above the normal cost of installation of the facilities an amount equal to the difference in cost between the oversized facility and the facility that would be required by the subdivision. In no event shall this authorize a cash payment from the Town of Duncan to the owner.

Section 12-6-5 Preliminary and Final Plan Check Fees

Before any preliminary or final plans for new sewer connections or hookups are approved by the town's building inspector, the applicant must have paid the application fee and connection fee.

The application fee for each application will be determined by the town based upon the building inspector's estimate of the cost of the plan check in light of the conditions, quality

and complexity of the plans. This fee shall be paid prior to the town's building inspector's plan check and shall be separately charged and collected for each set of plans submitted to the town by the applicant for subdivision or other approval.

Section 12-6-6 User Charge System

A. User Charge System Description. The Town of Duncan Wastewater Treatment Plant is primarily flow dependent. Therefore, the following equation will be used to compute user charges.

$$CU = (CT/VT) VU$$

Where CT = total O & M costs per year

CU = user's charge for O & M per year

VU = sewage volume contribution per sewer per year

VT = total sewage volume contribution, for all users, per year

In the event B.O.D., suspended solids or their pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to the base charge (above) will be levied. The following equation will be used to compute user surcharge.

CS = a surcharge for wastewaters of excessive strength

BC = O & M for treatment of a unit of biochemical oxygen demand (B.O.D.)

B = concentration of B.O.D. from a user above base level

SC = O & M cost for treatment of a unit of suspended solids

S = concentration of SS from a user above a base level

PC = O & M cost for treatment of a unit of any pollutant

P = concentration of any pollutant from a user above a base level

B. User Charge System Implementation. Sewage volume contributions. Since most of the sewer users are metered for domestic water supply, sewage volume contributions will be based upon water usage rates during December and January. Water usage rating will be furnished by the Town of Duncan Water Company on a yearly basis.

The Town of Duncan will, yearly, determine sewage volume contributions as per the following methodology. User charges will be implemented in the fiscal year immediately following their determination.

VU for a metered water user = $6VW$ where VW = volume of water used by a metered water user in December and January.

VT for metered water users = sum of VU for all metered water users.

The sewage volume contributions for a non-metered water user will be assumed to equal the average sewage volume contribution for a metered water user, therefore:

VU for a non-metered user = VT for metered water users/number of metered water users.

VT for non-metered water users = sum of VU for all non-metered water users.

Total estimated sewage volume contributions for metered water users are then added to calculate the total sewage volume contributions for all sewer users, hence:

$VT = VT$ for metered water users + VT for non-metered water users.

C. Financial Management. The Town of Duncan will maintain an adequate financial management system which will accurately account for O & M and replacement revenues and expenditures. The accounting system will segregate O & M and replacement revenues and expenditures from other wastewater revenues to assure adequate revenue to properly operate and maintain the treatment works. The user charge rates will be revised as needed to generate sufficient revenue to pay the total O & M and replacement costs.

1. User Charge Rates. Rates for users or user classes shall be reviewed annually and periodic rate changes shall be established by resolution of the mayor and council.
2. Wastewater Treatment By-Products. All revenue from the sale of treatment-related products will be used to offset the O & M and replacement costs. User charges will be proportionately reduced for all users. Total annual revenues received from the sale of by-products shall be credited to the O & M and replacement costs no later than the fiscal year immediately following their receipt.
3. Notification of Users. Each user will be notified at least annually in conjunction with a regular bill of (1) the rate and (2) that portion of the user charges which are attributable to wastewater treatment services.
4. Inconsistent Agreements. The user charge system shall take precedence over any terms or condition of agreements or contract which are inconsistent with the requirements of this policy and Section 204 (b) (1) (A)

of the Clean Water Act. Any pre-existing agreements which levy charges less or more than that which would be collected by an approved user charge system will not be acceptable.

Section 12-6-7 Responsibility for Payment of Sewer Charges

All sewer charges shall be due on or before the tenth (10th) day of the succeeding month. Bills shall become delinquent on the twentieth (20th) day of the succeeding month, and service may be discontinued on the twentieth (20th) day. The town reserves the right to vary dates or length of billing period, temporarily or permanently, if necessary or desirable. Sewer charges shall be payable by and billed to the owner of the property upon which are located the improvements which are connected to the sewer or the user of the sewer system whether or not the user is the owner of the property upon which are located the improvements that are connected to the sewer. The town council shall determine whether the owner or the user is to be billed the use fee based upon factors such as the ownership of the improvements, the physical location of the owner and the user, the severability of the improvements located on the same property and the previous payment records for user fees previously charged against the same sewer connection. All charges not paid when due shall be added to and included in the following billing, with interest at the rate of eighteen per cent (18%) per year on the unpaid balance.

Section 12-6-8 Disconnect for Delinquency

Prior to terminating service for non-payment of amounts due, the town will give written notice to the consumer and provide an opportunity for a hearing for such consumer with the town manager or designee.

Section 12-6-9 Reconnect Charge

Whenever the town shall have disconnected any sewer service for failure to pay the sewer charge, the property shall not be reconnected to the sewer system until all delinquent sewer charges are paid in full, together with a re-connection charge of twenty-five dollars (\$25.00). In addition to said re-connection charge, the town may require a deposit to cover future sewer services in an amount not to exceed one year's estimated sewer charges before the property is reconnected to the sewer system. All labor, material and equipment costs incurred to disconnect and reconnect shall be billed to the owner in addition to the re-connection charge.

ARTICLE 12-7 MISCELLANEOUS

12-7-1	No Person Shall Damage or Tamper With Sewage Works
12-7-2	Use of Town Funds
12-7-3	Easements
12-7-4	Construction Specifications
12-7-5	Effective Date

Section 12-7-1 No Person Shall Damage or Tamper With Sewage Works

That no person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the district sewage works.

Section 12-7-2 Use of Town Funds

Funds of the town may be used to aid in the construction of offsite sewers (not on the property in question) when:

- A. Town funds are available;
- B. Town funds can be used to service the greatest number of occupied dwellings within the town limits;
- C. Additional sewer diameter is required by offsite consideration;
- D. It is necessary to extend sewers to areas of existing habitation that have formed an assessment area.

Town funds will not be available for sewer construction to new or proposed subdivisions except for the additional sewer diameter that may be required by offsite considerations.

When special conditions (hardships) cause costs to be out of proportion to benefits when compared to other parts of the town, the town council may consider, upon application of the property owner, funding all or a portion of certain sewer lines.

Section 12-7-3 Easements

- A. All property owners desiring the connection of the improvements on their property to the sewer system of the Town of Duncan shall grant to the town, at no charge to the town, those easements necessary, to properly effectuate the sewer connection desired, and provide the town with a right-of-way over and along all sewer it will operate and maintain.

B. All easements granted to the town shall be subject to the following restrictions and conditions of use:

1. No person, firm or corporation having charge of property subject to easement in favor of the Town of Duncan, shall hereafter construct, build or establish a building upon the property subject to said easements. A building means a house, commercial building, industrial building or any structure of a size or construction that the moving thereof would cause great inconvenience to any person.
2. Should the owner of the property subject to an easement in favor of the Town of Duncan construct a building thereon, in violation of this code, the town may employ individuals to clear said property, and charge the costs of the same to the owner of the property. Nothing contained herein shall oblige the Town of Duncan to compensate the owner of the property subject to the easement for the value of a "building" cleared. The town may take those steps as are required to work in the easement and preserve the improvement, rather than clear the improvements.
3. No person shall excavate deeper than three (3) feet upon the property subject to the easement in favor of the Town of Duncan without having first obtained a permit therefor as herein required. Such permit shall be issued by the town and shall be signed by the town's building inspector. Applications for a permit to excavate upon property subject to easements in favor of the Town of Duncan shall be made in writing to the town and shall state thereon specifically the size of the space intended to be excavated, and the purpose for the excavation.
4. No person shall plant any trees or shrubbery upon the property subject to the easement in favor of the town without having secured a permit therefore. Applications for such permit shall be made to the town. All trees and shrubs so planted shall be placed subject to the direction and approval of the town. No boulders, benches or fences shall be built or maintained upon the property subject to the easement in favor of the Town of Duncan, unless approved by the town council.
5. In the event any improvements are constructed within the boundaries of the easement and these create any additional costs to the town because it must incur additional expenses to repair, install or replace its sewers, the property owner shall be charged all additional costs incurred.
6. Nothing herein shall prohibit the location of a mobile home on or over all or a portion of any easement of the Town of Duncan, provided that in the event it becomes necessary for the town to do any work within said easement the property owner shall pay the costs of moving the mobile home, if necessary.

Section 12-7-4 Construction Specifications

All sewer laterals, house laterals or other connections or connecting sewers which adjoin or connect into any portion of the Town of Duncan's sewer system shall be constructed in accordance with the Uniform Plumbing Code.

Section 12-7-5 Effective Date

The charges fixed by this regulation shall become effective as of the adoption of this code.

ARTICLE 12-8 GENERAL

12-8-1 General

Section 12-8-1 General

If any section, paragraph, subdivision, sentence, clause or phrase of these rules and regulations shall for any reason be here illegal or unenforceable, such decisions shall not effect the validity of the remaining portions of these rules and regulations. The town council of the Town of Duncan hereby declares that the town would have adopted these rules and regulations, each and every section, paragraph, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of these rules and regulations may be held illegal, invalid or unenforceable.

The town hereby authorizes its attorneys, agents and employees to take all steps as are necessary to enforce these rules and regulations.

CHAPTER 13

OFFENSES

13-1 OFFENSES.....	13.1
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CHAPTER 13 OFFENSES

ARTICLE 13-1

13-1-1	Burning
13-1-2	Interference With Use of Property
13-1-3	Alcoholic Beverages In A Motor Vehicle
13-1-4	Alcoholic Beverages In A Town Park

Section 13-1-1 Burning

It is unlawful for any person to start or maintain any open fire for the purpose of burning trash or rubbish in any of the streets, alleys or vacant lots in the town, or to start or maintain any such fire in the yard or enclosures surrounding any dwelling, house or business without a burning permit.

Section 13-1-2 Interference With Use of Property

It is unlawful for any person, other than the owner, manager or his authorized representative to interfere individually or collectively with the free enjoyment of such property by the owners thereof; or interfere with the conduct of any lawful business by obstructing entrance to such business or by obstructing free passage of persons, merchandise or commodities within such place of business, or by obstructing service rendered by such business to its customers.

Section 13-1-3 Alcoholic Beverages In A Motor Vehicle

- A. No person shall drink any alcoholic beverage while in a motor vehicle upon a street or highway within the town limits.
- B. No person shall have in his possession on his person while driving a motor vehicle upon a street or highway, within the town limits, any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or the seal broken, or the contents of which have been partially removed.
- C. No person shall have in his possession, while in a motor vehicle upon a street or a highway, within the town limits, any bottle, can or other receptacle containing any alcoholic beverage which has been partially removed.
- D. It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle, when such vehicle is upon a street or highway, within the town limits, any bottle, can or other

receptacle containing any alcoholic beverage which has been partially removed, unless such container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passenger.

Section 13-1-4 Alcoholic Beverages In A Town Park

A. It is unlawful for any person, while on the premises of any town park, to commit any of the following acts, except as provided in subsection B of this section:

1. Drink or have in his possession any alcoholic beverage.
2. Have in his possession any bottle, can or other receptacle containing any alcoholic beverage which has been opened, its seal broken or the contents of which have been partially removed.

B. Organizations seeking exemption from the prohibition of subsection A of this section shall apply to the town manager for a permit. If the permit is denied, the organization may file a request for review by the council within five days of the denial. The matter shall be heard as an item on the agenda of the next regular meeting. The town manager shall charge a maintenance fee for the purpose of maintaining the grounds of the park upon the issuance of the permit.

C. For the promotion and protection of the public health, safety, convenience and general welfare of the citizens and residents of the town, the council hereby reserves the right to close parks to give effect to this section.

Section 13-1-5 Use and Sale of Fireworks

A. Definitions. The following words, terms and phrases, when used in this section, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Consumer firework" means those fireworks defined by Arizona Revised Statutes §36-1601.
2. "Display firework" means those fireworks defined by Arizona Revised Statutes §36-1601.
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 Statutes §36-1601.

4. "Novelty items" means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statutes §36-1601.
5. "Permissible consumer fireworks" means those fireworks as defined by Arizona Revised Statutes §36-1601 that may be sold within the Town even where the use of those items has been prohibited.
6. "Supervised public display" means a monitored performance of display fireworks open to the public and authorized by permit by the Duncan Rural Fire Department or designee.
7. "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.
8. "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

B. Fireworks Prohibited; Exceptions.

1. The use, discharge or ignition of consumer and permissible consumer fireworks within the Town is prohibited.
2. Nothing in this division shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence, with a permit, of a supervised public display of fireworks.
3. Permits may be granted by the Duncan Rural Fire Department or designee for conducting properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The Duncan Rural Fire Department has authority to impose conditions on any permits granted.
4. Failure to comply with any permit requirements issued by the Duncan Rural Fire Department is a class 1 misdemeanor.

C. Sale of Fireworks.

1. No person shall sell, permit or authorize the sale of permissible consumer fireworks in conflict with state law.
2. Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall:
 - i. Comply with Duncan Municipal Code Chapter 5 regarding business licenses.

- ii. Obtain an inspection certificate from the Duncan Rural Fire Department verifying compliance with applicable state law pertaining to the storage, transportation and sale of consumer fireworks.
 - iii. Openly and conspicuously post color copies of inspection certificates at each cash register and in each area where fireworks are displayed for sale.
 3. Every person engaged in such sales shall prominently display signs indicating the following:
 - i. The use of fireworks, including permissible consumer fireworks, is prohibited within the Town limits. This prohibition does not apply to novelty items as defined by Town Code.
 - ii. Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.
 4. No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age

D. Penalties.

Any person in violation of this Section if guilty of a class 1 misdemeanor in accordance with Duncan Municipal Code Chapter 1, Article 1-8 and upon conviction thereof shall be punished by a fine of not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

E. Liability.

1. A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.
2. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart E1 of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

CHAPTER 14

PUBLIC WAYS AND PROPERTY

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CHAPTER 14
PUBLIC WAYS AND PROPERTY

ARTICLE 14-1 SIDEWALKS

14-1-1 Damaging Sidewalks and Streets

Section 14-1-1 Damaging Sidewalks and Streets

It shall be unlawful for any person to recklessly damage, injure, destroy, deface, alter or change any sidewalk or street without first obtaining a permit to do so from the clerk.

Any person receiving a permit to alter or change any sidewalk or street shall do so upon such restrictions and conditions as may be imposed by the town clerk for the protection of the public and shall further repair any damage to said sidewalk or street as required by the town clerk as soon as is reasonably possible.

Any person damaging a sidewalk or street without a permit shall be guilty of a misdemeanor and shall further be required to pay any and all expenses of repairing such sidewalk or street or shall be required to repair such damages as directed by the town clerk.

ARTICLE 14-2 TREES AND SHRUBBERY

- 14-2-1 Trees To Be Trimmed
- 14-2-2 Hedges and Shrubbery
- 14-2-3 Trees Outside of Property Line

Section 14-2-1 Trees To Be Trimmed

Any owner or occupant of any real property shall trim all trees on property owned or occupied by him, overhanging any public thoroughfare, so that the branches thereon will not interfere with pedestrians or public travel.

Section 14-2-2 Hedges and Shrubbery

Any owner or occupant of any real property shall maintain all hedges and shrubbery adjacent to public sidewalks so that no part of said hedges and/or shrubbery shall extend over any part of a public sidewalk in the municipality.

Rev. 05/05

Section 14-2-3 Trees Outside of Property Line

The Duncan Town Council is hereby provided full and complete control over all trees which are outside the property lines of privately owned real property.

ARTICLE 14-3 WEEDS

- 14-3-1 Definition
- 14-3-2 Removal of Weeds Required
- 14-3-3 Failure to Comply

Section 14-3-1 Definition

Weeds shall include all vegetable growth that is troublesome, useless or noxious.

Section 14-3-2 Removal of Weeds Required

All occupants or owners are hereby required to destroy all weeds upon their premises to the center of the street or alley.

Section 14-3-3 Failure to Comply

Whenever the growth of weeds advances to a condition prohibited by this chapter, the town or its designated official shall notify such occupant or owner to remove same. In default of this being done, the town shall remove the same and the cost thereof shall become a lien upon the property. Said lien shall be collected as provided by law.

ARTICLE 14-4 CEMETERY REGULATIONS

- 14-4-1 Supervision
- 14-4-2 Rules and Regulations
- 14-4-3 Interment
- 14-4-4 Records To Be Kept
- 14-4-5 Desecration of Markers
- 14-4-6 Removal of Excess Dirt
- 14-4-7 Penalty
- 14-4-8 Sale of Plots
- 14-4-9 Grave Opening and Closing
- 14-4-10 Indigent Burials
- 14-4-11 Restrictions
- 14-4-12 Disclaimer
- 14-4-13 Schedule of Fees
- 14-4-14 Definitions

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Section 14-4-1 Supervision

The mayor shall be the chairman of the cemetery committee and deputy chairman shall be the vice-mayor. The members of the Town Council shall serve as members of the Cemetery Committee and additional members of the committee shall be such other citizens of the town as shall be appointed to the committee from time to time by the Mayor and Council.

The cemetery manager shall be the town manager and the deputy cemetery manager shall be the town clerk.

The sitting town council may serve as the cemetery committee in regularly scheduled council meetings for the purpose of conducting such business as shall apply to the town cemetery.

Section 14-4-2 Rules and Regulations

The cemetery committee shall establish rules and regulations for the use of the town cemetery relating to:

- A. Subdividing the cemetery into lots.
- B. Capacity of each lot.
- C. Location of graves.
- D. Type of planting, monuments and markers that will be permitted for the proper and most attractive development of the town cemetery.

Section 14-4-3 Interment

The cemetery manager or deputy manager shall issue a permit for burial in the town cemetery upon being informed of the name of the deceased, the date and place of death, the name and address of the funeral director or person in charge, the ownership of the lot and location of the proposed grave within the lot, and having entered this information on the map and records of the Town of Duncan. No burial in the town cemetery shall be permitted without prior permission of the cemetery manager or deputy manager.

No deceased person shall be interred in the cemetery until it is found:

- A. That a death certificate has been obtained in accordance with state law.
- B. That the lot in which burial is to be made has been fully paid for.

- C. That the person arranging for such burial has the right to use such lot.
- D. That such lot is not used beyond its capacity.
- E. That persons wishing to conduct funeral operations or exhumations at the town cemetery shall notify the cemetery manager or deputy manager at least two (2) working days (excluding weekends and holidays) in advance of the services to be conducted.

Section 14-4-4 Records To Be Kept

The person in charge of any premises on which interments are made shall not inter or permit the interment or other disposition of a body unless it is accompanied by a burial, removal or transit permit upon the form prescribed by the state register.

The cemetery manager or deputy manager shall endorse upon the burial permit, over their signature, the date of interment and return the permit to the local registrar of their district within ten (10) days of the interment or within the time fixed by the Town Board of Health. They shall keep a public record of all bodies disposed of on the premises under their charge which states the name of each deceased person, place of death, date of burial or disposal and the name and address of the undertaker.

An undertaker who interms a body in a burial ground which has no person in charge shall so endorse, sign and file the permit and write across the face of the permit the words "No person in charge."

The cemetery manager or deputy manager is designated as the person to sign after burial, the "Burial – Transit Permit" as required by the State of Arizona pursuant to Section 36-333 and regulation of the State Health Department No. R9-19-125.

Section 14-4-5 Desecration of Markers

A person who willfully and maliciously defaces, breaks, destroys or removes a tomb, monument or gravestone erected for a dead person, or a memento, memorial, ornamental plant, tree or shrub placed at the sepulcher of a human being, or who marks, defaces, injures, destroys or removes a fence, post, rail or wall of the cemetery, is guilty of a misdemeanor.

Section 14-4-6 Removal of Excess Dirt

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After a burial has been completed all excess dirt left shall be immediately removed from the cemetery so that it is left in a clean and orderly condition.

Section 14-4-7 Penalty

Any person opening a grave in the town cemetery without first obtaining the permission of the cemetery manager or deputy manager is in violation of this section and shall be guilty of a misdemeanor and upon conviction thereof be punished a fine of not more than three hundred dollars (\$300.00) or imprisonment in the county jail of not more than 90 days or both.

Section 14-4-8 Sale of Plots

Burial plots are generally purchased at time of need only, except that burial sites for both spouses may be purchased at the time of one spouse's death. The cemetery manager or deputy manager may make exceptions to this policy.

Burial plots shall be sold only to residents or taxpayers of the town for the purpose of burial of such purchaser or their heirs at law or next of kin. No sales shall be made to funeral directors or others without the express consent of the town council. The cemetery manager or deputy manager may grant waivers to this restriction when the purchaser discloses sufficient personal reason for burial within the town through previous residence or relationship to other person(s) interred in the town cemetery.

Lot owners shall not allow interments in their lots for remuneration of any kind.

Section 14-4-9 Grave Opening and Closing

The opening and closing of any burial space, prior to and following a burial therein, and including the interment of ashes, shall be at a cost to be determined from time to time by the cemetery manager and/or deputy manager, approved by the town council and payable to the Town of Duncan, as owner of the cemetery.

Grave closing shall be made immediately following the service. The ceremony participants shall be permitted to place a symbolic amount of material on top of the casket, if desired. The grave will then be filled in after the departure of the loved ones and under the direction of the funeral director.

Extra charges shall apply for the closing of graves on any town holiday or on a Saturday or Sunday. Such charges to be determined by the cemetery manager or deputy manager and approved by the town council.

Section 14-4-10 Indigent Burials

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In any case in which the county is required by Arizona Revised Statutes §36-831(B) and 11-251(27) to bury an indigent who was a resident of the Town of Duncan and/or the County of Greenlee at the time of death, the town shall charge the county a reasonable fee which shall be set from time to time through a written agreement with the county.

Section 14-4-11 Restrictions

No burials shall be made in the town cemetery for other than human remains.

No burial plot or lot may be utilized for other than the burial of human remains.

No interment of two or more bodies shall be made in one plot in the town cemetery except as follows:

- A. Spouses may be stacked atop one another provided the lot has been dug sufficiently deep to do so.
- B. A parent and one infant child may be buried together.
- C. Two children may be buried together.
- D. Cremations may be interred at the foot of an existing lot, occupied or not.
- E. Two cremations per adult lot are permitted.

Section 14-4-12 Disclaimer

The town disclaims all responsibility for loss or damage from causes beyond its reasonable control and from damage caused by the elements, acts of God, acts of the common enemy, and acts of thieves, vandals, strikers, malicious mischief makers, explosions, riots or order of any military or civil authority, whether the damage is direct or collateral.

Section 14-4-13 Schedule of Fees

A schedule of fees shall be maintained in the town hall by the cemetery manager and/or deputy manager, updated regularly, available to the public and furnished to the funeral directors in the area.

Section 14-4-14 Definitions

- A. Chairman of the Cemetery Committee – The mayor of the Town of Duncan.
- B. Cemetery Manager – The town manager of the Town of Duncan.

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- C. Deputy Cemetery Manager – The town clerk of the Town of Duncan.
- D. Members of the Cemetery Committee, de facto – Members of the town council of the Town of Duncan.
- E. Members of the Cemetery Committee – Such citizens of the town as shall be appointed to the committee from time to time by the mayor and town council.
- F. Lot – A parcel of land in the Town of Duncan Cemetery sufficient in size to bury either four or eight people.
- G. Plot – A parcel of land within a lot for the burial of one person (except as noted above in section 14-4-11).

ARTICLE 14-5 HAZARD ABATEMENT REGULATIONS

Sections:

Article I. Regulation of Litter and Property

- 14-5-1 Definitions**
- 14-5-2 Littering on public property**
- 14-5-3 Posting notices**
- 14-5-4 Distribution of handbills**
- 14-5-5 Owner to maintain premises**
- 14-5-6 Procedure to compel removal of litter**
- 14-5-7 Notice to remove**
- 14-5-8 Service of notice**
- 14-5-9 Appeal to Council**
- 14-5-10 Removal by the Town**
- 14-5-11 Lien for removal**
- 14-5-12 Placement of debris**
- 14-5-13 Health hazards**
- 14-5-14 Adoption of County Sanitary Code**

Article II. Junk Motor Vehicles

- 14-5-15 Definitions**
- 14-5-16 Storing, parking, or leaving junk motor vehicles on private property prohibited**
- 14-5-17 Notice to remove**
- 14-5-18 Effective date of enforcement**

Article I. Regulation of Litter and Property

14-5-1 Definitions.

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Aircraft” shall mean any contrivance now known or hereafter invented, used, or designated for aerial navigation or for flight in the air. The word AIRCRAFT shall include helicopters and lighter-than-air dirigibles and balloons, free flying, or tethered.

“Authorized private receptacles” shall mean a litter storage and collection receptacle.

“Commercial handbill” shall mean any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, booklet, paper, or any other printed or otherwise reproduced original and copies of any matter of literature:

- (1) Which advertises for sale any merchandise, product, commodity, or thing;
- (2) Which directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting the interest thereof by sales;
- (3) 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;
- (4) Which, while containing reading matter other than advertising matter, is predominately and essentially an advertisement and is distributed or circulated for advertising purposes or for private benefit and gain for any person so engaged as advertiser or distributor; or
- (5) Any newspaper or similar publication containing substantial amounts of matter advertising articles or things for sale or any businesses or services for profit which newspaper or similar publication is in normal course distributed without charge and without subscription therefor by the recipients.

“Dilapidated buildings” shall mean any real property, structure, moveable or immovable, permanent or temporary, vacant or occupied, that is in such disrepair or is damaged to the extent its strength or stability is substantially less than a new building, or it is likely to burn or collapse and its condition endangers the lives, health, safety, or property of the public, including potential vagrant or transient occupant, whether trespassing or not.

“Litter” shall mean any rubbish, trash, weeds, filth, and debris which shall constitute a hazard to public health and safety and shall include all putrescible and nonputrescible solid wastes, including garbage, trash, ashes, street cleanings, dead animals, abandoned property, abandoned automobiles, glass, and solid market and industrial wastes; any deposits, accumulation, pile, or heap of brush, grass, debris, weeds, cans, cloth, paper, wood, rubbish, or other unsightly or unsanitary matter of any kind whatsoever; and any growth of weeds, brush, grass, or other vegetable growth to a height of over six inches.

“Newspaper” shall mean 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 the federal statutes or regulations, any newspaper filed and recorded with any recording officer as provided by general law, and in addition thereto, shall mean and include any newspaper, periodical, or current magazine regularly published with not less than for issues per year and sold to the public.

“Noncommercial handbill” shall mean 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 of literature not included in the definitions herein of a commercial handbill or newspaper.

“Person” shall mean any individual, public or private corporation, partnership, association, firm, or any other entity whatsoever.

“Private premises” shall mean any dwelling, house, building, or other structure, designated or used 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, or vestibules belonging or appurtenant to such dwelling, house, building, or other structures.

“Public places” shall mean any and all streets, sidewalks, boulevards, alleys, or other public ways, and any and all public parks, squares, spaces, grounds, and buildings.

“Vehicle” shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

14-5-2 Littering.

- A. It is unlawful for any person to throw or deposit or be responsible for the accumulation of litter in or upon any street, sidewalk, or other public place, except in public receptacles or in authorized private receptacles for collection. Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk, or other public place or upon private property.
- B. It is unlawful for any person to sweep into or deposit in any gutter, street, or other public place within the Town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway.
- C. It is unlawful for any person in an aircraft to throw out, drop, or deposit any litter or handbills within the Town.
- D. It is unlawful for any person to drive or move any truck or other vehicle within the Town unless said truck is so constructed, loaded, or covered to prevent any loaded contents or litter from being blown or deposited therefrom upon any public street, alley, public place, or private premises.

14-5-3 Posting Notices.

It is unlawful for any person to post or affix any notice, poster, or other paper or device, calculated to attract the attention of the public to any lamp post, public utility pole, shade tree, or upon any public structure or building, except as may be authorized or required by law, or upon any private structure or building, without the consent of the owner or person in control thereof.

14-5-4 Distribution of Handbills.

- A. It is unlawful to deposit, place, or scatter or cast any commercial or noncommercial handbill in or upon any sidewalk, street, or other public place. It is also unlawful to distribute, deposit, place, throw, scatter, or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle.
- B. Handbills may be placed or deposited on inhabited private premises if such handbill is so placed or deposited so as to be reasonably secure or as to prevent such handbill from the possibility of being blown or drifted about such premises, sidewalks, streets, or other public places.

14-5-5 Owner to Maintain Premises.

It shall be unlawful for an owner, lessee, or occupant of property to maintain said property or contiguous sidewalks, streets, or alleys with litter or dilapidated structures which constitute a hazard to public health and safety.

14-5-6 Procedure to Compel Removal of Litter.

Any officer or employee of the Town may enforce the provisions of Section 14-5-2 through Section 14-5-5 hereby by prosecuting violators of said sections in the Magistrate's court pursuant to the criminal provisions of this code. In the alternative or if such prosecution fails to secure compliance with the provisions of said sections, or in the event of inability to prosecute violators by reason of failure to secure jurisdiction over their persons, any officer or employee of the Town may compel the removal of litter by the procedure outlined in Section 14-5-7 through Section 14-5-11.

14-5-7 Notice to Remove.

To compel the removal of litter or dilapidated structures through the provisions of this section and of Sections 14-5-6, 14-5-9, 14-5-10 and 14-5-11, written notice shall be given by the Town, not less than 30 days before the day set for compliance, to the owner and to the occupant or lessee of the property of the condition(s) constituting a hazard to public health or safety and shall include the legal description of the property and the cost to the Town for such removal if the owner, occupant, or lessee does not comply; said notice shall be either mailed by certified mail to

the owner and to the occupant or lessee at his or her last known address or the address to which the tax bill for the property was last mailed and if the owner does not reside on such property, the notice shall be sent to him or her at his or her last known address. The Town may record the notice in the County Recorder's office and if compliance with the notice is subsequently satisfied, the Town shall record a release of the notice. The notice shall contain a statement that such person may appeal in writing to the Council within 30 days from the date the notice is received by him or her and prior to the date of compliance. In the event the condition of the property is such as to make it immediately dangers to the life, limb, property or safety to the public or adjacent property, such appeal must be filed within 10 days from the date the notice is received.

14-5-8 Service of Notice.

Formal and legal notice shall be given by certified mail only; however, personal notice may be given to assist in abatement.

14-5-9 Appeal to Council.

Should an appeal be submitted by the owner, occupant, or lessee, the Council shall fix a date, time and place for the hearing of the appeal. Such date shall be no less than 10 days nor more than 60 days from the date the appeal was submitted. The decision of the Council shall be final. The Council may either affirm or reverse the decision of the Town's staff or modify the scope of the work as required in the notice. The owner, occupant, or lessee shall be granted 30 days after determination on appeal to comply with the decision of Council unless the Council provides for a different date of compliance.

The failure of any person to file an appeal according to this Section 14-4-9, shall constitute a waiver of the right to an administrating hearing and adjudication of the notice and order or any portion thereof.

14-5-10 Removal by the Town.

When any such person to whom notice has been given, fails, neglects, or refuses to remove from such property any litter or dilapidated structures, the Town is authorized and directed to cause the same to be removed and disposed of at the expense of the persons notified, including any lien holders of record, at the cost as stated in the notice including 5% for additional inspection and other incidental costs in connection therewith.

14-5-11 Lien for Removal.

The cost of removal, abatement, or legal actions seeking injunctions to abate the litter or dilapidated structures shall be an assessment lien upon recording by the Town with the County Recorder a statement of an assessment, including the date and amount of the assessment, the

legal description of the property, and the name of the Town. Assessments that are imposed are due and payable as authorized in A.R.S. §9-276 and as provided in A.R.S. § 9-499(E), as amended, and the provisions of A.R.S. § 9-499(F), (G), and (H) are applicable as if set forth herein.

14-5-12 Placement of Debris.

Any person, firm, or corporation who shall place any rubbish, trash, filth, or debris upon any private or public property not owned or under the control of said person, firm, or corporation shall be guilty of a misdemeanor and, in addition to any fine which may be imposed for violation of any provisions of this subchapter, shall be liable for all costs which may be assessed pursuant to this subchapter for the removal of said rubbish, trash, filth, or debris.

14-5-13 Health Hazards.

The Town Manager is authorized to obtain assistance from the county in the event that any health hazard is found which cannot be corrected or controlled by provisions of this code.

14-5-14 Adoption of County Sanitary Code.

The certain document known as the “Greenlee County Hazard Abatement Ordinance”, adopted November 16, 2007, is hereby adopted by reference and made a part of this chapter the same as though said code was specifically set forth herein and at least three copies of said code, noting the exclusions aforesaid, shall be filed in the office of the Town Clerk and kept available for public use and inspection.

Article II. Junk Motor Vehicles

14-6-1 Definitions.

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Junk motor vehicle” shall mean any motor vehicle, the condition of which is wrecked, dismantled, partially dismantled, inoperative, or from which the wheels, engine, transmission, or other substantial part thereof has been removed.

“Motor Vehicle” shall mean any vehicle which is self-propelled and designed to travel along the ground includes, but is not limited to, automobiles, motor homes, buses, motor bikes, motorcycles, motor scooters, and trucks which are required to be registered and licensed with the state’s Department of Motor Vehicles.

14-6-2 Storing, Parking, or Leaving Junk Motor Vehicles on Private Property Prohibited.

It is unlawful and shall constitute a nuisance for a person to park, store, leave, or permit the parking, storing, or leaving of any junk motor vehicle for a period in excess of five days upon any private property within the Town, excepting where progress is being made toward immediate repair of such motor vehicle; provided, however, that the provisions of this subchapter shall not apply to any junk motor vehicle in an enclosed building, or the premises of a business enterprise which is properly operated in the appropriate business zone pursuant to the zoning laws of the Town.

14-6-3 Notice to Remove.

Whenever it comes to the attention of any officer or employee of the Town that a junk motor vehicle is located on any private property, exclusive of the exceptions provided herein, he or she shall cite the owner of the vehicle, the owner of the property, or both, by written complaint. The written complaint shall require the party cited to appear before the Magistrate not less than 10 days no more than 30 days after the issuance of the complaint.

14-6-4 Effective Date of Enforcement.

Notwithstanding the provisions of Section 14-6-3, no person shall be cited by written complaint for any junk motor vehicle having lawfully affixed thereto expired license plates or tags on the effective date of this provision. After the effective date of this provision, at the expiration date of said unexpired license plates or tags, a person or persons shall be cited for violations of said 14-6-2 as provided herein, and license plates or tags affixed to junk motor vehicles after the effective date of this provision shall be of no consequence in the enforcement of said 14-6-2.

ARTICLE 14-7 MUNICIPAL SIGNAGE REGULATIONS

- 14-7-1 Traffic Control Signage
- 14-7-2 Non-Traffic Control Signage
- 14-7-3 Obedience To Traffic Control Signage
- 14-7-4 Destruction or Removal of Traffic and Non-Traffic Control Devices
- 14-7-5 Portable School Crossing Signs
- 14-7-6 Closure of Streets
- 14-7-7 Penalty

Section 14-7-1 Traffic Control Signage

A. The Town of Duncan may install, modify or remove traffic control signs, signals, devices and/or markings along Town roads, streets and rights-of-way such as are necessary to properly regulate, guide and/or warn traffic and preserve the public safety. For the purpose of this ordinance, traffic control signage specifically includes parking regulation signage.

B. The Planning and Zoning Commission shall be the initial body to consider all requests for signage, whether from the Commission itself, residents, the Council, law enforcement agencies or others.

1. They shall request and require all proposals relating to signage to be in writing.

2. They shall consult with all applicable law enforcement, traffic engineering and/or other authorities, including the Arizona Department of Transportation, as necessary, to make a proper determination of the need for traffic control signage and to ensure that all requests and installations are in accordance with federal, state, and local laws and regulations.

3. They shall, by simple majority vote, have the right to reject or remand to the requester any proposal for signage, either outright, or for further study.

4. They may, by simple majority vote, recommend to the Town Council the installation, modification or removal of any traffic control signage that complies with this ordinance.

C. The Town Council shall, by simple majority vote, approve or reject the recommendations of the Planning and Zoning Commission, as noted in Section 14-7-1-B.

D. The Town Manager or designee shall have the authority as directed by the Town Council to erect, install, repair, or modify traffic control signage within the Town.

E. In case of emergency or specific request of local law enforcement agencies, traffic control signage may be temporarily installed, subject to review and approval as noted above for permanent installation.

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Section 14-7-2 Non-Traffic Control Signage

A. Non-traffic control signage is defined as informational, tourist, directional or other non-traffic control signage deemed to be appropriate for installation upon Town of Duncan rights-of-way.

B. The same procedures, rules, regulations and approvals as described in Section 14-7-1 shall apply, except that emergency situations are not applicable.

Section 14-7-3 Obedience To Traffic Control Signage

The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with this section of the ordinance of the Town of Duncan unless otherwise directed by a law enforcement official. Emergency vehicles on official calls are exempt from this requirement.

Section 14-7-4 Destruction or Removal of Traffic and Non-Traffic Control Devices

A. It shall be unlawful for any person to maliciously remove, tear down, mutilate, deface, or destroy any sign, notice, traffic or non-traffic control device erected or installed under authority of this ordinance.

B. Any person who willfully or negligently damages any traffic control device is liable for the reasonable cost of repair or the replacement thereof in addition to any penalties levied in accordance with Section 14-7-7.

Section 14-7-5 Portable School Crossing Signs

Upon approval as indicated in Section 14-7-1, any school district may be authorized to use and maintain portable school signs for the protection of students in accordance with applicable federal, state, and local laws, statutes, rules and regulations.

Section 14-7-6 Closure of Streets

The Town Manager or designee may temporarily close any portion of a road or street when, in their opinion, such closure is necessary for the public safety, health, and/or welfare. Such closures may be made on an emergency basis or for repairs and shall be as short in duration as possible.

Section 14-7-7 Penalty

Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor, and upon conviction thereof shall

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be punished by a fine not to exceed three hundred dollars (\$300), or imprisonment for not more than ninety (90) days or both fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

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ARTICLE 14-9 RECREATIONAL REGULATIONS

- Section 14-9-1 Purpose
- Section 14-9-2 Definitions
- Section 14-9-3 Regulations
- Section 14-9-4 No Mandatory Duty Of Care
- Section 14-9-5 Severability
- Section 14-9-6 Violations and Penalties

Section 14-9-1 Purpose

The purpose of this ordinance is to provide for the orderly operation of skateboards, scooters, skates, and bicycles within the Town of Duncan, and to specifically prohibit their use within certain areas designated within the Town of Duncan.

Section 14-9-2 Definitions

“Operate” – To ride upon, drive, propel, or otherwise convey oneself or others on skateboards, scooters, skates, and bicycles.

“Vehicle” – Skateboard, scooter, skates, and/or bicycle.

Section 14-9-3 Regulations

It shall be unlawful to operate skateboards, in-line skates, roller skates, and scooters on public property other than at a facility or park designated as a skate park. The following regulations shall apply to the riding of skateboards, in-line skates, roller skates, and

scooters at, or any other use of any facility or park owned or operated by the Town of Duncan, which has been designated a skate park.

A. Within the skate park it shall be unlawful for any person to:

Enter or remain in or upon the skate park premises: (1) while closed; (2) hours of closure are between the hours of 6:00 PM and 8:00 AM; (3) the hours of closure during the months of June, July and August shall be 7:00 PM and 8:00 AM.

B. The skate park shall be posted with signs at the following locations:

1. At the entrance to the skate park; and
2. On the fences of the skate park, facing the interior and exterior of the skate park, and in such places inside the park as determined by the Town Manager of Duncan.

The signs shall not be less than 2 feet by 3 feet in size and shall use white letters on a green background. The signs shall summarize recommendations for use of the skate facility. Each sign shall contain letters not less than 1/2 inch in height and shall include the following languages: English and Spanish.

WARNING

SKATEBOARDING, IN-LINE SKATING ACTIVITIES ARE HAZARDOUS RECREATION ACTIVITIES. SCOOTERS ARE NOT ALLOWED IN THE SKATEPARK. USE OF THIS SKATEPARK FACILITY MAY RESULT IN SERIOUS INJURIES OR DEATH. THE TOWN OF DUNCAN DOES NOT ASSUME ANY RESPONSIBILITY FOR INJURIES OR DEATH. EACH PERSON (OR HIS/HER PARENT(S) IF SUCH PERSON IS UNDER THE AGE OF 18 YEARS) ENTERING THE FACILITY ASSUMES ALL RISK OF INJURY OR DEATH.

THE ORDINANCE GOVERNING THE CREATION AND MAINTENANCE OF THE SKATEPARK IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED OR GIVEN EFFECT IN A MANNER WHICH IMPOSES UPON THE TOWN OF DUNCAN, OR ANY OFFICER OR EMPLOYEE THEREOF, A MANDATORY DUTY OF CARE TOWARD PERSONS OR PROPERTY WITHIN THE TOWN OF DUNCAN OR OUTSIDE THE TOWN OF DUNCAN SO AS TO PROVIDE A BASIS OF CIVIL LIABILITY FOR DAMAGES, EXCEPT AS OTHERWISE IMPOSED BY LAW.

THE FOLLOWING ARE RECOMMENDATIONS TO REDUCE YOUR RISKS OF INJURY:

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- WEAR A HELMET, WRIST GUARDS, ELBOW PADS, KNEE PADS, GLOVES AND FOOTWEAR DESIGNED FOR SKATEBOARDING AND/OR IN-LINE SKATING USE. EQUIPMENT SHOULD BE IN GOOD REPAIR AT ALL TIME DURING USE.
- SKATEBOARDING AND IN-LINE SKATING ARE NOT RECOMMENDED FOR INDIVIDUALS AGE 5 AND UNDER.
- DO NOT RIDE, OPERATE, OR UTILIZE ANY DEVICE OTHER THAN NON-MOTORIZED SKATEBOARDS AND NON-MOTORIZED SKATES.
- ACT IN AN ORDERLY, SAFE AND CONSIDERATE MANNER, WAITING YOUR TURN.
- NO AMPLIFIED MUSIC WITHIN THE SKATE PARK.
- NO USE OF HEADPHONES WHILE SKATING.
- DO NOT USE, CONSUME OR HAVE WITHIN YOUR CUSTODY OR CONTROL ALCOHOLIC BEVERAGES OR DRUGS WITHIN THE SKATE PARK.
- NO FOOD OR DRINK IN THE SKATING AREA.
- SPECTATORS SHOULD KEEP THEIR DISTANCE.
- IF YOU ARE NOT AN EXPERIENCED SKATER YOU SHOULD NOT USE THIS PARK.
- HAVE FUN, BUT BE CAREFUL AND BE RESPECTFUL OF OTHERS.

C. All ordinances and parts of ordinances in conflict herein are repealed insofar as such conflict may exist.

Section 14-9-4 No Mandatory Duty Of Care

This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the Town of Duncan, or any officer or employee thereof, a mandatory duty of care toward persons or property within the Town of Duncan or outside the Town of Duncan so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 14-9-5 Severability

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If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The Town Council of the Town of Duncan hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 14-9-6 Violations and Penalties

Violation of this ordinance setting forth unlawful activity may be punishable by a civil penalty of not less than twenty-five dollars (\$25.00) and not more than three hundred dollars (\$300.00) or by impoundment of the vehicle which was operated in the commission of such violation for a period not to exceed thirty (30) days or both. Community service is considered a viable alternative at the discretion of the Town Council of the Town of Duncan for payment of fines.

Article 14-10 ATV/OHV REGULATIONS

Section 14-10-1	Purpose
Section 14-10-2	Definitions
Section 14-10-3	Violations
Section 14-10-4	Penalty

Section 14-10-1 Purpose

To prohibit ATVs/OHVs on personal property other than their own. To prohibit ATVs/OHVs on public property unless specified.

Section 14-10-2 Definitions

All-terrain vehicle (ATV) means a motor vehicle that satisfies all of the following: (a) is designed primarily for recreational nonhighway all-terrain travel. (b) is 50 or fewer inches in width. (c) has an unladen weight of 800 pounds or less. (d) travels on three or more low-pressure tires. (e) has a seat to be straddled by the operator and handlebars. for steering control. (f) is operated on a public highway. A.R.S. § 28-101.34

Street or highway means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel. This includes the shoulders of the roadway. A.R.S. § 28-101.48

Off-highway vehicle (OHV) means a motorized vehicle when operated off of highways on land, water, snow, ice or other natural terrain or on a combination of land, water, snow, and ice or other natural terrain. Includes a two-wheel, three-wheel, or four-wheel vehicle, motorcycle, four-wheel drive vehicle, dune buggy, amphibious vehicle, ground effects or air

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cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind. A.R.S. § 28-1171.3.A.B

Off-highway vehicle trail means a multiple use corridor that is all of the following: (a) open to recreational travel by an off-highway vehicle. (b) not normally suitable for travel by conventional two-wheel drive vehicles. (c) opened by the managing authority of the property that the trail traverses for the specific designated purpose of recreational off-highway vehicle use. A.R.S. § 28-1171.4

Section 14-10-3 Violations

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state while under the influence of intoxicating liquor, any drug, a vapor-releasing substance containing a toxic substance or any combination of liquor, drugs or vapor-releasing substances if the person is impaired to the slightest degree. A.R.S. § 28-1381A.1

B. It is unlawful for a person to drive an ATV/OHV with reckless disregard for the safety of persons or property. A.R.S. § 28-1174

C. No person shall drive a motor operated vehicle cross-country on public or private lands where such cross-country driving is prohibited by rule or regulation or, in the case of private lands, by proper posting. A.R.S. § 17-454

D. The operation of an ATV/OHV requires skill and good judgment. Drugs and alcohol impair both. Laws regarding driving under the influence apply everywhere in the state and apply to operators of ATVs/OHVs.

E. If the driver of an off-highway vehicle is going to drive on streets or highways, the vehicle must be registered. An ATV must be street legal in order to get it registered and some ATVs may require additional equipment or modifications in order to be street legal. Arizona law requires either an off-road plate or a current registration plate to be securely fastened in a clearly visible position to the rear of the ATV/OHV.

F. Persons, under the age of 18, must wear a helmet on an ATV/OHV.

G. You must have a Class M license for a three-wheel ATV and a Class D license for a four-wheel ATV.

Section 14-10-4 Penalties

This section of the codebook is enforceable by Town of Duncan law enforcement and the Greenlee County Sheriff's Department. Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed three hundred dollars. (\$300), or imprisonment for not more than ninety (90) days or both fine and imprisonment.

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Each day that a violation continues shall be a separate offense punishable as hereinabove described.

CHAPTER 15
ZONING REGULATIONS

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CHAPTER 15
ZONING REGULATIONS

ARTICLE 15-1 INTENT AND PURPOSE

15-1-1	Title
15-1-2	Intent and Purpose
15-1-3	Guiding Principles
15-1-4	Grandfather Clause

Section 15-1-1 Title

This chapter shall be known as the "Duncan Zoning Chapter."

Section 15-1-2 Intent and Purpose

The intent and purpose of this chapter is to promote the health, safety, morals, convenience, order and general welfare of the present and future inhabitants of the Town of Duncan by guiding future development in accordance with the following general objectives:

- A. Preserve the present small town rural atmosphere of the Town of Duncan.
- B. Plan for and encourage growth. Insure that this future development occurs in a planned and orderly manner.
- C. Promote a wholesome, friendly, uncrowded and peaceful environment.
- D. Insure an attractive, efficient commercial district that will attract those retail and commercial services which are needed in the community. Also, identify areas well suited for industrial use.
- E. Promote an adequate supply of decent housing of sufficient variety to meet the need of Duncan residents. Insure the adequate spacing of homes to prevent overcrowding.
- F. Promote a visually attractive community. Prohibit the open storage of junk, debris and obsolete vehicles in residential and downtown commercial areas. Keep the town free of excessive signs, to preserve an open and attractive view of the community.
- G. Secure safety from flood, fire, crime, water, air and noise pollution and other hazards.
- H. Reduce the waste of physical, financial and human resources resulting from excessive scattering of population or the overcrowding of this land.
- I. Facilitate adequate provisions for transportation, water, sewage, schools, parks and other public requirements.

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J. Keep livestock out of the central commercial area. Allow zones for those families wishing to keep a few head of livestock; but with safeguards to protect neighboring properties from excessive smell, dust, health hazards and other menace.

K. Stabilize and improve property values.

Section 15-1-3 Guiding Principles

The powers of the Mayor and Common Council, the Planning and Zoning Commission, Board of Adjustment, the Zoning Inspector and all other persons or agencies charged with the administration of the chapter shall be strictly limited by the expressed intent of the State Legislature in the enactment of Section 9-461 through 9-464 of the Arizona Revised Statutes, 1973, and as amended.

Section 15-1-4 Grandfather Clause

Nothing in the chapter shall affect existing property of the right to its continued use for the purpose used at the time this chapter takes effect, nor to any reasonable repairs.

ARTICLES 15-2 DEFINITIONS

15-2-1 Definitions

Section 15-2-1 Definitions

"Agriculture" – Shall mean cultivation of crops and the raising of livestock (temporary pasturing of livestock). It shall not include livestock feeding activities; nor shall it include retailing of products on the premises.

"Agricultural Building" – A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor shall it be a place used by the public.

"Apartment House" – Any building or portion thereof that contains three (3) or more dwelling units and, for the purpose of this code, includes residential condominiums. To be occupied by three (3) or more families living independently of each other and doing their own cooking on the premises.

"Barn" – A building for storing farm produce and implements and stabling livestock.

"Building" – Any structure used or intended for supporting or sheltering any use or occupancy.

"Building, Accessory" – A subordinate building, the use of which is incidental to that of the main building, including carports, garages, storage sheds, etc.

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“Building, Existing” – A building erected prior to the adoption of this code, or one for which a legal building permit has been issued.

“Clinic” – A building used for the diagnosis and treatment of ill or injured persons, but which does not provide board, room or regular hospital care and services.

“Commercial Feed Lot” – see “Livestock Feed Yard.”

“Commission” – The Duncan Planning and Zoning Commission.

“Conditional Approval” – An affirmative action by the commission or council indicating that approval will be forthcoming upon satisfaction of certain specific stipulations.

“Conditional Use” – Special uses of property, specifically authorized by this chapter, but not permitted unless certain stated conditions are met. This chapter outlines specifically the nature of these special exceptions and the conditions under which they will be permitted. The special exception is in fact a permitted use once that the special conditions required by the ordinance in protection of the public interest are met.

“Congregate Residence” – Any building or portion thereof that contains facilities for living, sleeping, and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging houses.

“Construction Standards, Town of Duncan” – Minimum standards and specifications of construction of public improvements within the Town of Duncan as adopted by the Town Council.

“Corral” – A pen or enclosure for livestock or other animals.

“Council” – The Duncan Town Council.

“Covenant, Deed Restrictions” – A privately executed and recorded document designed to govern the use of lots within a subdivision.

“Design” – Street alignment, grades and widths alignment and widths of easements and rights of way for drainage, sanitary sewers and other utilities; the arrangement and orientation of lots.

“Discriminate or Discrimination” – Means to make, directly or indirectly, any distinction with respect to any person or persons based on sex, race, color, religion, national origin or ancestry.

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"Dry Lot Feeding" – The maintenance of livestock under conditions where over fifty percent (50%) of the feed consumed is provided through supplementary feeding.

"Dwelling" – Any building or portion thereof, which is designed or used exclusively for residential purposes and contains not more than two dwelling units.

A. "Dwelling Unit" – Any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by this code, for not more than one family, or a congregate residence for ten (10) or less persons.

B. "One-Family Dwelling" – A detached residence designed for or occupied by one family.

C. "Multiple-Family Dwelling" – A building containing two (2) or more dwelling units.

D. "Efficiency Dwelling Unit" – A dwelling unit containing only one habitable room.

"Easement" – A non-profitable interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

"Encourage" – Is used in the chapter to express conditions which are desired, but not mandatory.

"Engineering Plans" – Plans, profiles, maps, cross-section, and other required details necessary for the construction of public improvements prepared by an engineer registered to practice in the State of Arizona, in accordance with the approved tentative plat and in compliance with standards of design and construction specified in this chapter and as required by the town's engineer.

"Fence, Sight Obscuring" – A fence having a height of at least six feet (6') above grade, which permits vision through not more than ten percent (10%) of each square foot of the fence.

"Financial Institution" – Means any person as defined herein engaged in the business of lending money or guaranteeing losses.

"Floor Area" – The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

"Front of Lot" – The front boundary line of a lot bordering on the street and, in the case of a corner lot, may be either frontage.

"Garage and Auto Repair Shop" – A business enterprise where licensed vehicles are repaired or serviced, but does not include the storage of vehicles.

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"Garage" – A building or portion thereof in which a motor vehicle containing flammable or combustible liquids or gas in its tank is stored, repaired or kept.

"Garage, Private" – A building or a portion of a building, not more than 1000 square feet in area, in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept.

"Grade" – (Adjacent ground elevation) Is the lowest point of elevation of the finished ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than 5 feet (1524 mm) from the building, between the building and a line 5 feet (1524 mm) from the building.

"Home Occupation" – Any occupation (or hobby) conducted within a dwelling and/or accessory building and carried on by persons residing in the dwelling. A business license issued by the Town of Duncan will be required and displayed in a visible location.

"Hospital" – A building in which ten (10) or more ill or injured human beings are offered board and room while being treated for such illness or injury by persons registered to practice the healing arts in the State of Arizona.

"Hotel" – A building containing six or more guest rooms intended or designed to be used, or that are used, rented or hired out to be occupied, or that are occupied for sleeping purposes by guests.

"Housing" – Means (1) any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous, located in the Town of Duncan used for the building or the placing of one or more housing or rooming units owned by, or otherwise subject to the control of, one or more persons; and/or (2) any real property or any interest therein, located in the Town of Duncan; and/or (3) any single family dwelling or multiple family dwelling or trailer house or trailer space or any portion thereof, located in the Town of Duncan which is used or occupied, or intended, arranged, assigned or designated to be used or occupied as the home, homesite, residence or sleeping place of one or more persons; and/or (4) a single room, suite of rooms or apartments 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.

"Improvements" – Installations, including street grading and surfacing, sewer and water, drainage, etc., required as a condition to the approval and acceptance of the final plat.

"Junk Yard" – A place where scrap, waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, handled or stored, to be converted to useable stock, including auto grave yards for the storage of salvaged house wrecking and structural steel materials and equipment.

"Kennel" – Means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs or cats under controlled conditions. It

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also means any person, group of persons or corporations engaged in breeding, buying, selling or boarding dogs or cats and specifically the keeping of five or more dogs or cats four months of age or older.

“Landscaping” – Shall mean the application or use of some combination of planted trees, shrubs, vines, ground cover, flowers or lawns to improve the appearance of a piece of ground. The combination or design may include rocks and such structural features as fountains, pools, art works, screens, walls, fences or benches.

“Livestock” – Means meat animals, cattle, swine, sheep, goats, oxen, asses, mules and horses. Livestock shall also mean rabbits and poultry (ie: chickens, ducks, geese).

“Livestock Feed Yard; Commercial Feed Lot” – A feeding operation on a parcel of land where livestock are kept or exchanged in corrals or yards on a sustained basis as a commercial enterprise; where the feed is brought to the yard as contrasted to feed obtained through grazing the animals on the premises.

“Lot” – A single parcel or tract of land.

A. “Lot of Record” – A lot designed on a subdivision plat or shown by deed, duly recorded pursuant to Statute in the County Recorder’s Office. A lot of record may or may not coincide with a zoning lot.

B. “Zoning Lot” – A parcel of land, composed of one or more recorded lots, occupied by a principal building or buildings or principle use or uses, along with permitted accessory buildings or uses, meeting all of the requirements for the area, width, yards, setbacks and any other requirements set forth in this chapter.

“Medical marijuana means” – All parts of the genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient’s debilitating medical condition or symptoms associated with the patient’s debilitating medical condition.

“Medical marijuana cultivation” – The process by which a person grows a marijuana plant.

“Medical marijuana designated caregiver cultivation location” – An enclosed, locked facility, such as a closet, room, greenhouse, or other enclosed area equipped with locks, that does not exceed 50 square feet of cultivation space where a designated caregiver, as defined by A.R.S. §36-2801(5), cultivates marijuana.

“Medical marijuana dispensary” – A not-for-profit entity defined in A.R.S. § 36-2801(11), that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells, dispenses, or otherwise provides medical marijuana or related supplies and educational materials to cardholders as defined in A.R.S. § 36-2801(2).

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“Medical marijuana dispensary offsite cultivation facility” – An enclosed, locked facility where marijuana is cultivated by a medical marijuana dispensary as referenced in A.R.S. § 36-2804(B)(1)(b)(ii).

“Medical marijuana infusion facility” – A facility that incorporates medical marijuana into consumable/edible goods by the means of cooking or blending.

“Medical marijuana qualifying patient” – A person who has been diagnosed by a physician as having a debilitating medical condition as defined in A.R.S. § 36-2801(13).

“Medical marijuana facility” – A medical marijuana designated caregiver cultivation location, medical marijuana dispensary, medical marijuana dispensary offsite cultivation facility, medical marijuana infusion facility or any combination of the above.

“Mobile Home” – A movable or portable dwelling designated as a “mobile home” by the State Inspector (Division of Building Codes, Registrar of Contractors, State of Arizona) which has been inspected by the State Inspector and contains his “insignia of approval.” A mobile home is defined as a movable or portable dwelling over thirty-two feet (32’) in length and over eight feet (8’) wide, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence or as a temporary or permanent office which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a portable dwelling or office composed of a single unit.

“Mobile Home Park” – An area or tract of land divided into mobile home lots for rent, lease or sale to the public and which is restricted to such use through deed restrictions.

“Modular Dwelling (Modular Construction)” – A building designated as a “factory-built building” by the State Inspector, Division of Building Codes, Registrar of Contractors, State of Arizona; which has been inspected by the State Inspector and contains his “insignia of approval,” which has been installed on a permanent foundation of brick, mason, block, concrete, etc. A modular dwelling is defined as a single story commercial building of less than four thousand (4,000) square feet of floor space or a residential building not to exceed two (2) stories in height, which is either wholly or in substantial part manufactured at an off-site location to be assembled on site, except that it does not include a mobile home as defined in this location.

“Motel” – Shall mean hotel as defined in this code.

“Multifamily Development” – A complex of apartments, town houses, condominiums or other multifamily dwellings planned and constructed as a single, planned unit developed in compliance with section 15-6-3-B of this chapter.

“New Development” – Residences or businesses constructed after the effective date of adoption of this code.

“Non-conforming Building” – A building, structure or portion thereof, which does not conform to the regulations of this chapter applicable to the zone or district in which such building is situated, but which legally existed prior to the effective date of this code.

“Non-conforming Use” – A use of premise which does not conform to the regulations of the chapter but which existed at the effective date of this code.

“Occupancy” – The purpose for that a building, or part thereof, is used or intended to be used.

“Owners” – Includes a leasee, subleasee, 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.

“Parking Space” – A space, not less than twenty feet (20') in length and not less than eight and five-tenths feet (8.5') in width for the parking of an automobile.

“Pasture” – Grass and other field crops harvested through the grazing of livestock. Also includes the cleaning of fields after harvest. (To qualify as pasture, over fifty percent (50%) of the feed consumed by the animals must be derived from the pasture alone.)

“Pedestrian Walkway” – A walkway used exclusively as a pedestrian traffic way.

“Permanent Building of Conventional Construction” – A building on a permanent foundation (of brick, mason block, concrete, etc.) built through modular and/or conventional construction methods.

“Permit” – An official document or certificate issued by the building official authorizing performance of a specified activity.

“Person” – Means an individual and a group of any one or more persons such as, but not limited to, labor unions, joint apprenticeship committees, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint stock companies, trusts, legal representatives, trustees in bankruptcy, receivers, any individuals acting in a financial or representative capacity either appointed by a court or otherwise, the town or any of its agencies and any other legal governmental or commercial entity as well as a natural person or persons. The term persons, when applied to any of the foregoing, includes members, representatives, officers and directors, agents and employees.

“Planning Commission” – The Duncan Planning and Zoning Commission.

“Plat” – A map of subdivision.

“Plat, Preliminary” – A preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with this chapter.

“Plat, Final” – A map of all or part of the subdivision essentially conforming to an approved preliminary plat, prepared in accordance with this chapter.

“Plat, Recorded” – A final plat bearing all of the certificates of approval required by this chapter and duly recorded by the Greenlee County Recorder.

“Real Estate Broker” or “Real Estate Salesperson” – Means an individual, whether licensed or not, who, for a fee, commission, salary or for other valuable consideration or show, with the intention or expectation of receiving or collecting same, lists, sells, purchases, exchanges, rents or leases any housing accommodation, including options thereupon; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrances, upon transfer to any housing accommodation; or who is engaged in the business or charging an advance fee or contracting for collection of a fee in connection with a contract whereby she/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.

“Right of Way” – The entire dedicated tract or strip of land that is for the use of the public for circulation and service, the length and width of which shall be sufficient to provide adequate accommodation for all physical features to be included therein.

“Salvage Yard” – see “Junk Yard.”

“Setback” – The shortest distance between the property line and the foundation, wall or mainframe of the building.

“Shall” – Is used in the chapter to express what is mandatory.

“Sign” – Any device for visual communication that is used for the purpose of bringing the subject shown thereon to the attention of the public. Any sign shall not obstruct the view of traffic. No sign shall be permitted on private or public property without the owner’s approval.

A. “Accessory Sign” – A sign which directs attention to a business or profession conducted on the premises.

B. “Free-Standing Sign” – A sign supported by uprights or braces placed upon or in the ground, and not attached to or part of a building.

C. “Non-Accessory Sign (Billboard)” – A sign which directs attention to a business or product which is located or sold at a location other than the lot or building on which the sign is located.

D. “Overhanging (Projecting) Sign” – A sign which is attached to a building or structure and extends beyond the wall of the building by more than twelve inches (12”).

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E. "Wall Sign" – A flat sign placed against and attached to an exterior front, side or rear wall of a building, which extends no more than twelve inches (12") out from the wall of the building.

F. "Political/Campaign Sign" – A sign which directs attention to a political candidate or issue. Such signs shall be limited to 4' x 6'. Such signs shall be displayed only with the permission of the property owner. Such signs shall be removed within thirty (30) days of the election. If said signs are not removed within this thirty (30) days, all costs of the removal shall be billed to the particular candidate in the amount designated by the Duncan Town Council.

G. "Event Sign" – Any temporary sign which directs attention to or announces an event, outside or within the town limits, including but not limited to, yard sales, weddings, parties, etc. Such signs shall be limited to 2' x 3' in size. Such signs shall be displayed only with the permission of the property owner. Such signs shall be removed within three (3) days of the event. If said signs are not removed within three (3) days, all costs of the removal shall be billed to the particular advertiser in the amount designated by the Duncan Town Council.

"Street" – Any thoroughfare or public way not less than 16 feet (4877 mm) in width that has been dedicated or deeded to the public for public use. It is also a way for vehicular traffic, whether designated as a street, highway, road, avenue or however otherwise designated. A street includes all land within the street right of way whether improved or unimproved, and includes such improvements as pavements, shoulders, curbs, gutters, sidewalks, parking spaces, bridges and viaducts.

"Streets, Arterial" – Arterial streets or highways are those primarily for fast or heavy traffic.

"Streets, Collector" – Collector or feeder streets shall mean a street carrying traffic from local or minor streets onto an arterial street or highway.

"Streets, Local" – Local or minor streets are those which are used primarily for access to abutting properties.

"Sub-divider" – Any person or legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this chapter, except that an individual serving as agent for such legal entity is not a sub-divider, as designated in A.R.S. No. 9-463.02.

"Sub-division" – Pursuant to A.R.S. No. 9-463.02(a), subdivision shall mean improved or unimproved lands divided for the purpose of sale or lease, whether immediate or in the future, into four (4) 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 two (2) or more parts; sub-division also includes a 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, but plats of such projects need not show the buildings or the manner in which the

buildings or airspace above the property shown on the plat are to be divided. Pursuant to A.R.S. No. 9.463.02(c), sub-division does not include the following: 1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots. 2. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership. 3. The leasing of apartments, offices, stores or similar space within a building or trailer park, nor to mineral, oil or gas leases.

“Sub-division Regulations” – A municipal chapter setting forth standards for the design and development of sub-divisions (the laying out of land into lots and their development for sale). Pursuant to A.R.S. No. 9-463.02(b), the legislative body of a municipality shall not refuse approval of a final plat of a project included in A.R.S. No. 9-463.02(a) under provisions of an adopted subdivision regulation because of a location of buildings on the property shown on the plat not in violation of such subdivision regulations or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to such plats on the basis of parcels or lots on the surface of the land shown thereon as included in the project. This subsection does not limit the power of such legislative body to regulate the location of buildings in such a project by or pursuant to a zoning ordinance.

“Travel Trailer, Recreational Vehicle Camper” or “Motor Home” – A vehicular type dwelling unit thirty-two feet (32’) or less in length and eight feet (8’) or less in width designed primarily as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

“Travel Trailer Park” – An area or tract of land used to accommodate two (2) or more travel trailers for a short period of time (less than thirty (30) days).

“Variance” – A waiver or reduction in required area of lot or yard dimension, or usage that differs from the requirements set forth in this zoning chapter.

“Yard” – An open space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated.

A. “Front Yard” – The horizontal distance between the street line and the front line of the building, excluding non-enclosed steps.

B. “Rear Yard” – A yard between the buildings and the rear line of the lot.

C. “Required Yard” – The open space around a building which is required by the terms of this chapter.

D. “Side Yard” – A yard between the buildings and the side line of the lot and extending from the front yard to the rear yard.

“Zone” – A section or sections within the municipal limits in which the same zoning regulations apply.

ARTICLE 15-3 ESTABLISHMENT OF ZONES

15-3-1	Zones Established
15-3-2	Official Zone Map
15-3-3	Boundaries of Zones
15-3-4	Regulations Within Zones

Section 15-3-1 Zones Established

In order to carry out the purposes of this chapter, the Town of Duncan, Arizona is hereby divided into zones as follows:

- C – Commercial Zone
- DR – Duncan Residential Zone
- I – Industrial Zone
- P – Public Zone

Section 15-3-2 Official Zone Map

The location and boundaries of each of the zones are shown on "The Official Duncan Zoning Map" and said map is hereby declared to be an official record and part of this chapter. Whenever amendments or changes are made in zone boundaries, such changes shall be made on the official zone map promptly. No amendments or changes shall become effective until after it has been properly noted and attested to on the official zone map.

No changes of any nature shall be made on the official zone map except in conformity with the procedure set forth in this chapter. Any unauthorized change of whatever kind by any person shall be considered a violation of this chapter and punishable as provided in this chapter.

Regardless of the existence of copies of the official zone map which may from time to time be made or published, "The Official Duncan Zoning Map" which shall be located in the office of the town clerk shall be the final authority in determining current zoning status.

Section 15-3-3 Boundaries Of Zones

Where uncertainty exists with respect to the boundaries of various zones, the following rules shall apply:

- A. Where the intended boundaries on the official zone map are approximately street or alley lines, said street or alleys shall be construed to be the zone boundaries.
- B. Where the indicated boundaries are approximately lot lines, said lot lines shall be construed to be the zone boundaries unless otherwise indicated.

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C. Where land has not been subdivided into lots, the zone boundary shall be determined by the use of the scale of measurement shown on the official zone map.

D. Where other uncertainty exists, the Board of Adjustment shall interpret the official zone map.

Section 15-3-4 Regulations Within Zones

Within each of the zones, the use, location, height and size of buildings and structures, the use of land and size of lots, yard, courts and other open spaces and the density of population are regulated as hereinafter set forth.

ARTICLE 15-4 COMMERCIAL ZONE (C)

- 15-4-1 Objectives and Characteristics of Zone
- 15-4-2 Use Requirements
- 15-4-3 Specific Requirements

Section 15-4-1 Objectives and Characteristics of Zone

This zone covers Duncan's present downtown and highway commercial district. This would also include any additional areas outside of the flood plain which would be attractive to new businesses needed in the community. The zone has been established to facilitate the attractive, efficient and profitable operation of the normal retail, financial, personal service and tourist establishments. A mixture of businesses, residential development and open space along U.S. 70 is encouraged. The commercial "strip zoning" of the entire length of U.S. 70 is discouraged. The storage of all merchandise, equipment and materials must be within a building or sight-obscuring fence. In an effort to protect surrounding residential areas, commercial establishments which would be hazardous due to excessive odors, vibration, dust, smoke or other emissions are prohibited. Brightly lighted, flashing and large overhanging signs and billboards are prohibited. New businesses shall and existing businesses are encouraged to provide adequate off-street parking, sidewalks and off-street loading areas. Businesses are encouraged to insure an efficient flow of traffic and visually unobstructed intersections. Where a commercial establishment abuts on an existing residential property, the establishment of a buffer between the properties is encouraged. In order to accomplish the above objectives, the following regulations shall apply in the commercial zone.

Section 15-4-2 Use Requirements

The following buildings, structures and use of land shall be permitted in the commercial zone, upon compliance with the requirements set forth in this chapter.

A. The normal retail, financial, personal service and tourist establishments.

B. Gasoline stations, for retail sales only, provided gasoline pump islands are set back not less than eighteen feet (18') from any street to which the pump island is vertical and twelve

feet (12') from any street line to which the pump island is parallel and not less than twelve feet (12') from any residential zone boundary line. If the pump island is set at an angle on the property, it shall be so located over the property line. Lots from which gasoline is dispensed to customers at retail shall not be less than seventy-five feet (75') in length. A screen shall be required between all service stations and residentially zoned property.

C. The fabrication or processing of goods done in connection with the sale of these goods on the premises, provided such activities are incidental to the primary functions of retailing. Includes bakeries, lumberyards, sign painter, repair shops, upholstery and arts and crafts shops.

D. Public garages and auto repair, but excluding junk yards and auto wrecking salvage yards.

E. Parking lots.

F. Shopping centers, subject to the review and ~~approval of~~ RECOMMENDED BY the Planning and Zoning Commission and ~~the~~ APPROVED BY Board of Adjustment.

G. Travel trailer parks, subject to the ~~approval of~~ RECOMMENDATION OF the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment.

H. Temporary buildings for uses incidental to construction work, provided such buildings are removed upon completion or abandonment of the construction work, but not for longer than twelve (12) months without specific ~~approval of~~ RECOMMENDATION BY the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment.

I. Accessory signs:

1. Parking lot signs, not to exceed six (6) square feet in size.
2. One free-standing sign per business establishment, when ~~approved~~ RECOMMENDED by the Planning and Zoning Commission and ~~the~~ AND APPROVED BY THE Board of Adjustment.
3. One overhanging (projecting) sign per business establishment, not to exceed eight (8) square feet in size.
4. Signs which are painted on or attached to the flat of the building are not restricted.
5. Brightly lighted and flashing signs are prohibited.
6. Non-accessory sign and billboards are prohibited.

J. All uses permitted in the Duncan residential zone subject to compliance with the regulations and restrictions required therein.

K. Other uses ruled RECOMMENDED by the Planning and Zoning Commission and ~~the~~ RULED BY THE Board of Adjustment to be similar to uses specifically permitted in the zone.

- L. The following and similar uses are specifically prohibited:
 - 1. The keeping of livestock, commercial feed lots, livestock auction barn, slaughter or rendering plant.
 - 2. An industrial, manufacturing or processing plant.
 - 3. Junk yards and auto wrecking salvage yards.
 - 4. Massage parlors and related uses of immoral impact.
- M. A medical marijuana facility when in compliance with Section 15-4-3-I of this Chapter.

Section 15-4-3 Specific Requirements

- A. No activity shall give rise to dust, odor, noise, smoke, vibrations or intermittent light or glare objectionable beyond the zone.
- B. All business establishments shall be located in permanent buildings of conventional construction, and aligned with neighboring commercial buildings.
- C. The storage of merchandise, materials, equipment or junk outside of a building or sight-obscuring fence, except licensed automobiles, trucks and other vehicles in running order, is prohibited.
- D. New business constructed after the effective date of the code shall provide off-street parking at the rate of three (3) spaces per one thousand (1,000) square feet of floor space, except restaurants, taverns, theaters, clubs and lodges which shall have one parking space for each five (5) seating places. The Planning and Zoning Commission MAY RECOMMEND and the Board of Adjustment may approve substitute parking locations and may reduce the amount of off-street parking as the individual situation merits.
- E. Every building having a gross floor area of two thousand (2,000) square feet or more to which merchandise is regularly received or distributed by vehicle, shall have at least one off-street loading space of not less than ten feet in width, twenty-five feet in length and fourteen feet in height (10' x 25' x 14').
- F. New businesses are required, and existing businesses are encouraged, to put in sidewalks. The construction of sidewalks shall meet the town's construction standards.
- G. The ground floor of all new structures shall be constructed above the one hundred (100) year flood levels, in accordance with the National Flood Insurance Programs (FEMA).
- H. All applications for a building permit from within this zone shall be approved by the building inspector or the town manager. ~~The Planning and Zoning Commission shall approve~~ TOWN CLERK SHALL APPROVE building permits in the event that either position is unoccupied.

I. A medical marijuana facility is conditionally permitted when in compliance with the terms of this chapter, including the following terms and all rules adopted by the Arizona Department of Health Services and the following requirements:

1. An applicant shall provide evidence to the Town Council sufficient to show compliance with this section prior to being issued a conditional use permit for a medical marijuana facility.
2. A medical marijuana facility shall not be located with 500 feet of any residentially zoned property, any church or worship facility or any dwelling unit.
3. A medical marijuana facility shall not be located within 1,500 feet of any public or private charter, primary, or secondary school, any public or private day care, preschool, nursery, or kindergarten facility or any park or playground.
4. A medical marijuana facility shall not be located with 3,000 feet of any other medical marijuana facility or any sexually oriented business.
5. A medical marijuana facility shall be a maximum size of 2,500 gross square feet.
6. A medical marijuana facility shall be located in a permanent building and may not locate in a trailer, cargo container, storage unit, or motor vehicle.
7. A drive-through medical marijuana facility is prohibited.
8. Marijuana remnants, by-products, and/or infused products shall not be placed within the medical marijuana facility's exterior refuse containers.
9. For purposes of measuring separation distances required in this section, the measurements will be taken in a straight line from the closest property line of any affected property without regard to intervening structures or objects or political boundaries.
10. A medical marijuana facility lawfully operating is not rendered in violation of these provisions by the subsequent location of a church or worship facility, public or private primary or secondary school, public or private day care, preschool, nursery, kindergarten facility, public park, or playground within the buffer zones outlined in this section above for a medical marijuana facility.
11. This provision shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by local, state or federal law.

ARTICLE 15-5 INDUSTRIAL ZONE (I)

15-5-1 Objectives and Characteristics Of Industrial Zone

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15-5-2 Use Requirements

15-5-3 Specific Requirements

Section 15-5-1 Objectives and Characteristics Of Zone

The industrial zone covers those areas within the town and outside the floodplain that would be best suited for warehousing, light manufacturing, commercial, and industrial use. The primary objectives of this zone are to (1) separate industrial from residential uses and (2) promote the economic well being of the community. In an effort to protect surrounding residential areas, new industrial establishments, which would be hazardous or offensive due to excessive odors, vibration, dust, smoke, or other emissions are prohibited. Brightly lighted, flashing, and overhanging signs and billboards are prohibited. New business shall and existing buildings are encouraged to provide adequate off-street parking, sidewalks and off-street loading areas. Businesses are encouraged to insure an efficient flow of traffic and visually unobstructed intersections. Where an industrial establishment abuts on an existing residential property, the establishment of a buffer between the properties is encouraged. The storage of all merchandise, equipment, and materials must be within a building a sight-obscuring fence. In order to accomplish the above objectives, the following regulations shall apply in the industrial zone.

Section 15-5-2 Use Requirements

The following buildings, structures, and uses of land shall be permitted, upon compliance with the requirements set forth in this chapter.

- A. Any use permitted in the Commercial (C) Zone except motels, hotels, churches, hospitals, schools, day-care nurseries, nightclubs, beer, wine and spirituous liquor dispensing establishments, food retailing firms, and residential uses. All regulations and restrictions in the commercial zone still apply.
- B. Wholesale distributing firms and warehouses, including wholesale and bulk gasoline.
- C. All new industrial, manufacturing and processing establishments, except slaughter and animal by-products, new commercial feed lots or livestock auction house, new salvage yards, or any other new business or industrial firm that would emit dust, smoke, odor, vibration, light, or other wastes beyond the zone boundary.
- D. Bona fide caretaker dwellings located on site.
- E. The fabrication or processing of goods done in connection with the sale of these goods on the premises, provided such activities are incidental to the primary functions of retailing. Including, but not limited to bakeries, lumberyards, sign painters, repair shops, gun manufacturing.
- F. Public garages and auto repair, but excluding new junkyards and new auto wrecking salvage yards.
- G. Parking lots.

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H. Shopping centers, subject to the ~~approval~~ RECOMMENDATION of the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment.

I. Temporary buildings for uses incidental to construction work, provided such buildings are removed upon completion or abandonment of the construction work, but not for longer than twelve (12) months without specific ~~approval~~ RECOMMENDATION of the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment.

J. Kennels.

K. Accessory signs:

1. Parking lot signs, not to exceed six (6) square feet in size.
2. One freestanding sign per business establishment, when ~~approved~~ RECOMMENDED by the planning and zoning commission and the APPROVAL BY THE board of adjustment.
3. One overhanging (projecting) sign per business establishment, not to exceed eight (8) square feet in size.
4. Signs which are painted on or attached to the flat of the building are not restricted.
5. Brightly lighted and flashing signs are prohibited.
6. Billboards are prohibited.

L. Other uses ~~ruled~~ RECOMMENDED by the Planning and Zoning Commission and the APPROVED BY THE Board of Adjustment to be similar to uses specifically permitted in the zone.

M. The following and similar uses are specifically prohibited: slaughter and rendering plants, new junk yards and new auto wrecking salvage yards, those adult oriented business establishments either retail or wholesale providing adult entertainment and/or goods depicting, describing or relating to specified sexual activities, or characterized by emphasis on depiction, description or relations to specified anatomical areas of the human body, typical uses types of adult oriented business establishments include adult arcades, adult bookstores or video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, massage establishments and nude model studios.

N. A Medical marijuana facility when in compliance with Section 15-4-3-1 of this Chapter.

Section 15-5-3 Specific Requirements

A. No activity shall give rise to dust, odor, noise, smoke, vibrations, or intermittent light or glare objectionable beyond the zone.

B. All business establishments shall be located in permanent buildings of conventional construction and aligned with neighboring commercial or industrial buildings.

- C. The storage of merchandise, materials, equipment, or junk outside of a building or sight-obscuring fence, except licensed automobiles, trucks, and other vehicles in running order, is prohibited.
- D. New business constructed after the effective date of this code shall provide off-street parking at the rate of three (3) spaces per one thousand (1,000) square feet of floor space. The Planning and Zoning Commission MAY RECOMMEND and the Board of Adjustment may approve substitute parking locations and may reduce the amount of off-street parking as the individual situation merits.
- E. Every building having a gross floor area of two thousand (2,000) square feet or more to which merchandise is regularly received or distributed by vehicle, shall have at least one off-street loading space of not less than ten feet in width by twenty-five feet in length by fourteen feet in height (10' x 25' x 14').
- F. New businesses shall be required to put in sidewalks. The construction of sidewalks shall meet the town's construction standards.
- G. The ground floor of all new structures shall be constructed above the one hundred (100) year flood levels, in accordance with the Nation Flood Insurance Programs (NFIP).
- H. All applications for a building permit from within this zone shall be reviewed and approved by the town manager, building inspector, RECOMMENDED BY the Planning and Zoning Commission and APPROVED BY the Board of Adjustment before the building permit can be issued by the Town of Duncan.
- I. A medical marijuana facility is conditionally permitted when in compliance with the terms of this chapter, including the requirements in Section 15-4-3-I of this chapter and all rules adopted by the Arizona Department of Health Services.

ARTICLE 15-6 DUNCAN RESIDENTIAL ZONE (DR)

- 15-6-1 Preamble
- 15-6-2 Objectives and Characteristics of the Duncan Residential Zone
- 15-6-3 Use Requirements
- 15-6-4 Specific Requirements

Section 15-6-1 Preamble

Effective February 11, 2003, the former separate residential zones and all variations thereof are combined into one residential section in the planning and zoning portions of the town codebook.

The former Duncan residential zone, the new area residential zone and the new area mobile residential zone have been combined into one Duncan residential zone.

Section 15-6-2 Objectives and Characteristics of Zone

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The Duncan residential zone covers the original townsite of the Town of Duncan and all annexed properties, including, but not limited to; (1) the Hunter Estates area (annexed 1974); (2) the Duncan Heights senior citizens apartments (annexed 1983); (3) the LDS Church area annexation (annexed 1983); and (4) the Babbitt Heights area (subdivided 1980).

The original Duncan townsite is characterized by small fifty by one hundred foot (50' x 100') lots and a mixture of residential uses, mobile homes, apartments and conventional single-family housing. The annexation areas are characterized by single family dwellings on spacious lots.

This zone has been established to facilitate a quiet, attractive and efficient residential area, with a rural, small town atmosphere, free of excessive traffic, unsightly appearances, and sanitation problems.

Certain minimum requirements are established for future development to insure the gradual upgrading of housing within the zone. It is the intent of these regulations to encourage development of vacant and underdeveloped lots within the zone.

The zone will safeguard against overcrowding, and the traffic, fire protection and aesthetics associated with it, by providing the adequate spacing of homes and other structures.

In the original Duncan townsite, the dividing of present lots into smaller parcels is prohibited, except in an approved mobile home park. Residents are encouraged to locate new homes on double lots or to combine three (3) lots into two (2). Only one dwelling will be permitted per lot. A minimum amount of open space (side yard setback) shall be required between structures. The zone specifies a minimum size of dwelling to prevent the construction of shanties and such undersized structures.

Apartments, town houses, and other multifamily dwellings will be permitted in the annexation areas as a "conditional use", with the ~~approval~~ RECOMMENDATION of the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment, where an adequate community sewer and water system is provided.

Mobile home parks will be permitted in these annexation areas as a "conditional use", with the ~~approval~~ RECOMMENDATION of the Planning and Zoning Commission and the APPROVAL BY THE Board of Adjustment, where an adequate community sewer and water system is provided. It is also the objective of this zone to insure that new development is relatively flood resistant. New housing is encouraged to locate out of the Gila River flood plain. New housing in the flood prone area will be required to construct the ground floor above the one hundred (100) year flood level. ~~For aesthetic reasons, double-wide mobile homes are encouraged over single-wides.~~ For flood (and wind) protection, tie-downs will be required of mobile homes, and skirting will be required for aesthetic purposes.

To maintain the rural atmosphere of Duncan AND TO CONSERVE WATER THE PLANTING OF XERISCAPING, the planting and maintenance of NATIVE trees, ~~lawns~~, gardens and other

landscaping is encouraged. To improve the flow of traffic through the residential area, at least one off-street parking space will be required of each dwelling.

Businesses are not allowed in this zone. Home and hobby occupations, however, are permitted, with the approval of the ZONING ADMINISTRATOR ~~Planning and Zoning Commission and the Board of Adjustment~~, if they do not distract from the residential character of the zone. A limited number of livestock, maintained for recreation, home consumption or youth projects will be permitted where adequate space is provided and state health regulations are met. The open storage of junk, debris and unlicensed vehicles is prohibited.

In order to accomplish the above objectives, the following regulations shall apply to this zone.

Section 15-6-3 Use Requirements

The following buildings, structures and uses of land shall be permitted in this zone, upon compliance with the requirements set forth in this chapter.

- A. Single-family conventional dwellings.
- B. Apartments and other multifamily dwellings as a "conditional use" provided that:
 - 1. The development will be adequately served by a private or public community water and sewer system meeting state and county health standards.
 - 2. The development is located in an area well suited for such a use, as determined by the Planning and Zoning Commission. Such a determination shall be based on soil conditions, topography, accessibility, erosion and flood conditions.
 - 3. There will be no more than twelve (12) dwelling units per acre.
 - 4. Not less than ten percent (10%) of the gross area of the developments shall be designated as common open space for parks and playgrounds. Roads, off-street parking, and yards surrounding the individual dwelling units shall not be included in computing the required area for open space.
 - 5. The development shall contain not less than five (5) acres.
 - 6. No building shall be constructed closer than twenty feet (20') to another building. Several dwellings can be located in a building. Each dwelling unit shall have at least one thousand (1000) square feet of floor space.
 - 7. A detailed site plan prepared by a licensed architect or engineer is submitted to and approved by the Planning and Zoning Commission. The plan shall contain the following information:
 - a. Type and name of development, and name and address of owner and developer.
 - b. Legal description of the tract.
 - c. The proposed street, driveway, parking, and building site layout, including areas to be set aside for parks, playgrounds and open space.
 - d. Location and size of all water mains, fire hydrants, sewers, storm drains, and culverts.

- e. Preliminary dwellings of floor plans of typical dwellings along with elevations of such dwellings.
 - f. General planting plans showing the area to be landscaped and types of architectural features to be used.
 - g. Tabulation showing area of land within the development, number of dwelling units to be constructed, and percent of area to be devoted to parks, playgrounds, and open space.
 - h. A declaration of management, policies, covenants and restrictions setting forth the responsibilities and duties of the renter/occupants and the developer/owner of the development.
 - i. Any other data that the Planning and Zoning Commission may require in order to evaluate the proposal.
- C. Mobile homes located on individual lots.
- D. Mobile home parks subject to compliance with Section 15-8 of this chapter.
- E. Accessory buildings, including a private garage for the storage of vehicles owned by persons residing on the premises, greenhouses and swimming pools for private use only, porches, and buildings for storage of personal effects, provided they are not located on any required front or side yard setback.
- F. Schools, churches, hospitals, clinics, day-care nurseries, rest homes, mortuaries, public parks and recreation grounds, utility buildings and structures, subject to review and ~~approval~~ RECOMMENDATION by the Planning and Zoning Commission and the APPROVAL BY THE zoning Board of Adjustment. A site plan in the form of front and side yard setbacks, playgrounds and parking areas, etc, shall be provided for as ~~determined~~ RECOMMENDED by the Planning and Zoning Commission and DETERMINED BY the Zoning Board of Adjustment. The Planning and Zoning Commission MAY RECOMMEND and the Zoning Board of Adjustment may set additional requirements to protect surrounding property values and the residential character of the zone.
- G. Home (and hobby) occupations, provided that:
1. The home occupation is conducted entirely within the main dwelling, or else in an accessory building which contains not more than four hundred (400) square feet.
 2. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the character of the building from that of a dwelling.
 3. Not more than the equivalent of twenty-five percent (25%) of the ground floor of the dwelling is devoted to the home occupation.
 4. The physical appearance, traffic requirements, noise level, etc. of the home occupation does not depreciate surrounding property values or distract from the residential character of the zone as determined by the ~~Planning and Zoning Commission and the Zoning Board of Adjustment~~ ZONING ADMINISTRATOR.

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5. A site plan is submitted to and approved by the ZONING ADMINISTRATOR ~~Planning and Zoning Commission and the Zoning Board of Adjustment.~~
 5. A salvage yard of any kind is prohibited.
- H. Fences, walls, trees, hedges and gardens, provided they do not obscure the view of motorists at street intersections, or interfere with neighboring properties having a clear view of the street.
- I. No advertising signs of any kind shall be permitted, except for a name plate, or signs pertaining to a home occupation or the sale or lease of residential property provided they do not exceed four (4) square feet in size, and provided such signs are constructed and maintained in harmony with the residential character of the zone.
- J. Customary household pets.
- K. Agriculture, meaning the growing of garden and commercial crops in the customary open field manner, and the temporary pasturing of cattle, horse or sheep. (to qualify as pasture, over fifty percent (50%) of the feed consumed by the animals must be derived from the pasture alone).
- L. The maintenance of livestock under dry-lot conditions. Such livestock shall be limited to domestic animals and chickens, maintained for purposes of home consumption (family food production), youth projects (4-H, FFA, etc.) Or recreational use, in numbers not to exceed one animal unit per one-half (1/2) acre (21,780 square feet) of lot area. Commercial dry-lot feeding of livestock, however, is specifically prohibited. (An animal unit shall be one horse, one cow or one hog, with or without young, or twenty-five (25) chickens, ducks or geese, or twenty-five (25) rabbits). All animals shall be kept within a building, fence or other enclosure.
- M. Barns, pens, coops, feed storage facilities for the care and keeping of permitted livestock, provided (a) such facilities are located on the rear part of the lot, and (b) that no barn, corral or coop shall be constructed closer than two hundred feet (200') to any existing dwelling.
- N. Temporary buildings for uses incidental to construction work, provided such buildings are removed upon completion or abandonment of the construction work, but not for longer than twelve (12) months without specific approval RECOMMENDATION from the Planning and Zoning Commission and the APPROVAL BY THE Zoning Board of Adjustment. Such building shall be no closer to property lines than is allowed a residence in this area. A building permit must be obtained for such temporary buildings.

Section 15-6-3 Specific Requirements

- A. The minimum lot size shall be five thousand (5,000) square feet.

Where a private well and septic tank are to be used, the minimum lot size shall be one acre (43,560 square feet), excluding easements.

Where a private well is to be used in conjunction with a community water system, the minimum lot size shall be one half (1/2) acre (21,780 square feet) excluding easements.

Where the lot is to be served by both a community water and sewer system, the minimum lot size shall be ten thousand (10,000) square feet.

B. The minimum lot width shall be fifty feet (50').

C. The minimum front yard setback shall be fifteen feet (15'); except that the setback may be the average setback of dwellings on adjoining or adjacent properties, except in the Babbitt Heights subdivision, where the setback shall be ten feet (10').

D. The minimum side yard setback shall be five feet (5'), except in the Babbitt Heights subdivision, where the setback shall be ten feet (10').

E. There shall be no more than one dwelling per lot except in an approved multifamily development.

F. The open storage of junk, debris and unlicensed vehicles (except behind a sight obscuring fence) is prohibited.

G. All mobile homes shall be skirted with material similar in appearance to the mobile home. The skirting shall completely enclose the space under the mobile home. The mobile home shall be provided with anchors and tie-downs adequate to secure the stability of the mobile home. Siding and tie-downs shall be completed within six (6) months after moving a mobile home into the town limits.

H. The ground floor of all new housing shall be constructed above the one hundred (100) year flood level and at least eight inches (8") above ground level.

I. Certain parking requirement shall be met within the Duncan residential zone.

1. At least two (2) off-street parking spaces shall be provided per dwelling unit.
2. Parked vehicles are prohibited from blocking access and egress to a property or facility.
3. Parked vehicles are prohibited from blocking access to sidewalks, pedestrian access or public rights-of-way.
4. Parked vehicles are prohibited from obstructing the view of on-coming traffic.
5. On-street parking shall be permitted as determined by council from time to time.
6. On-street parking of commercial vehicles is prohibited.

J. In constructing a septic tank in this area, state and county health standards shall be complied with. In addition, the leach line (perforated pipe) shall be laid on a minimum of six feet (6') of coarse rock and shall be covered with a minimum of two feet (2') of gravel over

the pipe and then at least four additional feet (4') of coarse rock. The septic tank system shall include a grease trap and distribution box at the start of the perforated pipe. The complete tank system shall be inspected by the Greenlee County sanitation department prior to backfilling.

ARTICLE 15-7 PUBLIC ZONE (P)

15-7-1	Objectives And Characteristics Of The Duncan Public Zone
15-7-2	Use Requirements
15-7-3	Specific Requirements

Section 15-7-1 Objectives and Characteristics of Public Zone

This zone shall cover any public entity or facility, including, but not limited to, the following: cemeteries, churches, historical buildings/sites, libraries, schools, senior citizen facilities, public utilities, sports facilities, government facilities and parks.

This zone has been established to facilitate the attractive and efficient operation of any public facility. The storage of all equipment and materials must be within a building or sight-obscuring fence. In an effort to protect surrounding residential areas, public facilities which would be hazardous due to excessive noise are prohibited. Brightly lighted, flashing and large overhanging signs and billboards are prohibited. Any public facility shall provide adequate off-street parking, sidewalks, and off-street loading areas and meet local, state and federal health standards. Public facilities are encouraged to ensure an efficient flow of traffic and visually unobstructed intersections. Where a public establishment abuts on an existing residential property, the establishment of a buffer between the property is encouraged. In order to accomplish the above objectives, the following regulations shall apply in the public zone.

Section 15-7-2 Use Requirements

The following buildings, structures, and use of land shall be permitted in the public zone, upon compliance with the requirements set forth in this chapter.

- A. All churches within the Town of Duncan.
- B. All historical buildings and sites within the Town of Duncan.
- C. The Duncan Public Library.
- D. All schools in the Duncan Unified School District.
- E. All cemeteries within the Town of Duncan.
- F. All parks within the Town of Duncan.

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- G. All community or senior citizen facilities within the Town of Duncan.
- H. Any other public facility within the Town of Duncan.
- I. All public use buildings shall be constructed in compliance with the applicable building, plumbing, electrical, fire, fire prevention and mechanical codes. The owner of the public building is subject to the same fees required of other persons. Public buildings are subject to inspection during construction pursuant to these codes to determine compliance.
- J. Public buildings are subject to those codes that apply and are in effect when the building is designed or constructed and to the currently adopted codes when a building is found to be structurally unsafe, without adequate egress, or a fire hazard or is otherwise dangerous to human life.
- K. All uses permitted in the Duncan Public Zone are subject to compliance with the regulations and restrictions required therein.
- L. Other uses ~~not~~ RECOMMENDED by the Planning and Zoning Commission and the APPROVED BY THE Board of Adjustment to be similar to uses specifically permitted in the zone.

Section 15-7-3 Specific Requirements

- A. No activity shall give rise to excessive dust, odor, noise, smoke, vibrations or intermittent light or glare objectionable beyond the zone.
- B. All building facilities shall be located in permanent buildings of conventional construction, and aligned with neighboring commercial, public or residential buildings, except under emergency conditions.
- C. The storage of materials, equipment or junk outside of a building or sight-obscuring fence is prohibited.
- D. New public facilities constricted, modified or applying for a change of use variance after the effective date of the code shall provide off-street parking at the rate of three (3) spaces per one thousand (1,000) square feet of floor space, except churches which shall have one (1) parking space for each five (5) seating places. The Planning and Zoning Commission MAY RECOMMEND and the Board of Adjustment may approve substitute parking locations and may reduce the amount of off-street parking as the individual situation merits.
- E. Every building constructed, modified or applying for a change of use variance after the effective date of the code and having a gross floor area of two thousand (2,000) square feet or more to which merchandise is regularly received or distributed by vehicle, shall have at least one off-street loading space of not less than ten feet in width, twenty-five feet in length and fourteen feet in height (10' x 25' x 14').

F. New public facilities are required, and existing public facilities are encouraged to put in sidewalks. The construction of sidewalks shall meet the town's construction standards.

G. The ground floor of all new structures shall be constructed above the one hundred (100) year flood levels, in accordance with the national flood insurance programs (FEMA).

H. All applications for a building permit from within this zone shall be approved by the building inspector or the town manager. The ~~Planning and Zoning Commission~~ TOWN CLERK shall approve building permits in the event that either position is unoccupied.

ARTICLE 15-8 MOBILE HOME PARK

- 15-8-1 Characteristics and Objectives
- 15-8-2 Specific Requirements

Section 15-8-1 Characteristics and Objectives

~~Many families cannot afford a lot and the cost of conventional housing. One alternative for such families is a mobile home in a mobile home park. Likewise, there are families who prefer the mobility, easy installation and other benefits of mobile home living. Residential alternatives must be provided for such families.~~ A mobile home park will be permitted as a "conditional use" in this zone when the following conditions are met and RECOMMENDED ~~verified~~ by the Planning and Zoning Commission and VERIFIED BY the Zoning Board of Adjustment. These conditions have been set to insure that the mobile home park develops as a safe, attractive and efficient residential area that does not distract from the surrounding residential zone. For the purposes of this chapter, a mobile home park is defined as an area divided into mobile home lots for rent, lease or sale to the public and which is restricted to such use through deed restrictions. A mobile home park where lots are to be sold must conform to state and municipal subdivision regulations as well as this chapter.

Section 15-8-2 Specific Requirements

The following minimum requirements ("conditions") must be met and ~~verified~~ RECOMMENDED by the Planning and Zoning Commission and the VERIFIED BY THE Zoning Board of Adjustment before a mobile home park can be approved for development or expansion.

- A. A mobile home park shall contain a minimum of two (2) acres in the Duncan Residential (DR) Zone.
- B. The park shall contain no more than eight (8) mobile homes per acre.
- C. Lots shall be designed so as to insure a minimum of thirty feet (30') of open space between adjoining mobile homes. No accessory buildings shall be constructed within this required setback. Lot size is adjustable.

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D. All street and driveways shall be of all-weather (mineral aggregate) construction and meet town construction standards. It shall be the responsibility of the owner and/or developer to maintain those streets within the mobile home park. No entrance to a mobile home park shall be located closer than fifty feet (50') to a street intersection. The street plan shall insure easy access for garbage collection, fire protection, etc.

E. The mobile home park shall be graded and equipped to drain all surface water in a safe and efficient manner.

F. Only one mobile home shall be permitted on each lot. Each lot shall be clearly marked at its corner.

G. Each lot shall have at least two (2) off-street parking spaces of a size not less than eight and one-half by twenty feet (8½' x 20') each.

H. It shall be the responsibility of the mobile home owner and/or developer to provide major utilities (water, sewage disposal, gas and electricity) to each lot prior to the sale of the lot. All utilities shall be underground.

I. Within six (6) months of their location in the park, all mobile homes shall be adequately secured with anchors and tie-downs to prevent shifting and shall be skirted on all four (4) sides with material similar in appearance to the material used to cover the mobile home.

J. The open storage of materials and belongings other than licensed boats and vehicles is prohibited.

K. The developer shall build a fence or plant shrubs or other such vegetation along the outer limits of the park as a buffer to adjoining properties.

~~L. Each mobile home park shall have a laundry facility containing at least two (2) washers and one (1) dryer for each ten (10) mobile home lots in the park.~~

~~M. Double wide mobile homes shall not be mixed with single wide homes. Separate areas shall be set aside for each.~~

~~N. Each lot shall contain a slab of concrete of at least eight feet by twenty feet (8' x 20') located so that it will serve as the main entrance to the mobile home.~~

O. The developer shall provide one (1) fire hydrant for each two (2) acres in the park.

~~P. All mobile home parks shall first be approved by the county health department before a permit can be issued by the Town of Duncan.~~

Q. A site plan must be submitted by the owner/developer and ~~approved~~ RECOMMENDED by the Planning and Zoning Commission and the APPROVED BY THE Zoning Board of

Adjustment before a building permit can be issued and work on the mobile home park initiated. The site plan shall include:

1. The names and addresses of the property owner and developer.
2. Location and legal description of the property on which the mobile home park is to be located.
3. Area dimensions of the tract of land.
4. The location and size of all lots; each lot shall be numbered, the dimensions shown, and whether the lot is to be sold or leased indicated.
5. For each type of lot, indicate the minimum and maximum size of mobile home that will be permitted.
6. The location and width of road and walkways, and the nature of the street and sidewalk improvements to be provided by the park developer and the proposed timetable for such improvements.
7. Plans and specifications for drainage, water supply, sewages and solid waste disposal, the provision of fire hydrants and other utilities, and
8. A copy of deed restriction, if lots are to be sold.

Once the site plan has been approved, developments shall conform to the plan. Any revisions in the size and design of the park must be approved by the ~~Planning and Zoning Commission~~ and Board of Adjustment as an amendment to the site plan before such changes or expansion can be made.

ARTICLE 15-9 SUPPLEMENTARY REQUIREMENTS AND GENERAL PROVISIONS

- 15-9-1 Nonconforming Buildings and Uses
- 15-9-2 Drainage
- 15-9-3 Conformance With Site Plans
- 15-9-4 Official Street Map
- 15-9-5 Official Building and Property Numbering System

Section 15-9-1 Nonconforming Buildings and Uses

Nothing in this chapter shall affect existing property or the right to its continued use for the purpose for which it was being used on the date this chapter was adopted, nor to any reasonable repairs. Nonconforming buildings and uses shall not, however, be increased nor expanded.

A. Damaged building may be restored: A nonconforming building or a building occupied by a nonconforming use which is damaged or destroyed by fire, flood or other calamity or act of nature, may be restored, provided that such restoration is started within a period of six (6) months from the date of destruction and is diligently prosecuted to completion. Such restoration shall not increase floor space devoted to the nonconforming use over that which prior existed.

B. Discontinue or abandonment: A nonconforming building or lot occupied by a nonconforming use which is discontinued for a continuous period of six (6) months or more

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shall not thereafter be occupied, except by use which conforms to the regulations of the zone in which it is located.

C. Change to conforming use: A nonconforming use or nonconforming building which has been changed to a conforming use or building shall not thereafter be changed back to a nonconforming use or building.

D. Change to another nonconforming use prohibited: A nonconforming use of a building or lot shall not be changed to another nonconforming use whatsoever. Change in use shall be made only to a conforming use.

E. Reclassification of territory: This provision shall apply to land and buildings which hereafter become nonconforming upon the passage of this chapter or which becomes nonconforming due to an amendment to this chapter shall not be built unless construction has taken place thereon to the extent of at least five hundred dollars (\$500) in value by the date on which this chapter or said amendment becomes effective.

Section 15-9-2 Drainage

Surface water from roof tops shall not be allowed to drain into adjacent lots except after written agreements between the two (2) parties.

Section 15-9-3 Conformance With Site Plans

A use for which approval of site plan is required shall not be expanded or otherwise changed beyond that which was approved in the site plan without such changes first being reviewed by the Planning and Zoning Commission and the Zoning Board of Adjustment.

Section 15-9-4 Official Street Map

Under the provisions of Arizona Revised Statutes §9-461.08 (Municipal Planning), the Planning and Zoning Commission is empowered to recommend to the Town Council the adoption of an official street map detailing the legally adopted street names of all roads and streets in the Town of Duncan.

As a general rule, alleyways shall not be named unless or until their usage expands into a general-use thoroughfare and/or residences or buildings are located on said alleyways requiring physical addresses.

The location and names of each of the roads and streets shall be shown on "The Official Duncan Street Map" and said map is hereby declared to be an official record and a part of this chapter. Whenever amendments or changes are made in road or street names, such changes shall be made on the official street map promptly. No amendments or changes shall become effective until after they have been properly noted and attested to on the official street map.

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No changes of any nature shall be in the official street map except in conformity with the procedures set forth in this chapter and in general conformity with procedures pertaining to the official zone map. Any unauthorized change of whatever kind by any person shall be considered a violation of this chapter and punishable as provided in this chapter.

Regardless of the existence of copies of the official street map, which may from time to time be made or published, "The Official Duncan Street Map", which shall be located in the office of the town clerk, shall be the final authority in determining the names of roads or streets.

Roads or streets shall be named in conformity with the county general plan and shall be coordinated to ensure continuity and consistency, particularly where roads and streets cross from town into county or other boundaries. In case of dispute, the town's naming system shall prevail. Road and street names shall be named so as to best serve the needs of the community for emergency services, including, but not limited to, police, sheriff, ambulance, fire and emergency response units.

The Town of Duncan is responsible to install and maintain street signs, as deemed feasible, at all intersections in order to properly identify the roads and streets within the town.

~~The United States Postal Service does not provide house or building delivery of mail within the town limits of the Town of Duncan. Should they elect to do so in the future, coordination will be made to ensure consistency and continuity in the naming of roads and streets for residential and business delivery of mail.~~

Section 15-9-5 Official Building and Property Numbering System

Under the provisions of Arizona Revised Statutes §9-461.08 (municipal planning), the Planning and Zoning Commission is empowered to recommend to the Town Council the adoption of an official numbering map clearly indicating the physical description of properties and buildings by number on streets and roads as shown on the official street map of the Town of Duncan.

Each and every building and property shall be numbered on its respective road or street.

As a general rule, alleyways shall not be numbered unless or until their usage expands into a general-use thoroughfare and/or residences or buildings are located on said alleyways requiring physical addresses.

The numbering of each of the buildings and properties shall be shown on "The Official Duncan Numbering Map" and said map is hereby declared to be an official record and a part of this chapter. Whenever amendments or changes are made in numbering, such changes shall be made on the official numbering map promptly. No amendments or changes shall become effective until after they have been properly noted and attested to on the official numbering map.

No changes of any nature shall be in the official numbering map except in conformity with the procedures set forth in this chapter and in general conformity with procedures pertaining to the official zone map. Any unauthorized change of whatever kind by any person shall be considered a violation of this chapter and punishable as provided in this chapter.

Regardless of the existence of copies of the official numbering map, which may from time to time be made or published, "The Official Duncan Numbering Map", which shall be located in the office of the town clerk, shall be the final authority in determining the numbering of buildings and properties.

Numbering of buildings or properties shall be done in general conformity with the county general plan and shall be coordinated to ensure continuity and consistency, particularly where roads and streets cross from town into county or other boundaries. In case of dispute, the town's numbering system shall prevail. Buildings and properties shall be numbered so as to best serve the needs of the community for emergency services, including, but not limited to, police, sheriff, ambulance, fire and emergency response units.

Numbering of properties shall be done in such a manner as to allow for additional consistent and sequential even or odd numbers for future growth, expansion, sale and/or development.

All numbering and re-numbering shall, insofar as possible, take into account existing traditional and longstanding numbers in order to transition into a coordinated system of numbering within the Town of Duncan as easily as possible.

Wherever a building is located on one or more properties, the owner should generally elect to use the number most consistent with the physical property address; however, the owner may choose any number within the property ownership.

Owners are responsible to ensure that accurate and visible numbers are displayed on the property. These numbers shall be reflective and in conformity with emergency service regulations.

~~The United States Postal Service does not now provide house or building delivery of mail within the town limits of the Town of Duncan. Should they elect to do so in the future, coordination will be made to ensure consistency and continuity in the numbering of buildings and properties for residential delivery of mail.~~

ARTICLE 15-10 ADMINISTRATION AND ENFORCEMENT

- 15-10-1 Building Permit Required
- 15-10-2 Plans Required
- 15-10-3 Permit Must Comply With Chapter
- 15-10-4 Construction and Use to Comply With Application
- 15-10-5 Zoning Administrator Appointed
- 15-10-6 Powers and Duties of Zoning Administrator
- 15-10-7 Zoning Board of Adjustment Created

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Section 15-10-1 Building Permit Required

Any person or firm desiring to construct, remodel, move or repair a building or structure (plaster and painting excepted) within the town, the value of which exceeds two hundred fifty dollars (\$250) shall make application for a building permit, which shall be approved by the building inspector or the town manager and pay the required fee before commencing construction.

Section 15-10-2 Plans Required

All applications for building permits shall be submitted on a special form available at the town clerk's office and shall be accompanied by plans, drawn to scale of the work to be done. A careful record of such application and plans shall be kept in the office of the zoning administrator.

Section 15-10-3 Permit Must Comply With Chapter

The building inspector and town manager shall review the building permit application with the applicant to determine its compliance with this chapter before issuing the permit. No permit shall be issued which would not be in conformance with the provisions of this chapter. Any permit so issued shall be null and void.

Section 15-10-4 Construction and Use To Comply With Application

Building permits authorize only the use, arrangement and construction set forth in the approved permit and site plan. Any use or construction undertaken in variance with that authorized in the permit shall be deemed to be a violation of this chapter.

Section 15-10-5 Zoning Administrator Appointed

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A zoning administrator shall be the **TOWN MANAGER OR PERSON** appointed by the mayor and council. **THE PERSON SHALL NOT BE A MEMBER OF THE PLANNING AND ZONING COMMISSION.** Other officers may also be appointed to assist in the administration of this chapter.

Section 15-10-6 Powers and Duties of Zoning Administrator

A. ~~It shall be the duty of the zoning administrator to issue building permits.~~

B. It shall be the duty of the ~~zoning administrator~~ TOWN MANAGER AND OR BUILDING INSPECTOR to inspect or cause to be inspected all buildings in the course of construction or repair. He shall enforce all of the provisions of this chapter, entering actions in the courts when necessary; and his failure to do so shall not legalize any act in violation of such provisions.

C. Upon appeal to the Zoning Board of Adjustment of any matters on which said board is required to pass, the zoning administrator shall transmit all papers, records and other permanent data pertaining to the appeal to said Board of Adjustment as required by the terms of this chapter.

Section 15-10-7 Zoning Board of Adjustment Created

A Zoning Board of Adjustment shall be created, which shall consist of not less than five (5) members, nor more than seven (7), each to be appointed by the Town Council for a term of three (3) years, provided that the terms of the members of the first board so appointed shall be such that the term of at least one member shall expire each year. Any member may be removed for cause by the Town Council upon written charges and after a public hearing, if such public hearing is requested.

Section 15-10-8 Organization; Meetings; Records

The Zoning Board of Adjustment shall organize and adopt rules in accordance with the provisions of this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. A public notice of all meetings must be posted for at least twenty-four (24) hours prior to the meeting. The chairman or, in his absence, the acting chairman shall conduct all meetings and may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the actions taken by the board, the vote of each member upon each question and the basis (rationale) on which approval or disapproval was given, and shall keep records of its examinations and other official acts, all of which shall be filed immediately in the office of the board and shall be of public record.

Section 15-10-9 Powers and Duties of The Zoning Board of Adjustment

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The powers and duties of the Zoning Board of Adjustment shall be limited to three (3) general types, as follows:

It shall have judicial power to interpret the provisions of this chapter.

It shall have administrative power to grant variances.

It shall have the administrative power to grant certain "conditional uses" as permitted in this chapter.

A. Interpret chapter and map: The power of interpretation provides a means whereby applicants who feel that the zoning administrator has misinterpreted the meaning of the chapter may receive relief from such error without having to resort to the courts. The board hears appeals, determines the facts of the case and then applies what is conceived as the proper meaning of the chapter. The Board of Adjustment shall also interpret the zone map and the boundaries thereof in cases of dispute or disagreement.

The board is also empowered to determine, upon appeal in certain zones, whether uses not specifically listed therein are, in fact, similar to those that are listed and thus permissible within the zone. Before the board shall declare a use to be similar to the uses permitted in the zone, it must find that the requested use will be: (a) consistent with the objectives and characteristics of the zone in which the use is to be located, and (b) similar to permitted uses as to function, service and traffic demands and the emission of smoke, dust, vibration, light, etc.

B. Grant variance: The Board of Adjustment has the power to grant variances from the terms of the chapter where, due to the exceptional narrowness, shallowness or shape of a specific piece of property at the enactment of this chapter or to exceptional topographic conditions of the property, a literal enforcement of the provisions of this chapter would result in unnecessary hardship upon the applicant. Before any variance may be granted, however, the board must find that all of the following conditions are present:

1. Having to adhere strictly to the letter of the chapter will cause difficulties and hardships upon the petitioner which are unnecessary in order to carry out the purposes of this chapter.
2. Special circumstances are attached to the property covered by the application that do not apply to other property in the same zone.
3. That because of said special circumstances, property covered by the application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of property rights possessed by the other properties in the same zone.
4. That the difficulties and hardships were not created by any act of the appellant subsequent to the effective date of the regulation appealed from.

C. Grant certain "conditional uses": There are certain special uses which are permitted within particular zones only after review and approval by the Board of Adjustment.

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Accordingly, the Board of Adjustment shall hear and decide such requests, but only when authorized to do so under the terms of this chapter. In deciding whether or not to grant a conditional use, the board shall be guided by the conditions set forth or referred to in this chapter. These conditions shall be deemed minimum requirements that must be complied with in protecting the public interest before the use can be approved. Examples of conditional uses allowed by this chapter are home occupations, mobile home and travel trailer parks, and churches and schools in residential areas.

Section 15-10-10 May Attach Reasonable Conditions

The Board of Adjustment, subject to the provisions and restraints of this chapter, may attach other reasonable conditions or requirements to the grant of a variance for approval. A time limit of one year shall be attached to the exercise of any variance or conditional use unless specifically extended by action of the board. If action is not taken by the applicant within that time, the variance or conditional use becomes void.

Section 15-10-11 Authority Limited

The powers and duties of the Board of Adjustment are limited to judicial and administrative matters as set forth in this chapter. The Board of Adjustment shall not have the authority to amend this chapter nor to correct what it may consider to be an unwise requirement.

Section 15-10-12 Vote

The concurring vote of a majority of the members of the Board of Adjustment shall be necessary to decide on any matter upon which it is required to pass under this chapter.

Section 15-10-13 Applications To Appear Before the Planning and Zoning Commission

Any person may appeal to the Planning and Zoning Commission for a variance or conditional use by filing a request in writing with the building inspector or town manager and paying a fee of ten dollars (\$10). The request must specify the ground upon which the appeal is being made and must be submitted within thirty (30) days from the grant or refusal of a building permit by the building inspector or town manager. All or a portion of the ten dollar (\$10) fee may be refunded by action of the Planning and Zoning Commission dependent on the costs incurred.

Section 15-10-14 Procedure

Upon receipt of the application, the zoning administrator shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. The appeal shall stay all proceedings in the matter appealed from, unless the officer from whom the appeal is taken certifies to the board that a stay would, in his opinion, cause imminent peril to life or property.

Section 15-10-15 Hearing

The Board of Adjustment shall fix a time for the hearing of the appeal, give public notice thereof as required by law and shall decide the same within a reasonable time. Where a variance or conditional use is requested, written notice shall be given to all property owners within one hundred fifty feet (150') of the property under question.

The intent in requiring a hearing is to enable the Board of Adjustment to obtain facts surrounding the case which may not be evident or which may not be shown in the record as submitted to the board. The decision of the board shall be based upon the facts and not upon the expressions of support or protest, or lack of support or protest, which may be made at the hearing. Any party may appeal to the hearing in person or by agent or by attorney.

Section 15-10-16 Action of The Board of Adjustment

The Board of Adjustment shall make determinations in harmony with the provisions of this chapter; and shall file its decision as public record in the office of the board.

Section 15-10-17 Recourse From Decision of the Board

Any person, taxpayer or municipal officer aggrieved by any decision of the Board of Adjustment may at any time within thirty (30) days after the filing of the decision, petition a writ of certiorari for review of the board's decision. Allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may for good cause grant a restraining order, and on final hearing may reverse or affirm, wholly or partly, or may modify the decision reviewed.

Section 15-10-18 Planning and Zoning Commission Created

- A. The Planning and Zoning Commission shall be created, which shall consist of not less than five (5) members, not more than seven (7), each to be appointed by the Town Council for a term of three (3) years, provided that the terms of the members of the first board so appointed shall be such that the term of at least one member shall expire each year. Persons desiring to serve on the Planning and Zoning Commission shall submit a written application to the Town Clerk. No member shall serve no more than 2 consecutive terms; no member shall be from the same immediate family or household. Any conflict between the by-laws that may be adopted from time to time by the Planning and Zoning Commission and this ordinance shall be governed by this ordinance.
- B. Planning and Zoning Commission shall meet the 1st Wednesday of every quarter; unless there is a special need called by the Mayor or Town Manager. All meetings shall be open to the public in accordance with the Arizona Statutes. The minutes of all meetings shall be taken by a Town Clerk, showing the actions taken by the Commission, the vote of each member upon each question and the basis (rationale) on which approval or disapproval was given, and shall keep records of its examinations

and other official acts, all of which shall be filed immediately in the Office of the Town Clerk and shall be public record.

C. in accordance with Arizona Statutes, the planning and zoning commission shall:

1. Develop and maintain a General Plan;
2. Develop such specific plans as may be necessary to implement the General Plan;
3. Periodically review the Town's Capital Improvement Program; and
4. Perform such other planning functions as the Town Council may request.

D. The Planning and Zoning Commission is an administrative department of the Town, however, the Town Council shall direct its activities and appoint its members. The Planning and Zoning Commission shall have the powers necessary to enable it to fulfill its planning functions, including the ability to contract for, receive and utilize any grants or other financial assistance made available by the Town of Duncan or other municipality, a county, state or federal government; or contract with the state or federal government and any of its agencies, or the legislative body of any municipality or county.

Section 15-10-19 Powers and Duties of the Town Council

The Town Council may amend, change or modify any provisions of the zoning chapter or map provided:

- A. Provided that it complies with the Arizona Revised Statutes.
- B. A public hearing is held thereon as required.

No substantial change in or departure from the recommendations of the Planning and Zoning Commission can be made after such public hearing, unless the change or departure be first resubmitted with comments to the Planning and Zoning Commission for its reconsideration and recommendations. Upon receiving the reconsidered recommendations from the Planning and Zoning Commission, the Town Council may overrule the Planning and Zoning Commission.

Section 15-10-20 Responsibility For Violation

It shall be the duty of all contractors, subcontractors, builders and other persons having to do with the establishment of any use of land or the erection, altering, changing or remodeling of any building or structure to make sure that a proper permit has been obtained before work is begun on any project for which a permit is required. Any such architect, builder, contractor or other persons doing or performing any such work without a permit having been issued

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shall be deemed guilty of violating this chapter in the same manner and to the same extent as the owner of the premises and shall be subject to the penalties herein prescribed for a violation.

Section 15-10-21 Penalties

Any firm, corporation, person or persons violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum less than three hundred dollars (\$300), or by imprisonment in the county jail for any term not exceeding ninety (90) days, or by both such fine and imprisonment.

Each day of violation a separate violation: each person, persons, firm or corporation found guilty of violations shall be deemed guilty of a separate offense for every day during which any violation of any provision of this chapter is committed, continued or permitted by such person, persons, firm or corporation and shall be punished as provided in this chapter. The imposition of any sentence or fine shall not exempt the offender from compliance with the requirements of this chapter.

Section 15-10-22 Amendments to Chapter and Map

This zoning chapter, including the zoning map, may be amended. All proposed amendments shall be submitted first to the Planning and Zoning Commission for its recommendations, and such recommendations shall then be submitted to the Town Council for its consideration within a reasonable time.

A. Any person seeking an amendment of this zoning chapter or map shall submit to the Planning and Zoning Commission a written application stating the change desired and the reasons therefore, and shall pay a filing fee of thirty-five dollars (\$35) to the town. Upon receipt of the application and the payment of the filing fee, the Planning and Zoning Commission shall consider the request and shall make its recommendations to the Town Council. The fee required herein shall not be returned to the APPLICANT application.

B. The Planning and Zoning Commission and Town Council may initiate amendments to this chapter without payment of the filing fee.

C. Intent with respect to amendments: It is hereby declared to be public policy that this chapter shall not be amended unless it can be shown that changed or changing conditions make the proposed amendment reasonably necessary to the promotion of the purposes and intent of this chapter.

D. Public hearing required before amending; notice: Amendments to this chapter may be adopted only after a public hearing in relation thereto before the Town Council at which parties in interest and citizens shall have an opportunity to be heard. A notice of the time and place of such hearing shall be published in a newspaper of general circulation within the town as required by law. In addition, a written notice shall be given to all property owners within one hundred fifty feet (150') of the property for which a zoning change is being requested.

ARTICLE 15-11 SUBDIVISIONS

15-11-1	Title
15-11-2	Purpose
15-11-3	Application
15-11-4	Procedure for Obtaining Approval of a Subdivision
15-11-5	Preliminary Plat Requirements
15-11-6	Final Plat Requirements
15-11-7	Design Standards
15-11-8	Improvement Standards
15-11-9	Penalty

Section 15-11-1 Title

This chapter shall be known as the "Duncan Subdivision Regulations."

Section 15-11-2 Purpose

These subdivision regulations are hereby adopted to provide for the orderly growth and harmonious development of the Town of Duncan; to secure adequate provisions for water supply and distribution, drainage and flood control, sanitary sewage and other health safeguards; to insure adequate access and traffic circulations and establish minimum standards for construction of roads, streets, alleys, curbs and gutters; to encourage well planned subdivisions by establishing design standards which reflect the environmental characteristics and capabilities of the land; to promote conveyance of land by accurate legal description; to achieve lots of reasonable utility and livability; to insure consideration of sites for schools, recreation areas and other public facilities; and secure adequate handling of all subdivision plans by providing uniform procedures and standards.

Section 15-11-3 Application

No person, firm, corporation or other legal entity shall hereafter sell, offer to sell or divide any lot, piece or parcel of land within the Town of Duncan which constitutes a subdivision or part thereof, as defined by this chapter, until a tentative plat and a final plat of the subdivision have been approved and recorded in accordance with the provisions of these subdivision regulations.

A. Minimum requirements: The provisions of this chapter shall be held to be the minimum requirements needed to protect the health, safety and welfare of the present and future inhabitants of the Town of Duncan. This chapter shall not interfere with or annul any chapter, provision of law, deed restrictions or other agreements between parties which impose a greater restriction than is required by this chapter. This chapter shall prevail, notwithstanding, over restrictions or provisions which are less restrictive.

B. Zoning: All proposed subdivisions shall be designed to meet the requirements for the zoning district within which it is located. In the event that an amendment or variance of zoning is necessary, said action shall be initiated by the property owner or his authorized agent at the time the plat is submitted.

C. Variances: The Town Council may grant a variance from the terms of these subdivision regulations when, because of physical conditions unique to the subdivisions, literal enforcement of the provisions would result in hardships to the subdivider which are necessary in order to carry out the purposes of this chapter. The variance shall not be used to grant a special privilege.

D. Appeals: The Town Council shall hear and decide appeals where it is alleged that an error has been made by the Duncan Planning and Zoning Commission or any official in the administration of these subdivision regulations. The appeal shall be made in writing and filed with the town clerk setting forth the particulars and the reasons for the appeal.

Section 15-11-4 Procedure for Obtaining Approval of a Subdivision

A. Review of initial proposal recommended: In order to avoid costly and unnecessary revisions, the sub divider is urged to consult informally with ~~THE members of the Duncan Planning and Zoning ADMINISTRATOR Commission~~ before preparing the preliminary plat and formal application for its approval. This will enable him to become familiar with the provisions of this chapter and other regulations which might affect the area.

B. Submit preliminary plat: The sub divider shall prepare a preliminary plat of the subdivision and shall submit five (5) copies of the plat, and additional copies as may be required, to the commission. The preliminary plat, letter of intent and other requirements shall be prepared and submitted as prescribed in section 15-11-5.

C. Review of preliminary plat: The ZONING ADMINISTRATOR ~~commission~~ will obtain recommendations from the town's engineers, ~~the Arizona State Department of Health Services~~, the Greenlee County Health Department, the County planning department, utility companies and other groups ~~it~~ HE/SHE wishes to consult. Approval of the preliminary plat shall be REVIEWED BY THE PLANNING AND ZONING COMMISSION based upon compliance with the standards specified in this chapter and the "Duncan Zoning Chapter" and other conditions deemed necessary by the commission. The Town Council shall have the power to overrule the commission's RECOMMENDATION. ~~approval or disapproval.~~

Actions of the commission shall be written on the face of two (2) copies of the plat, one to be maintained in the files of the town clerk and the other returned to the subdivider to proceed with the preparation of the final plat. Approval of the tentative plat shall be effective for one year, but may be extended upon written request by the subdivider and approval of the commission.

C. Final plat preparation and presentation: The subdivider shall prepare a final plat based on the approved preliminary plat, and shall submit the original tracing (or a reproducible copy) and four (4) prints of the plat to the commission. The final plat and accompanying certificates and exhibits shall be prepared and submitted as prescribed in Section 15-11-6-B.

D. Review of final plat by commission: The commission shall hold a public hearing as required by law. With the recommendation of the town's engineer, the commission shall review, ~~approve or disapprove~~ RECOMMEND OR NOT RECOMMEND the plat with modifications. Approval of the final plat shall be based upon compliance with the preliminary plat and the standards and conditions for approval set forth in this chapter.

E. Guarantee of performance must be given: Before approval of the final plat by the Town Council, the subdivider shall post a bond with the town clerk, as prescribed by this chapter, guaranteeing that the proposed improvements will be installed and paid for without cost to the town within two (2) years from the date of approval.

F. Approval of final plat: Once reviewed by the commission, the final plat is submitted to the Town Council with the commission's recommendations. The council shall hold the required public hearing and shall either approve or disapprove the plat. If the plat is approved, the mayor or his representative shall sign the plat and return a copy to the subdivider. If the plat is not approved, the council shall advise the subdivider in writing of such disapproval and the reason or reasons for such disapproval.

G. Recording the plat: Upon approval of the final plat by the council, the subdivider shall submit the final plat, bearing all required signatures and approvals, to the Greenlee County Recorder. No lot shall be sold within such subdivision until the plat has been approved and recorded.

H. Completion of improvements: Following completion of required improvements, a certificate shall be filed with the Town of Duncan by a registered engineer in the state certifying that such improvements have been made under his direction in accordance with the provisions of these subdivision regulations and the final plat as approved. Upon receipt of this certification, the town's engineer shall conduct a final inspection of said improvements and report on such to the Town Council. The council may then declare that the improvements are completed in accordance with all requirements and release the guarantee of performance bond.

In the ~~even~~ EVENT that the sub divider fails to fulfill these conditions, the Town Council may, after reasonable notice to the sub divider of default, take whatever steps are within its power to require compliance deter further land sales or make claim to the forfeited securities provided for such improvements.

Section 15-11-5 Preliminary Plat Requirements

A. Letter of intent – to include:

1. Name, general location and legal description of subdivision.
2. Name and address of all persons having a legal interest in the subdivision.
3. Total acreage, time table for development, proposed number of lots and their proposed use and typical lot size.
4. A statement regarding the conditions of the sub divider's title to the land comprising the subdivision, including mortgages, easements, deed restrictions, trusts, etc., and a statement of current property taxes.
5. A statement regarding present and proposed access to the subdivision.
6. A statement regarding the present availability of water, sewage and solid waste disposal, utilities, drainage, streets, schools, medical facilities, police and fire protection and other community services to the subdivision.
7. Statement regarding the proposed method of sewage and solid waste disposal, supply of water, gas, electricity, telephone and other utilities, fire and police protection, schools, drainage and flood protection, street construction, culverts, fire protection (hydrants), street lights, lot staking, street signs and other proposed facilities and improvements. The statement should clearly indicate which of these improvements are to be constructed and provided by the subdivider and their estimated dates of completion.

B. Preliminary plat content:

1. Form: scale of one inch equals fifty feet (1" = 50'), one inch equals one hundred feet (1" = 100') or one inch equals two hundred feet (1" = 200') as necessary in clearly showing required details.
2. Boundary lines of the subdivision, with reference to survey markers and monuments.
3. The locations of all existing streets, trails, canals, ditches, dikes, buildings, easements, utilities and other improvements within proposed subdivision and within two hundred feet (200') of the subdivision. The plat should clearly distinguish between existing and proposed improvements.
4. Boundaries of all natural drainage ways and storm water overflow areas accompanied by a detailed engineering report indicating area of watershed, peak volume, frequency, direction and velocity of expected water flow for each of these drainage ways. (All calculations shall be included as an attachment to the plat.) The plat and accompanying materials shall clearly show how the subdivider plans to provide for drainage within the subdivision, based on the drainage design criteria set forth in section 15-12-8-d.
5. Topographical contours on two foot (2') or five foot (5') gradients.
6. Approximate lot boundaries, with typical minimum lot sizes for each type of proposed lot, and their purposed use and desired zoning.
7. Location, date and results of soil percolation tests.
8. The approximate location and size of proposed streets (with names), easements, water and sewer lines, drainage ways, utility lines, areas reserved for parks, schools, etc., and other improvements.

C. Additional requirements:

1. Processing fee of twenty-five dollars (\$25) or two dollars (\$2) per lot, whichever is greater.
2. Copy of all data and reports submitted to Arizona water commission in accordance with A.R.S. 45-513 regarding water availability and quality.
3. Copy of all deed restrictions, covenants, etc., under which lots will be sold.
4. U.S. Geological Service quadrant maps of subdivision and surrounding area, to include location of all existing and proposed access roads to the subdivision and the ownership of all lands crossed by the access roads.
5. Design and engineering specifications for any new access roads to be constructed by subdivider.

Section 15-11-6 Final Plat Requirements

The final plat may be submitted for approval progressively in contiguous units, each as a separate final plat.

A. Final plat content:

1. Form: a clear polyester film or linen tracing cloth drawn with India ink on sheets twenty-four inches by thirty-six inches (24" x 36") at a scale of either one inch equals fifty feet (1" = 50'); or one inch equals one hundred feet (1" = 100'); or one inch equals two hundred feet (1" = 200') such that all necessary details may be clearly shown. When two (2) or more sheets are submitted a key shall be provided.
2. Accurately drawn boundaries showing the proper bearings and dimensions of all boundary lines and corners of the subdivision, properly tied to identify public survey monuments.
3. Subdivision boundary lines fully balanced and closed, showing right-of-way lines of street, drainage ways, utility easements and other rights-of-way and property lines of all lots and other sites; with accurate dimensions, bearings or deflection angles and radii, arcs, semi-tangents and central angles of all curves.
4. Location of monuments, lot corners and other survey points in place.
5. Location and size of existing and proposed utilities.
6. All proposed streets shall be named, the purpose of all easements indicated, all drainage ways designated as such and dedicated to the public, parks and other parcels set aside for public use labeled and the proposed zoning indicated.
7. Each lot shall be numbered and each block shall be numbered or lettered.

B. Accompanying certificates and exhibits required:

1. A certificate signed by all persons holding title to the subdivision offering for dedication all street, alleys, drainage ways, easements and other parcels for public use, as shown on the final plat.
2. Certification by a registered engineer or land surveyor in the state to the effect that the plan represents a survey made or certified by him and that all

monuments shown on the plat actually exist and that their location, size and materials are correctly shown.

3. Certification by a registered engineer or land surveyor in the state that all lots are staked or will be staked, following the street construction work specified, but prior to the sale of the lot. To include description of the type of marker used.
4. Certification by the director of the Greenlee County Health Department that the final plat has been checked and is in conformance with the state's health standards.
5. Letter addressed to the mayor and council describing in detail the extent, nature and schedule for the completion of all proposed improvements to be provided within the subdivision, to include detailed engineering specifications and cost estimates prepared by a registered engineer in the state. (Cost estimates shall be in the amount which would be necessary for the Town of Duncan to construct such improvements in the event the sub divider defaults.)
6. A copy of private deed restrictions, if any, to be imposed upon the plat or any parts thereof, in form for recording.
7. A copy of the report prepared by the Arizona water commission, in accordance with A.R.S. 45-513, stating that an adequate supply of water exists for the projected needs of the subdivision.
8. Certification in writing from all involved utility companies approving the utility installation and confirming the availability of services.
9. A contract to be entered between the Town of Duncan and the sub divider wherein a bond is provided to guarantee the performance of the proposed improvements. The bond shall be in an amount adequate to cover inflation, inspections and other added costs that would accrue to the Town of Duncan in providing such improvements. The duration of the bond shall be for two (2) years from the date of approval of the final plat by the Town Council.

Section 15-11-7 Design Standards

A. General principles:

1. The commission shall not approve the subdivision of land if, from adequate investigations, it has determined that said land is not suitable for development due to flooding, poor drainage, steep slopes, etc.
2. It is strongly urged that significant natural features such as trees, cacti, watercourses, historical and archaeological sites and similar community assets be preserved.
3. At least two (2) dedicated public roads meeting Town of Duncan construction standards shall be provided from an existing public road to the land being subdivided.

B. Streets:

1. The arrangement of streets shall provide for the continuation of existing streets in adjoining areas.
2. Half-streets or partial with rights-of-way shall be discouraged except to complete an already existing street pattern.
3. Local streets shall be so arranged as to discourage their use for through traffic.
4. The sub divider shall provide for adequate railroad, canal and other public or private utility crossings.
5. Streets shall be designed to follow the natural contours and topography, so as to produce desirable lots of maximum utility and facilitate adequate drainage.
6. Minimum required street right-of-way and roadway widths shall be:

<u>Street Type</u>	<u>Right-of-Way</u>	<u>Roadway</u>
Arterial	150 feet	64 feet
Section line	100 feet	64 feet
Mid-section line	80 feet	64 feet
Collector	60 feet	64 feet
Local	50 feet	64 feet
Service roads	40 feet	64 feet

7. Cul-de-sac streets shall terminate in a circular right-of-way turn-around area of at least a fifty foot (50') radius and shall not exceed six hundred feet (600') in length.
8. Dead-end streets shall not be approved where more than four (4) lots are to be served.
9. Water and sewer lines shall not be placed in roadbed.
10. There shall be a minimum grade of twenty-five hundredths percent (0.25%) on all streets; a maximum grade of seven percent (7%) on arterial, section, mid-section and collector streets and ten percent (10%) on local streets.
11. All streets intersecting an arterial, section or mid-section street shall do so at a ninety degree (90°) angle; intersections of collector and local streets shall not vary from ninety degrees (90°) by more than fifteen degrees (15°). Intersections with more than four (4) legs and "y" type intersections shall be prohibited.
12. Street jogs with centerline offsets of less than one hundred thirty-five feet (135') shall be prohibited.
13. At street intersections, property line corners shall be rounded with a radius of twenty-five feet (25') or greater.
14. Proposed street names shall be subject to approval by the commission and shall not duplicate an existing street name within the area.
15. Subdivision streets shall meet minimum construction standards for subgrade, road base, surfacing and drainage as set forth in section 15-11-8-A.

C. Alleys:

1. Alleys shall be provided in residential and commercial areas, except that the commission may waive this requirement where other definite and assured provision is made for service access.
2. The width of alleys shall be sixteen feet (16') in residential areas and twenty feet (20') in areas intended for multiple-family or commercial use. Dead-end alleys are prohibited.

D. Drainage:

1. The classification and design of drainage ways and designation of design storm frequencies shall be based upon the contributing watershed drainage area as follows:

<u>Class</u>	<u>Watershed Area</u>	<u>Design Storm</u>
Major	more than 2,500 acres	50 year flood
Secondary	600 to 2,500 acres	25 year flood
Minor	150 to 600 acres	10 year flood
Local	less than 150 acres	2 year flood

2. Drainage ways, channels and road crossings shall be capable of safely passing flows resulting from the required "design storm" over the contributing drainage area.
3. For arterial, section line, mid-section line and collector streets, major and secondary drainage ways resulting from a ten (10) year storm with adjoining overflow sections (dips) for "design storm" flows exceeding this amount; minor and local drainage way crossings shall be culverted and capable of passing flow resulting from a two (2) year storm with adjoining overflow sections for all "design storm" flows exceeding this amount.
4. For local streets: minor, secondary and minor drainage way crossings shall be culvert and capable of passing flows resulting from a two (2) year storm with adjoining overflow sections (dips) for "design storm" flows exceeding this amount; local drainage way crossings may be carried in dips properly designed and stabilized for the "design storm" flow.
5. Roadside ditches shall be capable of handling the flow resulting from a two (2) year storm.
6. Channel flow velocities shall not exceed that generally accepted as "non-erodible" for the type of soil and/or channel lining. In cases where the flow velocity is such that substantial erosion is likely, drop structures shall be constructed.
7. All overflow and dip sections shall be stabilized with cement or asphalt to prevent erosion and to maintain a stable roadbed under overflow conditions.
8. Banks, slopes of channels and roadbeds are to be protected or stabilized to prevent excessive erosion.

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9. All drainage ways shall be dedicated to the public and shall follow substantially the natural watercourse. Such drainage way easements shall be of adequate width to permit widening, deepening or protecting of the drainage way.
10. Drainage ways, drainage easements and channels shall be capable of safely passing flows resulting from a storm have a re-occurrence interval of fifty (50) years whenever such drainage ways are located at a place other than its natural watercourse.

E. Easements:

1. Utility easements of at least sixteen feet (16'), or eight feet (8') of each side of lot lines, shall be provided to all subdivision lots on or along rear or side lot lines.
2. Land within a dedicated drainage way, street, alley or major power utility easement shall not be allowed within the boundary of a lot.
3. Pedestrian ways with right-of-way width of at least sixteen feet (16') may be required where essential to access to schools, playgrounds and other community facilities.

F. Utilities: All utilities shall be located underground.

G. Blocks:

1. The maximum length of blocks shall be one thousand five hundred feet (1,500') and the minimum four hundred feet (400').
2. The width of blocks shall be sufficient to allow two (2) tiers of lots.

H. Lots:

1. Lot area, width, setbacks, etc., shall conform with zoning requirements.
2. Every lot shall abut on a dedicated public street.
3. Prior to sale of any lots, all lot corners shall be marked with pipe or iron stakes at least fifteen inches long and one-half inch in diameter (15" x 1/2").
4. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage which would be unusable for normal purposes.

Section 15-11-8 Improvement Standards

A. Required street improvements: All subdivision streets shall be designed and constructed in conformance with the Town of Duncan Construction Standards:

1. All roadside areas and street sub grades shall be cleared and graded to a uniform and approved cross-section and compacted to the densities specified in the Town of Duncan construction standards.
2. Base course (roadbed) of the specified material, quality and construction shall be installed in accordance with the Town of Duncan construction standards

"depth of base course" chart, based on laboratory tests of the sub grade material.

3. All subdivision streets shall meet or exceed the town's standards for "road-mixed" surfacing, except that within a mobile home park, roads of all weather construction (mineral aggregate) will be permitted. "Modified pavements" (double bituminous surface treatment) may be substituted for "road-mix" surfacing, with the approval of the council, where the sub divider can show that such pavement will be as durable as road mix.
- B. Curbs and gutters: Vertical curbs and gutters shall be required in those areas where average lot size will be under twenty-two thousand (22,000) square feet. In such areas, curbs and gutters shall be installed before a building permit can be issued. Wherever installed, curbs and gutters shall be constructed in accordance with the Town of Duncan Construction Standards.
- C. Sidewalks: Sidewalks shall be required in those areas zoned "business." Sidewalks, whenever installed, shall be constructed of Portland cement concrete in accordance with the Town of Duncan Construction Standards.
- D. Alleys: All alleys shall be graded and surfaced with mineral aggregate (all weather construction) in accordance with the Town of Duncan Construction Standards.
- E. Drainage ways: All street gutters, dips, overflow sections and channels used for drainage onto or from a street surface shall be lined with a non-erosive material. All bridges, culverts, catch basins, retaining walls and other drainage improvements shall be constructed according to the Town of Duncan Construction Standards.
- F. Lot corner staked: Pipe or iron stakes at least fifteen inches long and one-half inch in diameter (15" x 1/2") shall be set at all corners, angle points and points of curvature for each lot within the subdivision, except for those points at which a monument is found or installed.
- G. Engineering plans required:
1. It shall be the responsibility of the sub divider to have prepared, by a professional engineer registered to practice in the state of Arizona, a complete set of engineering plans for all the proposed subdivision improvements. Such plans shall be based on the approved preliminary plat and shall be approved by the town's engineer prior to start of construction.
 2. Plans shall be prepared on standard fas plan or profile paper at a scale not smaller than one inch equals fifty feet (1" = 50').
 3. The depth of roadway base material required shall be established after testing and analysis of the sub grade soil at locations not more than five hundred feet (500') apart, or closer if so directed by the commission. The testing and analysis of the sub grade soil as well as the road construction materials to be used shall be conducted by an approved laboratory. A copy of the results showing the plasticity index and gradation of all samples taken and the findings

of all other materials and construction test shall be submitted to the commission with the engineering plans. The cost of all such sampling and tests shall be borne by the sub divider.

4. Street, sewer, water and drainage plans shall show natural ground profile and elevations and grade of the improvements. The basis of the elevation datum shall be given.
5. Street plans shall show depths of base and surfacing material; sizes, types and locations of features and structures for proper drainage; and adequate detail plans of all structures. Other plans shall show the location, size, type, construction and material of the improvement. Typical construction details and section shall be included in all cases.

H. Construction and inspection:

1. The ZONING ADMINISTRATOR ~~commission~~ shall be notified at least ten (10) working days prior to the start of construction of any required improvements.
2. All improvements shall be constructed under the general inspection and approval of the Town Council and their engineer OR ~~of~~ appointed representative. Primary control over the quality of construction, however, remains with the sub divider. Inspection by representatives of the Town Council will not eliminate the need for the regular inspection during the construction by the sub divider's project engineer. Upon completion of the improvements, certification by a registered engineer that all work has been completed in accordance with the approved plans and specifications is required.
3. All sewer, water and gas lines shall be inspected before covered.
4. Subdivision streets will be accepted for maintenance by the Town of Duncan only when they meet the minimum requirements of the town's construction standards and all applicable provisions of these subdivision regulations.

I. Improvement security: to insure construction of the required improvements, the sub divider shall post a surety bond with the Town of Duncan as beneficiary in an amount sufficient to cover all costs, including engineering, inspection and construction plus an allowance for inflation. The bond shall be deposited with the Town Council prior to final plat approval.

J. Health standards:

1. The subdivision must conform with all rules and regulations of the Arizona state department of health services and must be inspected and approved by the director of the Greenlee County Health Department.
2. No subdivision will be approved if the Arizona Water Commission reports the subdivision's water supply inadequate.
3. No building permit shall be issued for any subdivided lot of twenty one thousand seven hundred eight to forty three thousand (21,780 to 43,000) square feet in size until it is served by an approved community/public water or sewer system constructed, operated and maintained in accordance with county

and state health regulations. No building permit shall be issued for any subdivided lot of ten thousand (10,000) square feet or less until it is served by both an approved community/public water and sewer purchase.

4. The sub divider shall arrange for garbage disposal within the subdivision in conformance with county and state health regulations.

Section 15-11-9 Penalty

Any person, firm or corporation who shall transfer or sell any lot or land in a subdivision, as defined in this chapter, which subdivision has not been approved by the Duncan Town Council, and recorded in the office of the Greenlee County Recorder, shall be guilty of a misdemeanor for each lot or parcel so transferred or sold, and upon conviction thereof shall be punishable by a fine not to exceed three hundred dollars (\$300), or imprisonment for not more than ninety (90) days or both fine and imprisonment. Each day that a violation is permitted to exist may constitute a separate offense. The imposition of any sentence or fine shall not exempt the offender from compliance with the requirements of this chapter.

ARTICLE 15-12 FAIR HOUSING

15-12-1	Declaration of Policy
15-12-2	Enforcement Committee
15-12-3	Prohibited Acts
15-12-4	Procedures, Powers and Enforcement
15-12-5	Penalties
15-12-6	Administrative Provisions
15-12-7	Conciliation Agreement Violations
15-12-8	Power of Subpoena

Section 15-12-1 Declaration of Policy

It is declared to be among the civil rights of the people of the Town of Duncan, Arizona, to be free from discrimination in housing and it to be contrary to the policy of the town and unlawful to discriminate against any person because of sex, race, color, creed, national origin or ancestry in housing.

Section 15-12-2 Enforcement Committee

- A. The Town of Duncan shall establish a housing committee appointed by the mayor and Town Council.
- B. Each committee member shall serve for a term of one (1) year and until his/her successor is appointed. One of the members of the committee shall be elected by the members of such committee to be the chair of the committee.

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C. All communications authorized or required to be lodged with a committee shall be furnished to the chair or the committee, or, in his/her absence, any one of the committee members.

D. Any orders or finding issued by a committee may be over the signature of any one of the members.

E. A quorum of the committee shall be necessary for the conducting of any vote. A quorum shall consist of a majority number of the members of the committee.

F. A majority of the full committee shall be required on any vote taken for any proposed action to be effective.

G. All findings or orders of the committee shall be filed with the town attorney's office and upon such filing shall be deemed public records of the town.

H. This committee shall be considered to be a subcommittee of the Town of Duncan and must comply with the state of Arizona open meeting laws.

Section 15-12-3 Prohibited Acts

A. For any person, including but not limited to owners, leasees, agents, real estate brokers, real estate salespersons, trustees, mortgages, financial institutions, title companies or insurance companies:

1. To discriminate against any person because of sex, race, color, religion, ancestry or national origin in the sale, lease, rental or other transfer of interest in housing.
2. To so discriminate in the extension of loans, credit, insurance or other services relating to the transfer of interest in housing.
3. To print or circulate, or cause to be printed or circulated, any publication, or the use of any form of application or to make any inquiry in connection with prospective sales, leases, rentals or transfers of interest in housing, or the extension of credit, loans, insurance or other services relating to the transfer in interest in housing, which expresses directly or indirectly any limitation, specification or discrimination as to sex, race, color, religion, ancestry or national origin, or expresses any intent to make such limitation, specification or discrimination.

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/her sex, race, color, religion, ancestry or national origin.

C. To refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing to a person because of his/her sex, race, color, religion, ancestry or national origin.

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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 so available, or to refuse to permit a person to inspect any housing because of his/her sex, race, color, religion, ancestry or national origin.

E. For any reason to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this section or to attempt to do so.

F. For any person to go upon the premises of another for the purpose of abusing the occupants thereof by the use of language or conduct which reflect unfavorably on the occupants' sex, color, religion, ancestry or national origin.

G. The above subsection shall not be a violation of the town code unless and until the town attorney or its duly appointed agent has sent a prior written notice to the person charged with going upon the property of another and committing the above described acts, said notice advising the offending party that she/he is unwelcome on the occupant's property and that she/he may be charged under this subsection if she/he, after receipt of the notice, commits acts which are in violation of this subsection.

H. This subsection does not preclude the offending party from being charged with a violation of any offense that she/he might have committed not covered herein merely because the offending party did not receive notice.

Section 15-12-4 Procedures, Powers and Enforcement

A. The Town Attorney or the Housing Committee may authorize the town staff to effectuate conciliations between an aggrieved person and an alleged violator prior to a formal finding of any unlawful practices when the facts and circumstances properly indicate such action. If the findings as made that an unlawful practice has been or is being committed, the committee shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. If the committee fails thereby to eliminate such unlawful practice;

1. In the case of violation of section 3, it shall issue an order to the violator within the aforesaid thirty (30) day period, to cease and desist from further violations of this section and shall promptly mail a copy of such order to the violator; or
2. In the case of a violation of any other under section 3, it shall file a criminal complaint with the Town Attorney for appropriate action.

A. If the committee finds that no unlawful practice has been or is being committed, a copy of such finding shall be promptly mailed to the grievant. The grievant shall thereafter have the right to file a criminal complaint with the Town Attorney for appropriate action.

B. If the committee fails to file its findings or a statement setting forth valid reasons for not having done so with the Town Attorney within sixty (60) days after a grievance is filed with the housing committee, the grievant shall thereafter have the right to file a criminal complaint.

C. If another grievance is filed against a person after a cease and desist order pursuant to section 15-12-5-A of this section has been issued by the committee against the person and, upon investigation, the committee finds that such person has committed any further violations of this chapter, a criminal complaint may be filed with the Town Attorney by the aggrieved person or by the committee.

D. No criminal complaint for the enforcement of any provisions of the section may be filed unless and until such filing is specifically authorized by this section.

E. All complaints alleging violations of Chapter 7 of the code of the Town of Duncan shall be in writing and filed with the housing committee. Said complaints shall be filed within thirty (30) working days from the date of violation. All complaints shall be resolved within 120 days from the time they are filed. The Housing Committee shall cause a summary of complaints to be given to the chairperson of the committee. In carrying out the above provisions, the Housing Committee shall have full authority to investigate and resolve said complaints.

Section 15-12-5 Penalties

Upon conviction of each violations of any provisions of this chapter not otherwise provided for, the person so convicted shall be guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for a period not to exceed three (3) months, or both.

Section 15-12-6 Administrative Provisions

The Town of Duncan and the appropriate committee thereof shall have the following powers:

A. To make rules and regulations which promote the administration of and compliance with the provisions of this chapter. Such rules and regulations to become effective upon prior approval by the Duncan Town Council.

B. The Town Attorney is empowered to take all necessary action in the appropriate court to secure the production of all records, documents or other evidence necessary to assist the housing committee in carrying out the provisions of this chapter.

Section 15-12-7 Conciliation Agreement Violations

If the Town Attorney or Housing Committee and a person accused of a violation of this chapter shall reach agreement and execute a conciliation agreement, and such person shall then violate any terms and conditions of said conciliation agreement, it shall be as if such agreement had never been executed.

In such event, the Duncan Town Attorney shall file such criminal charges as are proper under the town code, and further shall take such other civil or criminal action as may be permitted under the Arizona Revised statutes.

Section 15-12-8 Power of Subpoena

The Town Attorney or the Housing Committee may: subpoena witnesses at hearings and compel their attendance; administer oaths; take the testimony of any person under oath and when deemed necessary record such testimony; and require the production for examination of books and paper relating to any matter before the housing committee. Failure to obey a subpoena issued pursuant to this section shall constitute a contempt punishable upon action of the Town Attorney before the superior court.

Any person appearing pursuant to this section shall have the right to be represented by legal counsel.

~~ARTICLE 15-13 IMPACT FEES~~

- ~~15-13-1 Purpose~~
- ~~15-13-2 Definition — Impact Fee~~
- ~~15-13-3 Impact Fee Schedule And Payment~~
- ~~15-13-4 Penalty~~

~~Section 15-13-1 Purpose~~ **ARTICLE REPEALED 1/19/12**

~~The purpose of this article is to establish impact fees for new development within the Town of Duncan. Both population and employment within the town are expected to increase and will create demands for new residential and nonresidential development. New development within the town will create additional demand and need for public facilities, including water and wastewater systems, arterial streets, fire and police protection, and neighborhood parks. The protection of the health, safety, and general welfare of the citizens of the town requires that the public facilities of the town be expanded to meet the demand of new development. Under the town's current laws, taxes, fees, utility charges, and other forms of revenue generated from new development do not generate sufficient funds to provide those public facilities required to serve new developments. It is only proper that those property owners who benefit by the expansion of public facilities for new development should bear their proportionate share of the cost of that expansion. The creation of an equitable impact fee system would enable the town to impose a more proportionate share of the costs of required improvements to the water and wastewater systems, arterial streets, fire and police protection, and neighborhood parks on those developments that create the need for them.~~

~~Section 15-13-2 Definition — Impact Fee~~

~~Impact fee is a cash or "non-cash" payment levied by the community on new development. Cash payments are typically required in advance of project completion and amounts are based on a formula derived from the cost of the capital facility as well as its site and nature. Non-cash payments include reserving land for schools, future public facilities, easements for utilities, streets and roads, or developing necessary public systems such as sidewalks or trails.~~

~~Section 15-13-3 Impact Fee Schedule And Payment~~

- ~~1. For new development, a minimum impact fee of \$1,000 per single residence or commercial entity applies.~~
- ~~2. A residential development impact fee shall not exceed ten percent (10%) of the cost of system improvement to include:
 - ~~a. Fire protection~~
 - ~~b. Sewer~~
 - ~~c. Water~~
 - ~~d. Infrastructure, including, but not limited to roads, streets, parks, police, and streetlights.~~~~
- ~~3. A commercial development impact fee shall not exceed ten percent (10%) of the cost of system improvement to include:
 - ~~a. Fire protection~~
 - ~~b. Sewer~~
 - ~~c. Water~~
 - ~~d. Infrastructure, including, but not limited to roads, streets, parks, police, and streetlights.~~~~
- ~~4. Development impact fees are negotiable and shall be calculated and imposed on the basis of service areas. Service areas shall be the nearest location of existing lines.~~
- ~~5. Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the town's comprehensive plan that are applicable to existing development as well as the new growth and development.~~
- ~~6. Development impact fees shall be collected at the time of the issuance of a building permit authorizing construction of a building or structure.~~
- ~~7. A development impact fees fund shall be administered by the Town Clerk and the Town Manager. or a designee as appointed by the Town Council of the Town of Duncan. Development impact fees shall be deposited into an account to be used only for development impact fees.~~
- ~~8. The development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.~~
- ~~9. In the event a building permit is abandoned, credit shall be given for the present value of the development impact fees against future development impact fees for the same parcel of land.~~
- ~~10. In the event the costs are less than the 10% deposit paid to the Town of Duncan, a refund of the excess development fees will be returned to the permittee.~~

~~11. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.~~

~~12. Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.~~

~~13. The Planning and Zoning Commission shall be the initial body to review any building permits associated with impact fees and recommend to the Town Council appropriate action.~~

~~14. Nothing in this section shall preclude a separate agreement between the developer of a large residential or commercial development and the Town of Duncan. In conjunction with the town manager or designee ZONING ADMINISTRATOR, the Planning and Zoning Commission shall negotiate with the developer and the Duncan Town Council shall approve any separate agreement.~~

~~Section 15-13-4 Penalty~~

~~Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed three hundred dollars (\$300), or imprisonment for not more than ninety (90) days or both fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein above described.~~

ARTICLE 15-14 HISTORIC PRESERVATION

Section 15-14-1	Purpose and Nature of this Ordinance
Section 15-14-2	Relation to the Town of Duncan Comprehensive Plan
Section 15-14-3	Definitions
Section 15-14-4	Historic Preservation Commission
Section 15-14-5	Designation of Landmarks or Historic Districts
Section 15-14-6	Certificate of Appropriateness for Alteration, Demolition or New Construction Affecting Landmarks or Historic Districts
Section 15-14-7	Criteria for Approval of a Certificate of Appropriateness
Section 15-14-8	Certificate of Appropriateness Application Procedure
Section 15-14-9	Hardship Criteria
Section 15-14-10	Hardship Application Procedure
Section 15-14-11	Maintenance and Repair Required

Section 15-14-1 Purpose and Nature of this Ordinance

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It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts is necessary to promote the economic, cultural, educational, and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the Town of Duncan has many significant historic, architectural and cultural resources which constitute its heritage, this act is intended to:

- A. Protect and enhance the landmarks and historic districts which represent distinctive elements of the Town of Duncan's historic, architectural, and cultural heritage;
- B. Foster civic pride in accomplishments of the past;
- C. Protect and enhance the Town of Duncan's attractiveness to visitors and the support and stimulus to the economy thereby provided; and
- D. Ensure the harmonious, orderly, and efficient growth and development of the Town.

Section 15-14-2 Relation to the Town of Duncan Comprehensive Plan

The enforcement of, amendments to, and the administration of this ordinance shall be accomplished in accordance with the recommendations contained in the Town of Duncan Comprehensive Plan as developed and amended on a regular basis by the Planning and Zoning Commission and the Town Council for the Town of Duncan.

Section 15-14-3 Definitions

The following definitions shall apply specifically and exclusively to the Historic Preservation Ordinance.

"Alteration" – Any construction or change of the exterior of a building, object, site, or structure or of an interior space designated a landmark. For buildings, objects, or structures, alteration shall include but is not limited to, the changing of roofing or siding materials; changing, eliminating, or adding doors, door frames, windows, window frames, shutters, fences, railings, porches, balconies, swings, or other ornamentation and the changing of paint color. Alteration shall not include ordinary repair and maintenance as defined below.

"Building" – A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, garage, or similar structure. Building may refer to an historically related complex, such as a courthouse and jail or a house and barn.

"Cemetery" – Any site that contains at least one burial, marked or previously marked, considered a dedicated cemetery under Arizona State Statutes, even though suffering neglect or abuse.

"Construction" – The act of adding an addition to a structure or the erection of a new principal or accessory structure on a lot or property, that requires a building permit.

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“Contributing Significance” – A classification applied to a building, site, structure, or object within a Historic District signifying that it contributes generally to the qualities that give the community cultural, historic, architectural, or archeological distinction, but without having exceptional significance as defined below.

“Demolition” – Any act or process that partially or totally destroys a landmark or a structure within a Historic District.

“Design Guideline” – A specific type of design criteria approved by the commission at the time of designation of a landmark, Historic District, Historic Landscape District, or Urban Conservation District and to be used in conjunction with other design criteria in the ordinance in reviewing alteration, construction, removal, or demolition.

“Exceptional Significance” – A classification applied to a building, site, structure, or object signifying the individual contribution the resource brings to the community in representation of the qualities that give the community cultural, historic, architectural, or archeological distinction. Exceptional significance can be applied to either a “landmark” or to those resources within a “Historic District” which are of individual importance.

“Exterior Architectural Appearance” – The architectural character and general composition of the exterior of a structure, including but not limited to the kind, color, and texture of the building material and type, design and character of all architectural details and elements, including, but not limited to, windows, doors, walls, roofs, overhangs, signs, and yards and/or open spaces.

“Historic District” – An area with definable boundaries designated as a historic district by the Town Council and in which a substantial number of properties, sites, structures, or objects have a high degree of cultural, historic, architectural, or archaeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures, or objects which, while not of such cultural, historic, architectural, or archaeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics or the significant properties, sites, structures, or objects located within it.

“Interior Architectural Design” – The architectural character and general composition of the interior of a structure, including but not limited to room design and configuration, materials, and the type, pattern, and character of all architectural details and elements, including but not limited to staircases, doors, hardware, moldings, trim, plaster work, light fixtures, and wall coverings.

“Landmark” – A property, site, structure, or object that is individually designated by the Town Council that is worthy of rehabilitation, restoration, and preservation because of its historic, cultural, architectural, or archaeological exceptional significance to the Town of Duncan.

“Non-contributing” – A designation applied to a site, structure, or object within a Historic District indicating that it is not a representation of the qualities that give the Historic District

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cultural, historic, architectural, or archaeological significance as embodied in the criteria for designating a Historic District.

“Ordinary Maintenance and Repair” – Regular, customary, or usual care, reconstruction or renewal of any part of an existing building, structure, or object for the purposes of preserving said property and maintaining it in safe and sanitary condition.

“Property” – Land and improvements identified as a separate lot for purposes of the subdivision and zoning regulations of the Town of Duncan.

“Repair” – Any change that is not alteration, construction, removal, or demolition.

“Structure” – Anything constructed or erected, the use of which requires a permanent or semi-permanent location on or in the ground, including without limitation, buildings, garages, fences, gazebos, advertising signs, billboards, antennas, satellite sending or receiving dishes, and swimming pools.

Section 15-14-4 Historic Preservation Commission

There is hereby created a commission to be known as the Town of Duncan Historic Preservation Commission.

A. It is intended that the Commission shall consist of five members to be appointed by the Town Council.

1. All members of the Commission shall have a demonstrated interest, experience, or knowledge in at least one of the following: history, architectural history, architecture, historic interiors, historic architecture, planning, archaeology, historic archaeology, real estate, historic preservation law, or other preservation-related field. The Council may appoint the most qualified individual if not able to otherwise fulfill this requirement.
2. To the extent available in the community, at least two members shall be professionals from the disciplines of architecture, history, architectural history, planning, archaeology, or related historic preservation disciplines such as cultural, geography, or cultural anthropology.
3. Ex Officio Member – Planning Director or his or her designee.
4. If a field described in paragraphs 1 and 2 above are not represented by a Commission member, the Commission must obtain expertise in the field when considering nation register nominations and other actions that will impact properties that are normally evaluated by a professional in that field.

B. Commission members shall serve for a term of three years, with the exception of the initial term of two of the five members, which shall be one year, two of which shall be two years, and one of which shall be three years. Commission members may be reappointed to serve consecutive terms following the initial term. Vacancies shall be filled by appointment by the Commission. Vacancies shall be filled within 60 days.

C. The Chairman and Vice-Chairman of the Commission shall be elected by and from the members of the Commission.

D. The responsibilities of the Commission shall include:

1. Promulgation of rules and regulations as necessary for the conduct of its business.
2. Review of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts.
3. Review existing surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town and periodically update the survey.
4. Recommendation to the Town Council of Duncan the designation of identified structures or resources and landmarks and historic districts.
5. Acceptance on behalf of the Town government of the donation of façade easements and development rights; the making of recommendations to the Town Council concerning the acquisition of façade easements or other interests in real property as necessary to carry out the purposes of this ordinance.
6. Increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
7. Making recommendations to the Town Council concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the Town.
8. Recommending acquisition of a landmark structure by the Town where its preservation is essential to the purposes of this ordinance and where private preservation is not feasible.
9. Approval or disapproval of applications for certificates of appropriateness pursuant to this act.
10. Cooperate with and assist the Arizona State Preservation Officer in his or her activities that relate to the Town.
11. Such other responsibilities required by state and federal laws or regulations.

E. The Commission shall meet at least four times per year, but meetings may be held at any time on the written request of any two of the Commission members or on the call of the Chairman or the Mayor. All meetings shall comply with the Open Meetings Law of the State of Arizona.

F. A quorum for the transaction of business shall consist of three of the Commission's members. Final decisions may be made by a majority of the members present.

Section 15-14-5 Designation of Landmarks or Historic Districts

A. The Commission may recommend to the Town Council that an individual property be designated as a landmark if it:

1. Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or
2. Is identified with historic personages; or
3. Embodies the distinguishing characteristics of architectural style; or
4. Is the work of a designer whose work has significantly influenced an age; or
5. Has a unique location or singular physical characteristic, or represents an established and familiar visual feature of the neighborhood.

B. The Commission may recommend to the Town Council that a group of properties be designated as a historic district if it:

1. Contains several properties which meet on or more of the criteria for designation of a landmark; and
2. By reason of possessing such qualities, it constitutes a district section of the Town; and
3. The majority owner(s) of the properties concur with the designation.

The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed, in writing, in the Town Clerk's Office for public inspection.

C. Notice of a proposed designation shall be sent by registered mail to the owner(s) of the property proposed for designation, wither by the Commission or by the owner, describing the property proposed and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least 15 days prior to the date of public hearing. Once the Commission has issued notice of a proposed designation, the building inspector shall issue no building permits until the Commission has made its decision.

D. The Commission shall hold a public hearing prior to the designation of any landmark or historic district. The testimony or documentary evidence at the hearing will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.

E. The Commission shall forward notice of each proposed property designated as a landmark and of the boundaries of each designated historic district to the Town Council for final designation, and subsequently to the office of the Greenlee County Recorder for recordation, as appropriate.

Section 15-14-6 Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Landmarks or Historic Districts

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within a historic district, nor shall any

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person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission.

Section 15-14-7 Criteria for Approval of a Certificate of Appropriateness

A. In passing upon an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public, or to architectural features that are not visible from a public street or alley.

The Commission's decision shall be based upon the following principles:

1. Properties that contribute to the character of the historic districts shall be retained, with their historic features altered as little as possible;
2. Any alteration of existing historic landmark properties shall be compatible with its historic character. Any alteration of existing properties within a historic district shall be compatible with its historic character as well as with the surrounding district; and
3. New construction shall be compatible with the district in which it is located.

B. In applying the principle of compatibility, the Commission shall consider the following factors:

1. The general design character and appropriateness to the property of the proposed alteration or new construction;
2. The scale of proposed alteration or new construction in relation to the property itself, surrounding properties and the neighborhood;
3. Texture, materials, and color and their relation to similar features of other properties in the neighborhood;
4. Visual compatibility with surrounding properties, including proportion of the property's front façade, proportion and arrangement of windows and other openings with the façade, roof shape, and the rhythm of spacing of properties on streets, including setback;
5. The importance of historic, architectural, or other features to the significance of the property.

C. As a guide to rehabilitation work, the Commission shall utilize the Secretary of the Interior's Standards for Rehabilitation (1990 Edition).

Section 15-14-8 Certificate of Appropriateness Application Procedure

A. Prior to the commencement of any work requiring a certificate of appropriateness the owner shall file an application for such a certificate with the Historic Preservation Commission. The application shall contain:

1. Name, address, and telephone number of applicant;
2. Location and photographs of property;
3. Elevation drawings of proposed changes, if available;
4. Perspective drawings, including relationship to adjacent properties, if available;
5. Where the proposal includes signs of lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the sign's location on the property;
6. Any other information that the Commission may deem necessary in order to visualize the proposed work.

B. No building permit shall be issued for such proposed work until the Historic Preservation Commission has first issued a certificate of appropriateness. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permits that may be required by any other ordinance of the Town of Duncan.

C. The Commission shall approve, deny, or approve the permit with modifications within 21 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.

D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's Office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application.

Section 15-14-9 Hardship Criteria

A. An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the grounds of hardship. In order to prove the existence of hardship, the applicant shall establish that:

1. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
2. The property cannot be adapted for any other use, whether by the current owner or by a purchase, which could result in a reasonable return; and
3. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

B. An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the grounds of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

Section 15-14-10 Hardship Application Procedure

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- A. After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists.
- B. The Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.
- C. The applicant shall consult in good faith with the Commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's Office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

Section 15-14-11 Maintenance and Repair Required

- A. Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district that does not involve a change in design, material, color, or outward appearance.
- B. No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Preservation Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.
- C. Examples of such deterioration includes:
 - 1. Deterioration of exterior walls or other vertical supports;
 - 2. Deterioration of roofs or other horizontal members;
 - 3. Deterioration of exterior chimneys;
 - 4. Deterioration or crumbling of exterior stucco or mortar;
 - 5. Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors;
 - 6. Deterioration of any feature so as to create a hazardous condition that could lead to the claim that demolition is necessary for the public safety.

Section 15-14-12 Violations

- A. Any person found guilty of violating any provision of this ordinance shall be guilty of violating any provision of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed two thousand five hundred dollars (\$2,500.00) or by

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imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

B. Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this ordinance shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Town Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 15-14-13 Appeals

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within 15 days of the decision, file a written application with the Town Council for review of the decision.

Section 15-14-14 Fees

No fees required.

ARTICLE 15-15 RECREATIONAL VEHICLE PARK

Section 15-15-1 Definitions

Section 15-15-2 Characteristics And Objectives

Section 15-15-3 Specific Requirements

Section 15-15-1 Definitions

"Recreational Vehicle" means a vehicular type unit that is any of the following:

1. A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls 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 a completed vehicle.
3. A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of not less than three hundred twenty (320) square feet and not more than four hundred (400) square feet when it is set up, except that it does not include fifth wheel trailers.
4. A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use and of the size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and that has a trailer area of less than three hundred (300) square feet. This paragraph includes fifth wheel trailers. If a unit requires a size and weight permit, it shall be manufactured to the standards for park trailers in section a 119-5 of the American National Standards Institute Code.

5. A portable truck camper constructed to provide temporary living quarters for recreational, camping or travel use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from a bed of a pickup truck.

"Recreational Vehicle Park" means an area or tract of land used to accommodate three (3) or more travel trailers for a short period of time (less than thirty (30) days).

"Recreational Vehicle Space" means a parcel of land for rent that has been designed to accommodate a recreational vehicle and provide the required sewer and utility connections.

"Travel Trailer, Recreational Vehicle, Camper or Motor Home" means a vehicular type dwelling unit thirty-two feet (32') or less in length and eight feet (8') or less in width designed primarily as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

Section 15-15-2 Characteristics and Objectives

A recreational vehicle park will be permitted as a "conditional use" in the commercial zone when the following conditions are met and verified BY THE ZONING ADMISITRATOR ~~by the planning and zoning commission~~ and the zoning board of adjustment. These conditions have been set to insure that the recreational vehicle park develops as a safe, attractive and efficient commercial area that does not distract from the surrounding residential zone. For the purposes of this chapter, a recreational vehicle park is defined as an area or tract of land used to accommodate two (2) or more travel trailers for a short period of time (less than thirty (30) days). For the purposes of this chapter, a travel trailer is defined as a vehicular type dwelling unit thirty-two feet (32') or less in length and eight feet (8') or less in width designed primarily as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle (see also definitions of recreational vehicles).

Section 15-15-3 Specific Requirements

The following minimum requirements ("conditions") must be met and verified by the ZONING ADMINISTRATOR ~~Planning and Zoning Commission~~ and the Zoning Board of Adjustment before a recreational vehicle park can be approved for development or expansion.

- A. A recreational vehicle park shall contain a minimum of one-half acre in the Duncan commercial zone.
- B. The recreational vehicle park shall contain no more than six (6) recreational vehicles per one-half acre.
- C. Spaces shall be designed so as to insure a minimum of twenty feet (20') of open space between adjoining recreational vehicles. No accessory buildings shall be constructed within this required setback.

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D. All streets and driveways shall be of all-weather (mineral aggregate) construction and meet town construction standards. It shall be the responsibility of the owner and/or developer to maintain those streets within the recreational vehicle park. No entrance to a recreational vehicle park shall be located closer than fifty feet (50') to a street intersection. The street plan shall insure easy access for garbage collection, fire protections, etc.

E. The recreational vehicle park shall be graded and equipped to drain all surface water in a safe and efficient manner.

F. Each space shall have at least two (2) off street parking spaces of a size not less than eight and one-half by twenty feet (8½' x 20') each.

G. It shall be the responsibility of the owner and/or developer to provide major utilities (water, sewage disposal, gas and electricity) to each space. Waste shall be disposed of according to the most current Town of Duncan Building Code.

H. The open storage of materials and belongings other than licensed boats and vehicles is prohibited.

I. The owner and/or developer shall build a sight-obscuring fence (as described in 15-5-1) or plant shrubs or other such vegetation along the outer limits of the park as a buffer to adjoining properties.

J. The developer shall provide one (1) fire hydrant for each one-half acre in the recreational vehicle park.

K. All recreational vehicle parks plans shall first be RECOMENEDED BY THE ~~approved by the building inspector,~~ the Planning and Zoning Commission and APPROVED BY THE the Zoning Board of Adjustment AND ZONING ADMISITRATOR before a permit may be issued by the Town of Duncan.

L. A site plan must be submitted by the owner/developer and ~~approved~~ RECOMMENDED by the Planning and Zoning Commission and APPROVED BY the Zoning Board of Adjustment before a building permit can be issued and work on the recreational vehicle park initiated. The site plan shall include:

1. The names and addresses of the property owner/developer.
2. Location and legal description of the property on which the recreational vehicle park is to be located.
3. Area dimensions of the tract of land.
4. The location and size of all spaces; each space shall be numbered and the dimensions shown.
5. The location and width of road and walkways, and the nature of the street and sidewalk improvements to be provided by the park developer and the proposed timetable for such improvements, as long as it complies with town code.
6. Plans and specifications for drainage, water supply, sewages and solid waste disposal, and the provision of fire hydrants and other utilities.

Once the site plan has been approved, developments shall conform to the plan. Any revisions in the size and design of the park must be ~~approved~~ RECOMMENDED by the Planning and Zoning Commission and APPROVED BY the Zoning Board of Adjustment as an amendment to the site plan before such changes or expansion can be made.

ARTICLE 15-16 LIGHT POLLUTION REGULATIONS
(COMMERCIAL OR PUBLIC OUTDOOR LIGHT FIXTURES)

- Section 15-16-1 Administration
- Section 15-16-2 Definitions
- Section 15-16-3 General Requirements
- Section 15-16-4 Prohibitions
- Section 15-16-5 Permanent Exemptions
- Section 15-16-6 Procedure For Code Compliance
- Section 15-16-7 Temporary Exemptions
- Section 15-16-8 Penalties

Section 15-16-1 Administration

A. The purpose of this code is intended to restrict the permitted use of outdoor artificial illuminated devices emitting undesirable rays into the night sky which have a detrimental effect on astronomical observations.

B. All outdoor artificial illuminating devices shall be installed in accordance with the provisions of this code, the Town of Duncan Zoning Code Chapter 15, the Greenlee County Light Pollution Ordinance, the International Building Code and any building codes or zoning regulations which may hereafter be enacted, as applicable.

C. Where any provisions of any of the Arizona Revised Statutes, Section 49-1101 through Section 49-1106, as amended, or any of the federal law, or any companion Greenlee County code comparatively conflicts with requirements of this light pollution code, the most restrictive shall govern.

D. The provisions of this code are not intended to prevent the use of any material or method of installation not specifically prescribed by this code, provided any such alternate has been approved. The building inspector OR TOWN MANAGER for the Town of Duncan may approve any such alternate provided he finds that the proposed design, material or method provides approximate equivalence to those specific requirements of this code and the international building code, or is otherwise satisfactory and complies with the intent of the code and the international building code.

Section 15-16-2 Definitions

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“Angstrom” – shall mean a unit of length equal to one hundred-millionth (10^{-8}) of a centimeter, used especially to specify radiation wavelengths.

“Fully Shielded” – shall mean that fixtures are shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

“Individual” – shall mean any private individual, tenant, lessee, owner, or any legal entity including but not limited to companies, partnerships, joint ventures or corporations.

“Installed” – shall mean the installation of outdoor light fixtures defined herein, following the effective date of this code, but shall not apply to those outdoor light fixtures installed prior to such date.

“Outdoor Light Fixtures” – shall mean 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 search, spot, or flood lights for buildings or structures, recreational areas, parking lot lighting, landscape lighting, billboards and other signage (advertising or other) and street lighting.

“Partially Shielded” – shall mean that fixtures are shielded in such a manner that the bottom edge of the shield is below the plane of the centerline of the lamp reducing light above the horizontal.

“Total Emergent Flux” – shall mean that between 3,000 and 7,000 angstrom units.

Section 15-16-3 General Requirements

A. Shielding

1. All outdoor light fixtures shall be fully or partially shielded except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less streetlight fixtures are exempt from this requirement if the shielding is not available from the manufacturer (A.R.S. 49-1102(a)).
2. This section does not apply to emergency lighting that is used by police, firefighters, correctional personnel or medical personnel and that is in operation as long as the emergency exists (A.R.S. 49-1102(b)).
3. All outdoor lighting used for programs, projects, or improvements of the Town of Duncan relating to the construction, reconstruction, improvement or maintenance of a street or highway are exempt (A.R.S. 49-1102(c)).
4. All outdoor lighting used for construction or major renovation of municipal buildings, structures and facilities of the Town of Duncan are exempt (A.R.S. 49-1102(d)).

B. Filtration

1. Those outdoor light fixtures requiring a filter in section 3 of this code, shall be equipped with a filter whose transmission is less than five percent total emergent flux at wavelengths less than thirty-nine hundred (3,900) angstroms. Total emergent flux is defined as that between 3,000 and 7,000 angstrom units.
 2. It is recommended that existing mercury vapor fixtures shall be equipped with a filter whose transmission is less than 10 percent total emergent flux at wavelengths less than forty-four hundred (4,400) angstroms.
 3. No new mercury vapor outdoor light fixtures shall be installed after the effective date of the code. No replacement equipment other than bulbs for mercury vapor lighting fixtures shall be sold in the state after January 1, 1991, and the use of mercury vapor light fixtures is prohibited after January 1, 2011. The provisions of the section shall not apply to outdoor light systems erected prior to 1950 (A.R.S. 19-1104).
 4. Low pressure sodium lamps are the preferred lamp for minimizing adverse effects on astronomical observations.
- C. Requirements for shielding and filtering
1. The requirements for shielding and filtering light emissions from outdoor light fixtures shall be as follows:
 - A. Low pressure sodium fixtures are the preferred light source to minimize undesirable light into the night sky affecting astronomical observations. Low pressure sodium lamps shall be partially shielded. No filter is required.
 - B. High pressure sodium fixtures shall be partially shielded. No filter is required.
 - C. Metal halide display lighting shall not be used for security lighting after 11:00 p.m. (or after closing hours if before 11:00 p.m.) unless fully shielded. Metal halide lamps shall be in enclosed luminaries. Filters shall be required.
 - D. Fluorescent – outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Warm white and natural lamps are preferred to minimize detrimental effects. Filters shall be required.
 - E. Quartz – for the purposes of this code, quartz lamps shall not be considered an incandescent light source.
 - F. Incandescent lamps fixtures greater than 150 watts shall be fully shielded. Incandescent lamp fixtures less than 150 watts shall not require a shield.
 - G. Mercury vapor – existing mercury vapor lamp fixtures shall be fully shielded and filtered. The installation of new mercury vapor fixtures is prohibited effective the date of adoption of this code.
 - H. Glass tubes – most glass, acrylic or translucent enclosures satisfy filter requirements and do not require additional shielding.
 - I. Fossil fuel – there are no requirements for shielding or filtering fossil fuel lamp fixtures.

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- J. Other sources of lamp fixtures shall be approved by the building inspector, AND/OR TOWN MANAGER.

Section 15-16-4 Prohibitions

- A. The operation of searchlights for advertising purposes is prohibited.
- B. No outdoor recreational facility, public or private, shall be illuminated by nonconforming means after 11:00 p.m. except to conclude specific recreational or sporting event or any other activity conducted at a ball park, outdoor amphitheater, arena, or similar facility in progress prior to 11:00 p.m.
- C. The unshielded outdoor illumination of any building, landscaping, signing or other purpose, is prohibited except with incandescent fixtures less than 150 watts.
- D. The installation of mercury vapor fixtures is prohibited effective the date of adoption of this code.

Sections 15-16-5 Permanent Exemptions

- A. All outdoor light fixtures existing and fully installed prior to the effective date of this code may remain "nonconforming"; provided, however, that no change in use, replacement, structural alteration shall be made unless it hereafter conforms to the provision of this code. Additionally, no restoration after abandonment of outdoor light fixtures shall be made unless it hereafter conforms to the provision of this code.
- B. Fossil fuel light produced directly or indirectly by the combustion of natural gas or other utility-type fossil fuels are exempt.
- C. Those facilities and lands owned and operated as protected by the U.S. Federal Government or the State of Arizona are exempted by law from requirements of this code. Voluntary compliance with the intent of this code at those facilities is encouraged.
- D. The building inspector AND OR TOWN MANAGER may grant a special exemption to the requirements of Section 15-16-3-C-1 only upon a wiring finding that there are extreme geographic or geometric conditions warranting the exemption and that there are no conforming fixtures that would suffice.

Section 15-16-6 Procedure For Code Compliance

- A. Any individual applying for a building or use permit under the Town of Duncan Zoning Code, Chapter 15, intending to install outdoor lighting fixtures shall as a part of said application, submit written evidence that the proposed work will comply with this code.

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B. All other individuals intending to install outdoor lighting fixtures shall submit an application to the Town of Duncan providing written evidence that the proposed work will comply with this code.

C. Utility companies entering into a duly approved contract with the Town of Duncan, in which they agree to comply with the provision of this code, shall be exempt from applying for and obtaining a permit for the installation of outdoor light fixtures, including residential security lighting.

D. The application shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the Town of Duncan Zoning Code upon application for the required permit:

1. Plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, other devices, etc.
2. Description of the illuminating devices, fixtures, lamps, supports, and other devices, etc. This description may include but is not limited to manufacturers catalog cuts and drawings (including sections where required).

E. The required plans and descriptions shall be sufficiently complete to enable the building inspector AND/OR TOWN MANAGER to readily determine whether compliance with the requirements of this code will be secured. If such plans and descriptions cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall submit evidence of compliance by certified test reports as performed by a State-recognized testing lab.

F. Upon compliance with the requirements of this code, the building inspector AND OR TOWN MANAGER shall issue a permit for installation of the outdoor lighting fixtures, to be installed as in the approved application. In the event the application is part of the building permit application under the zoning regulations, the issuance of the building permit will be made if the applicant is in compliance with this code as well as the other requirements for issuance under the Zoning Code. Appeal procedures of zoning regulations for decisions of the building inspector shall apply.

G. Should the applicant desire to substitute outdoor light fixtures or lamps after a permit has been issued, the applicant must submit all changes to the building inspector AND/OR TOWN MANAGER for approval with adequate information to assure compliance with this code.

Section 15-16-7 Temporary Exemptions

A. Any individual as defined herein may submit a written request on a form prepared by the Planning and Zoning Commission to the building inspector AND/OR TOWN MANAGER for a "temporary exemption" to the requirements of this code, such exemption to be valid for thirty (30) days, renewable at the discretion of the building inspector.

B. The request for temporary exemption shall contain minimally the following listed information:

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1. Specific exemptions requested.
2. Type and use of exterior light involved.
3. Duration of time for requested exemption.
4. Type of lamp and calculated lumens.
5. Total wattage of lamp or lamps.
6. Proposed location of exterior light.
7. Previous temporary exemption, if any.
8. Physical size of exterior light and type of shielding provided.

C. In addition to the above data, the building inspector AND/OR TOWN MANAGER may request any additional information which would enable him to make a reasonable evaluation of the request for temporary exemption.

D. The building inspector AND/OR TOWN MANAGER, within five days from the date of the properly completed request for temporary exemption, shall approve or reject the request in writing. If rejected, the individual making the request shall have the right of appeal to the Planning and Zoning Commission and the Board of Adjustment for review pursuant to the procedures applicable to any other appeal of a decision of the building inspector.

Section 15-16-8 Penalties

Any individual violating any of the provisions of this code shall be deemed guilty of a separate offense for each and every day or portion thereof during which a violation of any of the provisions of this code is committed, continued or permitted and upon conviction of any such violation such person, firm or corporation shall be punished as prescribed by the Town of Duncan codebook.

CHAPTER 16

WATER

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CHAPTER 16
WATER

ARTICLE 16-1 ADMINISTRATION

- 16-1-1 Management of System
- 16-1-2 Receipts and Deposits

Section 16-1-1 Management of System

The Town Manager, under the direction of the Common Town Council, shall have the immediate control and management of all things pertaining to the Town water utility system and shall cause to be performed all acts that may be necessary for the prudent, efficient and economical management and protection of said water utility.

Section 16-1-2 Receipts and Deposits

The Town Clerk and the Assistant Clerk shall keep a correct account of all receipts, prepare all bills for water and materials furnished to consumers, collect the same and deposit the proceeds so collected to the credit of the town.

ARTICLE 16-2 APPLICATION FOR SERVICE

- 16-2-1 Application for Water Service
- 16-2-2 Grounds for Rejection of Application
- 16-2-3 Violation of Application Provisions

Section 16-2-1 Application for Water Service

Application for the use of water shall be made in person at the Town Hall by the owner or person with a vested property interest in the property to be served designating the location of the property and stating that the owner or person with a vested property interest in the property to be served will comply with all applicable rules and regulations.

Section 16-2-2 Grounds for Rejection of Application

The Town may reject any application for water service for any good and sufficient reason including the following: service not available under a standard rate; service which involves excessive serve expense; service which may affect the supply to other consumers; service to the premises until all charges against said premises then due and payable to the Town shall have been paid whether on account of water service connection, meter installation, billing for water previously supplied to the same premises,

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whether used by the applicant or against the premises, for which water service is requested.

Section 16-2-3 Violation of Application Provisions

For violation of any of the provisions relative to application for service, the Town Hall shall, at the expiration of fifteen days after mailing written notice to the last known address of the consumer and providing an opportunity for a hearing. At its option, the Town may remove the meter and discontinue service. Where the meter is thereafter reinstalled, the consumer shall first pay to the Town a reinstallation charge which shall be set by resolution of the Council.

ARTICLE 16-3 DEPOSIT

- 16-3-1 Deposit Required
- 16-3-2 Payment Responsibility

Section 16-3-1 Deposit Required

A deposit shall be charged for water service before such service commences to applicants who own property or person with a vested property interest in the property to be served. The amount of the deposit shall be set by resolution of the Council.

Section 16-3-2 Payment Responsibility

When a deposit is made, the individual in whose name such deposit is made shall be responsible for payment of all bills incurred in connection with the service furnished. Should service be terminated without payment, service shall not be restored until payment is made in full and a new deposit is made.

ARTICLE 16-4 DISCONTINUANCE OF SERVICE

- 16-4-1 Notice Required
- 16-4-1 Discontinuance Under Certain Conditions

Section 16-4-1 Notice Required

A. Any person who desires to discontinue the use of water shall file notice with the Clerk at least three working days in advance of intended termination of service. Responsibility for water consumed extends to the time of departure or to the time specified for departure, whichever occurs last.

B. Any person who fails to give notice of discontinuance of service as provided in subsection A will be responsible for all water used on the premises until a new application for water service is filed and accepted for that property.

C. The Town may discontinue water service under any of the following conditions:

1. To prevent fraud or abuse.
2. Disregard of Town rules pertaining to water service.
3. Emergency repairs.
4. Insufficient supply caused by factors outside the control of the Town.
5. Legal process.
6. Direction of public authorities.
7. Local emergency requiring emergency measures.
8. Tampering with meter by the consumer.
9. Nonpayment of bill as provided in Section 16-5-2.

D. Prior to terminating service for seasons listed in subsection C, items 2, 6, 8 or 9 of this section, the Town will give written notice to the consumer and provide an opportunity for a hearing for such consumer with the Town Manager of designee.

ARTICLE 16-5 RATES AND BILLS

16-5-1	Water Rates
16-5-2	Water Bills
16-5-3	Incorrect Bill
16-5-4	Customer Service Miscellaneous Fees
16-5-5	Commencement and Application of Charges
16-5-6	Irrigation and Construction Water

Section 16-5-1 Water Rates

A. The water rates shall be established for all consumers by resolution of the Town Council.

B. Sales tax shall be collected on all water sales.

Section 16-5-2 Water Bills

A. Water meters shall be read on the twentieth day of each month, as nearly as possible, and a separate bill shall be rendered for each meter and mailed on the last business day of each month. All water bills shall be due on or before the tenth day of the succeeding month. Bills shall become delinquent on the twentieth day of the succeeding month, and service may be discontinued on the twentieth day. The Town reserves the

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right to vary the dates or length of billing period, temporarily or permanently, if necessary or desirable.

B. Prior to terminating service for nonpayment of amounts due, the Town will give written notice to the consumer and provide an opportunity for a hearing for such consumer with the Town Manager or designee.

Section 16-5-3 Incorrect Bill

Any consumer may present a claim to the Town if the consumer believes that an incorrect bill has been received. Such claim shall be presented in person at the Town Hall before such bill becomes delinquent, provided that the consumer may make a claim following payment of the bill and payment of the bill shall not prejudice this claim. Such claim shall not exempt the consumer from delinquency if the bill is not paid on time.

Section 16-5-4 Customer Service Miscellaneous Fees

The following miscellaneous fees shall be charged:

A. Deposit. A refundable deposit, when closed account is paid in full, shall be collected for a new customer account as follows:

- | | |
|-----------|----------|
| 1. Owner | \$75.00 |
| 2. Renter | \$150.00 |

B. Miscellaneous Field Visit Fee. To recover costs incurred in sending a reader to a service address, \$15.00.

C. NSF Check Fee. For customer payment checks which have been returned to the Town by the customer's bank due to insufficient funds, \$25.00.

D. Delinquent Account Turn On Fee. Re-connecting fee following disconnection for non-payment of delinquent account, \$15.00.

Section 16-5-5 Commencement and Application of Charges

A. The Town shall commence service charges for a consumer when the water meter is installed or the connection is activated, regardless if water is used or not.

B. Charges for water service for additional units shall apply even if a unit is unoccupied.

Section 16-5-6 Irrigation, Livestock and Construction Water

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- A. All water supplied shall be metered whenever possible.
- B. A charge of two dollars per thousand gallons will be billed to all irrigation water users.
- C. All supplying of water to contractors engaged in construction work shall be negotiated with the Town.
 - 1. Non-refundable installation fee \$ 350.00
 - 2. Base under fee (any portion of month) \$ 100.00
 - 3. Consumption rate \$ 40.00 per 1,000 gallons. Plus \$35 per hour operator fee.
 - 4. Waterline Extension Based on current piping prices
 - 5. Residential Pools \$20 per truck load in town/\$30 per truck load out of town within 5-mile radius.

ARTICLE 16-6 METERS

- 16-6-1 General Provisions
- 16-6-2 Water Service and Meter Installation Fee Schedule
- 16-6-3 Meter Readings
- 16-6-4 Meter Tests

Section 16-6-1 General Provisions

- A. All water sold by the Town shall be metered by metes which shall be owned and maintained by the Town.
- B. All water meters shall be of a single type to be specified by the Water Utility Director.
- C. All water meters shall be placed on public property, right-of way or easement adjacent to consumer property.
- D. Water pipes and equipment belonging to the consumer shall be so arranged to permit the placing of a single water meter for the property convenient to the Town. If the water pipes and equipment belonging to the consumer are not arranged to permit such placement of a meter shall be considered as an additional account and shall be so billed.
- E. When two or more meters are installed on the same premises for different consumers, they shall be closely grouped and each meter shall be clearly marked as to the consumer to which it belongs.
- F. All mobile homes and R.V. parks shall be serviced by a single master meter.

Section 16-6-2 New Water Service and Meter Installation Fee Schedule

A. Fees for new water service and meter installation shall be:

Water meter only installation:

<u>METER</u>	<u>TOTAL*</u>
3/4"	\$500.00
1"	\$600.00
1 1/2"	\$1200.00
2"	\$1500.00

*COST = cost of meter, box, labor, inspections and administration.

Individual lots, up to and including 2 inch meter. The council may from time to time fix the rates and classification for new water service and meter installation fee schedule by resolution of the town council.

Town will schedule and do above work and supply equipment upon payment by the contractor. Typical site: new subdivision, new offsite (i.e. water, sewer, road) construction. Contractor will install all lines to and from, including meter box.

Subdivisions and meters over 2" – developer will furnish all materials and labor. Town will inspect work at initial call for framing inspection (\$75.00 fee).

B. The Town of Duncan Water Systems were purchased from private owners for the benefit of the residents of the community. Many of the old meters are in odd locations. This in no way affects the quality, cost or amount of water used; however, upon written request by the customer, water meters may be moved at the discretion of the Town. Charges for this move will be made as if a new meter was being installed and in accordance with Section 17-6-2(A).

Section 16-6-3 Meter Readings

A. If a water meter fails to operate and a reading cannot be taken, a bill will be made by the Town in an amount based on the average monthly billing of the previous three months or the same month of the previous three years, whichever is applicable.

B. In the even any dog kept on the premises interferes with meter reading by an employee of the Town and the meter is not read, a billing will be made by the Town in an amount based on the average monthly billing of the previous three months or the same month of the previous three years, whichever is applicable.

C. Any person seeking verification of reading may request and have the Town perform a special reading of water meter upon the payment of a deposit in an amount to be set by resolution of the council. If the special reading indicates that the regular meter reading was incorrect, such deposit shall be returned to the person seeking verification of reading; otherwise such deposit shall be retained by the Town as a charge for the special meter reading.

Section 16-6-4 Meter Tests

Any consumer, upon written application accompanied by a deposit set by resolution of the council, may have a meter tested for accuracy by the Town. If the meter registers a deviation from accuracy greater than fifteen percent, the deposit shall be refunded to the applicant and the indicated adjustment made in the water service charges for a total period not longer than the current period and the monthly period immediately preceding. If a meter so tested registers within fifteen percent of accuracy, the deposit shall be retained by the Town as a fee to pay the cost of such test. All inaccurate and defective meters shall be replaced by the Town immediately when detected at cost to the consumer.

ARTICLE 16-7 CONSUMER RESPONSIBILITIES

16-7-1	Consumer Water Facilities
16-7-2	Consumer Negligence
16-7-3	Right-of-Way
16-7-4	Installation of Lines
16-7-5	Protection of Town Property
16-7-6	Sprinkling Restrictions
16-7-7	Waste of Water
16-7-8	Inspections

Section 16-7-1 Consumer Water Facilities

The consumer shall have complete responsibility for the installation and maintenance of adequate water facilities on the premises and the Town shall not in any way be responsible for the installation, maintenance, inspection or damage of such facilities or damage caused by any defect in such facilities on the consumer's premises. Such facilities shall be maintained by the consumer in full compliance with any and all rules and regulations of the Town in addition to applicable Arizona Revised Statutes.

Section 16-7-2 Consumer Negligence

- A. Any damage to the Town water system or injury to Town employees caused by negligence of any consumer which required any repairs, replacements or damages, the cost of such shall be added to that consumer's bill and if charges are not paid, water service may be discontinued.
- B. Prior to adding such costs to the consumer's bill, the Town will give written notice to the consumer and provide an opportunity for a hearing for such consumer with the Town Manager or designee.

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Section 16-7-3 Right-of-Way

Each consumer shall provide to the Town such easement and right-of-way as is necessary to provide water service to that consumer.

Section 16-7-4 Installation of Lines

The Town may refuse to provide service unless the lines or piping installed on the premises in compliance with existing codes.

Section 16-7-5 Protection of Town Property

The consumer shall guarantee proper protection of Town property placed on the premises and shall permit access to it only to authorized representatives of the Town.

Section 16-7-6 Sprinkling Restrictions

In case of water shortage or scarcity the council may by resolution place any restriction which it deems necessary upon the use of water.

Section 16-7-7 Waste of Water

Consumers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. All water outlets including those used in conjunction with hydrants, urinals, water closets, bathtubs and other fixtures must not be left running for any purpose other than the use for which they were intended. In addition to the penalty provided herein for code violations, the water supply may be turned off where any such waste occurs.

Section 16-7-8 Inspections

Whenever, in the judgment of the Town Manager or such person as may be authorized, it is deemed necessary to determine if the waste or abuse of water is occurring, that person may inspect the premises or building of any water consumer. Such person shall be vigilant to protect and remedy all abuses whether from waste or other improper use of water.

ARTICLE 16-8 MAIN EXTENSIONS

16-8-1	Size
16-8-2	Requirements
16-8-3	Minimum Standards
16-8-4	Costs
16-8-5	Inspection

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16-8-6 Replacement or Repair

Section 16-8-1 Size

All public water and extensions shall be installed in the size, type and manner as designed by an engineer registered in the State of Arizona and approved by Arizona Department of Health Services, Arizona Department of Environmental Quality and to comply with existing Building Codes.

Section 16-8-2 Requirements

- A. All water main extensions or water lines shall be valved to allow repairs without service disruption to a minimum adjacent property owners.
- B. All pipe shall meet minimum requirements as outlined by the National Sanitation Foundation.
- C. The developer shall, prior to any construction, submit the appropriate detailed plans showing the size, location and materials to be used in the construction of water lines and fire hydrants to the Town appointed representative.
- D. Upon completion of construction, the developer shall supply the Town with detailed as-built plans showing the size, location and material used in construction of water lines and fire hydrants to the Town appointed representative.

Section 16-8-3 Minimum Standards

The standards as set forth by the American Water Works Association shall be adopted as a minimum of performance for main and extensions.

Section 16-8-4 Costs

The developer causing an extension of water mains shall pay in full for the rights-of-way; the construction and installation of the lines, pipes and mains and all other appurtenances necessary for the extension.

Section 16-8-5 Inspection

When completed and approved by the appropriate authority, the council, if satisfied that the extension is in the public interest, suitable and compatible to the existing system in the Town, may by motion accept and approve the extension and authorize the use thereof provided that the extension shall first be conveyed to the Town free of any and all encumbrances.

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Section 16-8-6 Replacement or Repair

All persons who create, cause to be built or build any extensions of any water service shall also pay for any and all replacements of street surfacing, sidewalk, curbing and the like as become necessary as a direct or indirect result of the creation, building or construction of such extensions.

ARTICLE 16-9 LIABILITY

16-9-1 Interruption of Service

16-9-2 Liability Limited

Section 16-9-1 Interruption of Service

The Town shall notify the consumer in advance of any anticipated interruption of service when such advance notice is possible. The Town shall not be responsible for any interruption of water service caused by forces beyond its control.

Section 16-9-2 Liability Limited

No liability shall attach to the Town for any injury or damages that may result from turning on or shutting off the water in any main, service connection or pipe; or the restriction of use or discontinuance of any water service or any failure of the water supply regardless of any notice or lack of notice thereof. The Town shall not be held liable in any respect for the condition, defects, failure or use of any pipe, connection, fixture or appurtenance not belonging to the Town on any premises or for loss or damage resulting therefrom.

ARTICLE 16-10 REGULATIONS PART OF CONTRACT

All regulations contained in this chapter shall be considered a part of the contract of every person taking water from the water utility of the Town and every person taking water shall be considered as having expressly consented to be bound thereby. Consumers outside the Town limits shall, upon application for water service, be required to sign a statement agreeing to the regulations set forth in this chapter.

ARTICLE 16-11 SPECIAL AGREEMENTS

No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the Town and any large user of water whereby such

user may enter into negotiations with the Town for special rates or requirements as are in the best interests of the Town.

ARTICLE 16-12 CONSTITUTION ADVOCACY CLAUSE

Any paragraph or part of this ordinance declared unconstitutional shall affect that part and will not affect the remainder of this ordinance.

ARTICLE 16-13 CROSS-CONNECTION CONTROL PROGRAM

16-13-1	Purpose
16-13-2	Authority
16-13-3	Responsibility
16-13-4	Definitions
16-13-5	Administration
16-13-6	Requirements
16-13-7	Degree of Hazard
16-13-8	Permits
16-13-9	Exiting In-Use Approved Backflow Prevention Assemblies
16-13-10	Periodic Testing
16-13-11	Records and Reports
16-13-12	Fees and Charges
16-13-13	Addendum
16-13-14	Backflow Preventer Testing and Maintenance Agreement

Section 16-13-1 Purpose

- A. To protect the public water supply served by the Town of Duncan Water Department from the possibility of contamination or pollution by isolating, within its customers internal distribution system, such contaminants or pollutants which could backflow or back-siphon into the public water system.
- B. To promote the elimination or control of existing cross-connections, actual or potential, between its customers in-plant potable water system, and non-potable systems.
- C. To provide for the maintenance of a continuing program of cross-connection control which will effectively prevent the contamination or pollution of all potable water systems by cross-connection.

Section 16-13-2 Authority

- A. The Federal Safe Drinking Water Act of 1974, State regulation R-18-4-115 adopted April 28, 1995, State OSHA Standards 1910.141 and 1926.51, and the statutes of the State of Arizona, Title 18, Chapter 4, the water purveyor has the primary responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.
- B. Duncan Water Department, Rules and Regulations, adopted 1999.

Section 16-13-3 Responsibility

The Director of Municipal Services shall be responsible for the protection of the public potable water distribution system from contaminants or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If, in the judgment of the Director of Municipal Services, an approved backflow prevention assembly is required at the town's water service connection to any customer's premises, the Director, or his delegated agent, shall give notice in writing to said customer to install an approved backflow prevention assembly at each service connection to his premises. The customer shall, install such assembly, or assemblies, at his own expense, and failure or refusal, or inability on the part of the customer to install said assembly, or assemblies shall constitute a ground for discontinuing water services to the premises until such assembly or assemblies have been properly installed.

Section 16-13-4 Definitions

- A. Approved – Accepted by the Director of Municipal Services as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed use.
- B. Auxiliary Water Supply – Any water supply, on or available, to the premises other than the purveyor's approved public potable water supply.
- C. Backflow – The flow of water or other liquids, mixtures or substances, under positive or reduced pressure in the distribution pipes of a potable water supply from any source other than its intended source.
- D. Backflow Preventer – An assembly or means designed to prevent backflow or back-siphonage. Most commonly categorized as air gap, reduced pressure principle device, double check valve assembly, pressure vacuum breaker, atmospheric vacuum breaker, hose bib vacuum breaker, residential dual check, double check with intermediate atmospheric vent, and barometric loop.

1. Air Gap – A physical separation sufficient to prevent backflow between the free-flowing discharge end of the potable water system and any other system. Physically defined as a distance equal to twice the diameter of the supply side pipe diameter but never less than one (1) inch.
 2. Atmospheric Vacuum Breaker – A device which prevents back-siphonage by creating an atmospheric vent when there is either a negative pressure or sub-atmospheric pressure in a water system.
 3. Barometric Loop – A fabricated piping arrangement rising at least thirty-five (35) feet at its topmost point above the highest fixture it supplies. It is utilized in water supply systems to protect against back-siphonage.
 4. Double Check Valve Assembly – An assembly of two (2) independently operating spring loaded check valves with tightly closing shut off valves on each side of the check valves, plus properly located test cocks for the testing of each check valve.
 5. Double Check Valve with Intermediate Atmospheric Vent – A device having two (2) spring loaded check valves separated by an atmospheric vent chamber.
 6. Hose Bib Vacuum Breaker – A device which is permanently attached to a hose bib and which acts as an atmospheric vacuum breaker.
 7. Pressure Vacuum Breaker – A device containing one or two independently operated spring loaded check valves and an independently operated spring loaded air inlet valve located on the discharge side of the check or checks. Device includes tightly closing shut-off valves on each side of the check valves and properly located test cocks for the testing of the check valve(s).
 8. Reduced Pressure Principle Backflow Preventer – An assembly consisting of two (2) independently operating approved check valves with an automatically operating differential relief valve located between the two (2) check valves, tightly closing shut-off valves on each side of the check valves plus properly located test cocks for the testing of the check valves and the relief valve.
 9. Residential Dual Check – An assembly of two (2) spring loaded, independently operating check valves without tightly closing shut-off valves and test cocks. Generally employed immediately downstream of the water meter to act as a containment device.
- E. Backpressure – A condition in which the owners system pressure is greater than the suppliers system pressure.
- F. Back-siphonage – The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.

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G. Commission – The State of Arizona Water Supply and Pollution Control Commission.

H. Containment – A method of backflow prevention which requires a backflow prevention preventer at the water service entrance.

I. Contaminant – A substance that will impair the quality of the water to a degree that it creates serious health hazard to the public water supply and a source of contamination or pollution.

J. Cross-connection – Any actual or potential connection between the public water supply and a source of contamination or pollution.

K. Department – Town of Duncan Water Department.

L. Fixture Isolation – A method of backflow prevention in which a backflow preventer is located to correct a cross-connection at an in-plant location rather than at a water service entrance.

M. Owner – Any person who has legal title to, or license to operate or habitat in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.

N. Person – Any individual, partnership, company, public or private organization, political subdivision or agency of the State Department, agency or instrumentality or the United States or any other legal entity.

O. Permit – A document issued by the Department which allows the use of a backflow preventer.

P. Pollutant – A foreign substance, that if permitted to get into the public water system, will degrade its quality so as to constitute a moderate hazard, or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonable effect such water for domestic use.

Q. Water Service Entrance – That point in the owners water system beyond the sanitary control of the Department; generally considered to be the outlet end of the water meter and always before any unprotected branch.

R. Director of Municipal Services – The Director, or his delegated representative in charge of the Duncan Department of Municipal Services, is invested with the authority and responsibility for the implementation of a cross-connection control program and for the enforcement of the provisions of the Ordinance.

Section 16-13-5 Administration

- A. The Department will operate a cross-connection control program, to include the keeping of necessary records, which fulfills the requirements of the Commission's Cross-Connection Regulations and is approved by the Commission.
- B. The Owner shall allow his property to be inspected for possible cross-connections and shall follow the provisions of the Department's program and the Commission's Regulations if a cross-connection is permitted.
- C. If the Department requires that the public supply be protected by containment, the Owner shall be responsible for water quality beyond the outlet end of the containment device and should utilize fixture outlet protection for that purpose.

He may utilize public health officials, or personnel from the Department, or their delegated representatives, to assist him in the survey of his facilities and to assist him in the selection of proper fixture outlet assemblies, and proper installation of these assemblies.

Section 16-13-6 Requirements

- A. Department
 - 1. On new installations, the Department will provide on-site evaluation and/or inspection of plans in order to determine the type of backflow preventer, if any that will be required, will issue permit, and perform inspection and testing. In any case, a minimum of a dual check valve will be required in any new construction.
 - 2. For premises existing prior to the start of this program, the Department will perform evaluations and inspections of plans and/or premises and inform the Owner by letter of any corrective action deemed necessary, the method of achieving the correction, and the time allowed for the correction to be made. The Department may perform the initial testing at no charge, provided the Owner enters into agreement with the Department for the performance of periodic testing and maintenance.
 - 3. The Department will not allow any cross-connection to remain unless it is protected by an approved backflow preventer for which a permit has been issued and which will be regularly tested to insure satisfactory operation.
 - 4. The Department shall inform the Owner by letter of any failure to comply, by the time of the first re-inspection. The Department will allow an addition thirty (30) days for the correction. In the event the Owner fails to comply with the necessary correction by the time of the second re-inspection, the Department will inform the Owner by letter that the water service to the

Owner's premises will be terminated within a period not to exceed five (5) days. In the event that the Owner informs the Department of extenuating circumstances as to why the correction has not been made, a time extension may be granted by the Department but in no case will it exceed an additional thirty (30) days.

5. If the Department determines at any time that a serious threat to the public health exists, the water service will be terminated immediately.
6. The Department shall have on file, a list of Private Contractors who are certified backflow assembly testers. All charges for these tests will be paid by the Owner of the building or property.
7. The Department will begin initial premises inspections to determine the nature of existing or potential hazards, following the approval of this program by the Commission. Initial focus will be on high hazard industries and commercial premises.

B. Owner

1. The Owner shall be responsible for the elimination or protection of all cross-connections on his premises.
2. The Owner, after having been informed by a letter from the Department, shall at his expense, install, maintain, and test, or have tested, any and all backflow preventers on his premises. The Owner may enter into agreement allowing the Department to test and maintain the required backflow preventers for an annual fee.
3. The Owner shall within ten (10) days correct any malfunction of the backflow preventer which is revealed by periodic testing unless agreement has been made with the department for maintenance.
4. The Owner shall inform the Department of any proposed or modified cross-connections and also any existing cross-connections of which the Owner is aware but has not been found by the Department.
5. The Owner shall not install a by-pass around any backflow preventer unless there is a backflow preventer of the same type on the by-pass. Owners who cannot shut down operation for testing of the assembly(ies) must supply addition assemblies necessary to allow testing to take place.
6. The Owner shall install backflow preventers in a manner approved by the Department.
7. The Owner shall install only backflow preventers approved by the Department or the Commission.
8. Any Owner having a private well or other private water source, must have a permit if the well or source is cross-connected to the Department's system. Permission to cross-connect may be denied by the Department. The Owner may be required to install a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross-connected to the Department's system.

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9. In the event the Owner installs plumbing to provide potable water for domestic purposes which is on the Department's side of the backflow preventer, such plumbing must have its own backflow preventer installed.
10. The Owner shall be responsible for the payment of all fees for permits, annual or semi-annual device testing, re-testing in the case that the device fails to operate correctly, and second re-inspections for non-compliance with Department or Commission requirements.

Section 16-13-7 Degree of Hazard

The Department recognizes the threat to the public water system arising from cross-connections. All threats will be classified by degree of hazard and will require the installation of approved reduced pressure principle backflow prevention devices or double check valves.

Section 16-13-8 Permits

The Department shall not permit a cross-connection within the public water supply system unless it is considered necessary and that it cannot be eliminated.

A. Cross-connection permits that are required for each approved backflow prevention assembly are obtained from the Department. A fee of five (\$5) dollars will be charged for the initial permit and five (\$5) dollars for the renewal of each permit.

B. Permits shall be renewed every two (2) years and are non-transferable. Permits are subject to revocation and become immediately revoked if the Owner should so change the type of cross-connection or degree of hazard associated with the service.

Section 16-13-9 Existing In-Use Approved Backflow Prevention Assemblies

Any existing backflow preventer shall be allowed by the Department to continue in service provided it is an approved and properly installed assembly unless the degree of hazard is such as to supersede the effectiveness of the present backflow preventer, or result in an unreasonable risk to the public health. Where the degree of hazard has increased, as in the case of a residential installation converting to a business establishment, any existing backflow preventer must be upgraded to a reduced pressure principle device, or a reduced pressure principle device must be installed in the event that no approved backflow prevention assembly was present.

Section 16-13-10 Periodic Testing

A. Reduced Pressure principle backflow assemblies shall be tested and inspected at installation, repair, if any remodeling or a change in plumbing is done, and at least once a year.

B. Periodic testing shall be performed by the Department's certified tester or his delegated representative. This testing will be done at the Town's expense.

C. The testing shall be conducted during the Department's regular business hours. Exceptions to this, when at the request of the owner, may require additional charges to cover the increased costs to the Department.

D. Any backflow preventer which fails during a periodic test will be repaired or replaced. When repairs are necessary, upon completion of the repair the assembly will be retested at Owner's expense to insure correct operation. High hazard situations will not be allowed to continue unprotected if the backflow preventer fails the test and cannot be repaired immediately. In other situations, a compliance date of not more than thirty (30) days after the test date will be established. The Owner is responsible for spare parts, repair tools, or a replacement the assembly. Parallel installation of two (2) replacement the assemblies is an effective means of the Owner insuring that uninterrupted water service during testing or repair of assemblies and is strongly recommended when the Owner desires such continuity.

E. Approved backflow prevention assemblies will be tested more frequently than specified in A, above, in cases where there is a history of test failures and the Department feels that due to the degree of hazard involved, additional testing is warranted. Cost of the additional tests will be born by the Owner.

Section 16-13-11 Records and Reports

A. Records – The Department will initiate and maintain the following:

1. Master files on customer cross-connection tests and/or inspections.
2. Master files on cross-connection permits.
3. Copies of permits and permit applications
4. Copies of lists and summaries supplied to the Commission.

B. Reports – The Department will submit the following to the Commission.

1. Initial listing of low hazard cross-connections to the State.
2. Initial listing of high hazard cross-connections to the State.
3. Annual update lists of items 1 and 2 above.
4. Annual summary of cross-connection inspections to the State.

Section 16-13-12 Fees and Charges

The Department will publish a list of fees or charges for the following services or permits:

A. Testing fees

- B. Re-testing fees
- C. Fee for re-inspection
- D. Charges for after-hours inspections or tests.

Section 16-13-13 Addendum

A. Residential dual check – Effective the date of the acceptance of this Cross-Connection Control Program for the Town of Duncan all new residential buildings will be required to install a residential dual check device immediately down stream of the water meter. Installation of this residential dual check device on a retro-fit basis on existing lines will be instituted at a time and at a potential cost to the homeowner as deemed necessary by the Department.

The Owner must be aware that installation of a residential dual check valve results in a potential closed plumbing system within his residence. As such, provisions may have to be made by the Owner to provide for thermal expansion within his closed loop system, i.e. the installation of thermal expansion devices and/or pressure relief valves.

B. Strainers – The Department strongly recommends that all new retro-fit installations of reduced pressure principle devices and double check valve backflow preventer include the installation of strainers located immediately upstream of the backflow assembly. The installation of strainers will preclude the fouling of backflow assemblies due to both foreseen and unforeseen circumstances occurring to the water supply system such as water main repairs, water main breaks, fires, periodic cleaning and flushing of mains, etc. These occurrences may “stir up” debris within the water main that will cause fouling of backflow assemblies installed without the benefit of strainers.

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Section 16-13-14 Backflow Preventer Testing and Maintenance Agreement

BACKFLOW PREVENTER TESTING AND MAINTENANCE
AGREEMENT

I do hereby authorize the Town of Duncan Water Department to install, test and maintain the required backflow preventer located at the following address:

_____ Make of Device: _____
_____ Model Number: _____
_____ Serial Number: _____
_____ Size: _____

I agree to purchase the preventer at my own expense and pay an annual fee determined by the size of the backflow preventer required.

Customer's Signature

ANNUAL FEE REQUIRED:
Size in inches

¾" – 1"	\$35.00
1 ¼" – 1 ½"	45.00
2" – 3"	55.00
4"	65.00

CHAPTER 17
TAX CODE

ARTICLE 17-0 INDEX TO DUNCAN TAX CODE

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
ARTICLE I – GENERAL CONDITIONS AND DEFINITIONS		261-286
1	Words of tense, number and gender; code references.	
100	General definitions. Assembler Broker Business Business day Casual activity or sale Combined taxes Commercial property Communications channel Construction contracting Construction contractor Delivery (of notice) by the Tax Collector Delivery, installation, or other direct customer services Engaging Equivalent excise tax Federal government Food Gross income Gross proceeds of sales Gross receipts Hotel Jet fuel Job printing Lessee Lessor License (for use) Lodging (lodging space) Manufactured buildings Manufacturer Medical marijuana Mining and metallurgical supplies Modifier Nonprofit entity Occupancy (of real property) Out-of-Town sale	

Out-of-State sale

100 (ctd)	General definitions (ctd)
	Owner-builder
	Person
	Prosthetic
	Qualifying community health center
	Qualifying health care organization
	Qualifying health sciences educational institution
	Qualifying hospital
	Receipt (of notice) by the taxpayer
	Remediation
	Rental equipment
	Rental supply
	Repairer
	Resides within the Town
	Restaurant
	Retail sale (sale at register)
	Retailer
	Sale
	Solar daylighting
	Solar energy device
	Speculative builder
	Substantially complete
	Supplier
	Tangible personal property
	Tax Collector
	Taxpayer
	Taxpayer Problem Resolution Officer
	Telecommunication service
	Transient
	Utility service
100.1	Brokers
110	Definitions: income producing capital equipment.
115	Definitions: computer software; custom computer programming
115.1	Computer hardware, software and data services
120	(Reserved)
120.1	(Reserved)

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CHAPTER 17 PRIVILEGE AND EXCISE TAX

Article I – GENERAL CONDITIONS AND DEFINITIONS

Sec. 17. Words of tense, number and gender; code references.

- (a) For the purposes of this Chapter, all words of tense, number, and gender shall comply with A.R.S. Section 1-214 as amended.
- (b) For the purposes of this Chapter, all code references, unless specified otherwise, shall:
 - (1) refer to this Town Code.
 - (2) be deemed to include all amendments to such code references.

Sec. 17-100. General definitions.

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

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

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

“Business” means all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirectly, but not include either casual activities or sales, or the transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

“Business day” means any day of the week when the Tax Collector’s office is open for the public to conduct the Tax Collector’s business.

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

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

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

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

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

"Construction contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

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

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

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

"Equivalent excise tax" means either:

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

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

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

ingredient infused, mixed, or in any way combined with medical marijuana or an active ingredient of medical marijuana.

"Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses. "Gross income" does not include goods, wares or merchandise, or value thereof, returned by customers if the sale price is refunded either in cash or by credit, nor the value of merchandise traded in on the purchase of new merchandise before completion of the sale.

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.

"Gross proceeds of sales" do not include goods, wares or merchandise, or value thereof, returned by customers if the sale price is refunded either in cash or by credit, nor the value of merchandise traded in on the purchase of new merchandise when the trade-in allowance is deducted from the sales price of the new merchandise before completion of the sale.

"Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and taken nor the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the Town 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" means jet fuel as defined in A.R.S. Section 42-5351.

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

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

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

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

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

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

"Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares, or articles for use from raw or prepared materials, imparting to those materials, new forms, qualities, properties, and combinations.

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

"Mining and metallurgical supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 17-432 for such use. This definition shall not include:

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

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

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

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

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

- (1) transference of title and possession occur without the Town; and
- (2) the stock from which such personal property was taken was not within the corporate limits of the Town; and
- (3) the order is received at a permanent business location of the seller located outside the Town; 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 sites 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 Town, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-Town storehouses and out-of-Town retail branch outlets from a primary storehouse within the Town.

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

- (1) The order is placed from without the State of Arizona; and

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- (2) the property is delivered to the buyer at a location outside the State; and
- (3) the property is purchased for use outside the State.

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

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

"Prosthetic" means any of the following tangible personal property:

- (1) drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.
- (2) Prosthetic appliances as defined in A.R.S. Section 23-501 and as prescribed or recommended by a health professional who is licensed pursuant to Title 32, Chapter 7,8,11,13,14,15,16,17 or 29.
- (3) insulin, insulin syringes, and glucose test strips.
- (4) prescription eyeglasses or contact lenses.
- (5) hearing aids as defined in A.R.S. Section 36-1901.
- (6) durable medical equipment that has a centers for Medicare and Medicaid services common procedure code, is designated reimbursable by Medicare, is prescribed by a person who is licensed under Title 32, Chapter 7,8,13,14,15,17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.
- (7) 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.
- (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.

"Qualifying community health center"

- (1) means an entity that is recognized as nonprofit under Section 501 C (3) of the United States Internal Revenue Code, that is a community-based, Primary Care Clinic that has a community-based board of directors that is either.
 - (a) the sole provider of primary care in the community.
 - (b) a non-hospital affiliated clinic that is located in a federally designated medically underserved area in this State.
- (2) includes clinics that are being constructed as qualifying community health centers.

"Qualifying health care organization" means an entity that is recognized as nonprofit under Section 501(C) of the United States Internal Revenue Code and that uses, saves or invests at least eighty per cent (80%) of all moneys 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 auditing 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 per cent (80%) requirement.

"Qualifying health sciences educational institution" means an entity that is recognized as nonprofit under Section 501(c) of the United States internal revenue code and that solely provides graduate and postgraduate education in the health sciences. For the purpose of this paragraph, "health sciences" includes medicine, nursing, physician's assistant studies, pharmacy, physical therapy, occupational therapy, biomedical sciences, podiatry, clinical psychology, cardiovascular science, nurse anesthesia, dentistry, optometry and veterinary medicine.

"Qualifying hospital" means any of the following:

- (1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (2) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.
- (3) A hospital, nursing care institution or residential care institution which is operated by the Federal Government, this state or political subdivision of this state.
- (4) A facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

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

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

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

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- (1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for consideration; and
- (2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

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

- (1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

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

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

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

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

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

"Sale" means any transfer of title or possession, or both, exchange, barter, lease, rental or license for use, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration. "Sale" includes any transaction by which the possession of property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes fabricating of tangible personal property for consumers who furnish either directly or indirectly the materials used in such fabrication work. "Sale" also includes furnishing, preparing or serving for a consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property.

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

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

"Speculative builder" means either:

- (1) an owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 17-416) consisting of:
 - (a) custom, model, or inventory homes, regardless of the stage of completion such homes; or
 - (b) improved residential or commercial lots without a structure: or
- (2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
 - (a) prior to completion; or
 - (b) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

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

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

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the Town, 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.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

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

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

"Taxpayer Problem Resolution Officer" means the individual designated by the Town to perform the duties identified in Sections 17-515 and 17-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the Town. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the Town, 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.

“Telecommunication service” means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

“Transient” means any person who either at the person’s own expense or at the expense of another obtains lodging space or the use of the lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

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

Sec. 17-100.1. Brokers

- (a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 17-405, 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 has sold such items himself.
 - (2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed “casual” if his principal managed such real property himself.
- (c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.’
- (d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.
- (e) (Reserved)
- (f) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine “out-of-Town sales”; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction.

Sec. 17-110. Definitions: Income-producing capital equipment

- (a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed “income-producing capital equipment” for the purposes of this Chapter:
 - (1) machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms “manufacturing,” “processing”,

“fabricating”, “job printing”, “refining”, and “metallurgical” as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. “Metallurgical operations” includes leaching, milling, precipitating, smelting and refining.

- (2) mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. “Mining” includes underground, surface and open pit operations for extracting ores and minerals.
- (3) tangible personal property, sold to persons engaged in business classified under the telecommunications classification, including a person representing or working on behalf of such a person in a manner described in Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including optical fiber, coaxial cable, and other transmission media which are components of carrier systems.
- (4) machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.
- (5) pipes or valves four inches (4”) in diameter or larger used to transport oil, natural gas, artificial gas, water, or coal slurry including compressor units, regulators, machinery and equipment, fittings, seals, and any other parts that are used in operating the pipes or valves.
- (6) aircraft, navigational and communication instruments, and other accessories and related equipment sold to:
 - (A) a person:
 - (i) holding, or exempted by federal law from obtaining, a federal certificate of public convenience and necessity for use as, in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.
 - (ii) that is certificated or licensed under Federal Aviation Administration Regulations (14 Code of Federal Regulations Part 121 or 135) as scheduled or unscheduled carrier of persons for hire for use as or in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.
 - (iii) holding a 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.
 - (iv) operating an aircraft to transport persons in any manner for compensation or hire, or for use in a fractional ownership program that meets the requirements of Federal Aviation Administration Regulations (14 Code of Federal Regulations Part 91, Subpart K), including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under Part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.

- (v) That will lease or otherwise transfer operational control, within the meaning of Federal Aviation Administration Operations Specification A008, or its successor, of the aircraft, instruments or accessories to one or more persons described in item (i), (ii), (iii) or (iv) of this subdivision, subject to A.R.S. Section 42-5009, Subsection to A.R.S. Section 42-5009, Subsection Q.
 - (B) any foreign government.
 - (C) persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.
- (7) machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.
- (8) railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.
- (9) machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.
- (10) buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.
- (11) metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.
- (12) groundwater measuring devices required under A.R.S. Section 45-604.
- (13) machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this Section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.
- (14) new machinery and equipment consisting of agricultural aircraft, tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk and machinery and equipment necessary for cooling milk and

livestock, and drip irrigation lines, not already exempt under paragraph 5 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural, or floricultural crops in this State. For the purposes of this paragraph.

- (A) "new machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals which do not total two years or more.
 - (B) "agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.
 - (C) "self-powered implements" includes machinery and equipment that are electric-powered.
- (15) Included in income producing capital equipment are liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This subsection does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this Code. Chemicals meeting the requirements of this subsection are deemed not to be expendable under subsection (d) of this section.
- (16) cleanrooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph (13) of this subsection, of semiconductor products. For purposes of this paragraph, "cleanroom" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom:
- A) includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment.
 - B) does not include the building or other permanent, nonremovable component of the building houses the cleanroom environment.
- (17) machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in A.R.S. Section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.
- (18) tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

- A) any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25.
- (B) any satellite television or data transmission facility, if both of the following conditions are met:
 - (i) over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25.
 - (ii) over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

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

- (19) machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.
- (20) machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.
- (21) machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission Order issued April 21, 1997, 47 Code of Federal Regulations part 73. this paragraph does not exempt any of the following:
 - A) repair or replacement parts purchased for the machinery or equipment described in this paragraph.
 - B) machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.
 - C) any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.
- (22) Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under A.R.S. Section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in A.R.S. Section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the Department of Revenue.
- (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.
 - (2) janitorial equipment and hand tools.
 - (3) office equipment, furniture, and supplies.
 - (4) tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection (a)(18) of this section.
 - (5) motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection (a) (10) above without regard to the use of such motor vehicles.
 - (6) shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt.
 - (7) motors and pumps used in drip irrigation systems.
 - (8) machinery and equipment or other tangible personal property used by a contractor in the performance of a contract.
 - (e) For the purposes of this Section:
 - (1) "aircraft" includes:
 - (A) an airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121.
 - (B) tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.
 - (2) "other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

Sec. 17-115. Definitions: computer software; custom computer programming.

- (a) "Computer Software" means any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not "custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.
- (b) "Custom Computer Programming" means any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

- (1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease, or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.
- (2) Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

Sec. 17-115.1. Computer hardware, software, and data services.

(a) Definitions.

- (1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer network.
- (2) "Computer Software" (also called "computer program") is tangible personal property and includes:
 - A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
 - B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.
- (3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.
- (4) A "Terminal Arrangement" (also called "on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.
- (5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

(b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

- (1) computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.

- (2) computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:
 - A) the entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.
 - B) the entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.
 - C) license fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.
 - D) the entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.
 - E) any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:
 - (i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.
 - (ii) if such maintenance contract is optional with 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.
 - (i) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.
- (c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:
 - (1) statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.
 - (2) Additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of

the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

- (d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.
- (e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 16-1--.2(e):
 - (1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.
 - A) Custom computer programming is deemed a professional service regardless of the form in which the programming is transferred.
 - B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.
 - C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.
 - (2) Training services related to computer hardware or software, provided further that:
 - A) the provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
 - B) training deemed a direct customer service does not include:
 - (i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
 - (ii) training provided to customers without separate charge as part of the sale, rental, lease or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
 - (3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).
 - (4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.
- (f) (Reserved)

Sec. 17-120.1. (Reserved)

ARTICLE II – DETERMINATION OF GROSS INCOME

Sec. 17-200. 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 forgiveness of indebtedness and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.
 - (4) All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.
- (b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.
- (c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

Sec. 17-200.1. When deposits are includable in gross income.

- (a) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee.
- (b) Nonrefundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt.

Sec. 17-210. 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 Town Privilege and Use Taxes shall be levied. "Market value" shall correspond as nearly as possible to the gross income from similar transactions of like quality or character by other taxpayers where no common interest exists between the parties, but otherwise under similar circumstances and conditions.

Sec. 17-220. Determination of gross income: artificially contrived transactions.

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

Sec. 17-230. Determination of gross income based upon method of reporting.

The method of reporting chosen by a taxpayer, as provided in Section 17-520, 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 deduction and no exclusions from gross income are allowed. Interest finance contracts may be deducted if separately itemized on all books and records.
- (b) Accrual basis – When a person elects to report and pay taxes on an accrual basis, gross income for the applicable period regardless of whether receipts are for cash, credit, conditional, or partially deferred transactions, and regardless of whether or not any security document or instrument is sold, assigned, or otherwise transferred to another. Persons reporting on the accrual basis may deduct bad debts, provided that:
- (1) the amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made, and only to the extent that such amount was actually charged-off, and also only to the extent that such amount is or was included as taxable gross income; and
 - (2) if any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection.

Sec. 17-240. 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 17-427.
 - (4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.
 - (5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.
 - (6) In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer’s cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer’s right in the rebate to the retailer.

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

Sec. 17-250. 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 Town (or combined) Privilege and Use Taxes, the person upon whom the tax is imposed shall pay the full amount of the Town taxes due, whether collected by him or not, and in the event he collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts of taxes collected by him, and the Tax Collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this Chapter, the Tax Collector may determine the amount collected and collect the tax so determined in the manner provided in this Chapter.
- (2) Itemization. A taxpayer, in order to be entitled to exclude from his gross income any amounts paid to him by customers for combined taxes passed on to the customer, must prove that he has provided his customer with a written record of the transaction showing at a minimum the price before the tax, the combined taxes, and the total cost. This shall be addition to the record required to be kept under subsection (a) above.
- (b) When tax has been neither separately charged nor separately collected. When the person upon whom the tax is imposed shall establish by means of invoices, sales tickets, or other reliable evidence, that no added charge was made to cover combined taxes, the taxpayer may exclude tax collected from such income by dividing such taxable gross income by 1:00 plus a decimal figure representing the effective combined tax rate expressed as a fraction of 1.00.

Sec. 17-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax 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.

Sec. 17-260. Exclusion of fees and taxes from gross income; limitations.

- (a) There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a lessor and lessee respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.
- (b) There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal Excise Taxes imposed by 26 U.S.C. Section 4051, but only to the extent that the provisions of Article III, relating to recordkeeping, have been met.
- (c) There shall be excluded from the gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of article III, regarding recordkeeping, are met:
 - (1) Emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-5252. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;
 - (2) The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-5252;
 - (3) Federal excise taxes on communications services as imposed by 26 U.S.C. § 4251;
 - (4) Car rental surcharge imposed pursuant to A.R.S. Section 49-4234;
 - (5) Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. § 4001(.01);
 - (6) Waste tire disposal fees, imposed pursuant to A.R.S. Section 44-1302.
- (d) There shall be excluded from gross income of vendors of motor vehicles dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor.

Sec. 17-265 (Reserved)

Sec. 17-266. Exclusion of motor carrier revenues from gross income.

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

- (a) A motor carrier's use on the public highways in this State if the motor carrier is subject a fee prescribed in A.R.S. Title 28, Chapter 15, Article 4 or A.R.S. Title 28, Chapter 16, Article 4.
- (b) Leasing, renting or licensing a motor vehicle, subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16.
- (c) The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting or licensing such property.
- (d) For the purposes of these exclusion, "motor carrier" includes a motor vehicle weighing 26,000 pounds or more, a lightweight motor vehicle which weighs 12,001 pounds to 26,000 pounds and a light motor vehicle weighing 12,000 pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 15 or A.R.S. Title 28, Chapter 16.

Sec. 17-270. Exclusion of gross income of persons deemed not engaged in business.

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

- (c) Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:
 - (1) Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c) (7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona fide guests of members is an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by Regulation in the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.
 - (2) Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and his administrative interpretations and guidelines.
 - (3) (Reserved).

- (d) Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or non-licensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:
 - (1) a statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required, to pay Town Privilege Tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same: and
 - (2) the Privilege License number of the otherwise exempt vendee; and
 - (3) such other information as the Tax Collector may require.

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

Sec. 17-270.1. 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 17-270:

- (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.

Sec. 17-270.2 Proprietary clubs.

- (a) Equity requirements. In order to qualify for exclusion under Section 17-270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.
- (b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of subsection 17-270(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 fundraising events, raffles, etc.
 - E) donations, gifts, or bequests.
 - F) gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.
 - (2) the following must be included:
 - A) green fees, court use fees, and similar charges for the actual use of a facility or part thereof.
 - B) pro shop sales if the shop is owned by the club.
 - C) golf cart rental if the carts are owned by the club.
 - D) rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.
 - E) all receipts from food or beverage sales, room use or rental charge, corkage and catering charges and similar receipts.
 - F) Locker and locker room fees and attendance charges if paid to the club.
 - G) Tournament entry fees other than entry fees for the one annual tournament exempt under subsection (b)(1)(F) above.

Sec. 17-285. Determination of gross income: moratorium on certain taxes relating to certain real property.

- (a) A "moratorium period of "X"" means that consecutive passage of time commencing upon the date when real property first qualifies for the provisions of this Section and ending at midnight (12:00 p.m.) of that same month and day "X" years thereafter.

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- (b) Gross income derived from construction contracting upon real property not owned by a governmental entity shall be exempt from the taxes imposed by Sections 17-415 through 16-418 for a moratorium period of seven (7) years from the date upon which such real property shall have been annexed to and become a part of the Town.
- (c) (Reserved)
- (d) The provisions of this Section shall be irrevocable vested in any real property that qualifies under this Section after the adoption of this Section as part of the Town Code, or upon the adoption of any substantially similar ordinance previously adopted, whichever occurs earlier.

Sec. 17-290. (Reserved)

ARTICLE III – LICENSING AND RECORDKEEPING

Sec. 17-300. 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:
 - (1) Every person engaging or continuing in business activities within the Town upon which a Transaction Privilege Tax is imposed by this Chapter.
 - (2) Every person engaging or continuing in business within the town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter.
 - (3) (Reserved)
- (b) A person engaged in more than one activity subject to Town Privilege and Use Taxes at any one business location is not required to obtain a separate license for each activity; provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.
- (c) Limitation. The issuance of a Privilege License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

Sec. 17-300.1. Who must apply for a license.

- (a) For the purposes of determining whether a license is required under Section 17-300, a person shall be deemed to be "engaged in or continuing in business" within the Town, if he meets any of the following conditions:
 - (1) He is engaged in any activity subject to the Town's Privilege Taxes as principal or broker.

- (2) He has or maintains within the Town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this Town under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this Town.
- (3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the Town from customers, consumers, or users located within the 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 Town.
- (4) (Reserved)
- (5) (Reserved)
- (b) For the purposes of obtaining a Privilege License, a person who has less than three (3) apartments, houses, trailer spaces, or other lodging spaces available for rent, lease, or license within the State is not considered to be regularly engaged in business and need not obtain a Privilege License: provided, however, if that person is also receiving income from the activity of renting, leasing, or licensing one (1) or more commercial properties or units within a commercial property, he is considered to be regularly engaged in business and must obtain licenses for all his rental, lease, or license property.

Sec. 17-300.2. (Reserved)

Sec. 17-310.1. (Reserved)

Sec. 17-310.2. (Reserved)

Sec. 17-310.3. (Reserved)

Sec. 17-310. Licensing: special requirements.

- (a) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaged in business as partners, limited or general, shall be in the name of the partnership.
- (b) Limited Liability Companies. Application of a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business in 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.
- (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.
- (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.

- (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.

Sec. 17-320. License fees; annual renewal; renewal fees.

- (a) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of twenty five dollars (\$25.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately 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-five dollars (\$25.00) 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.
- (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-five dollars (\$25.00). 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 fee of twenty-five dollars (\$25.00) 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.

Sec. 17-330. Licensing: duration; transferability; display; penalties; penalty waiver; relicensing; fees collectible as if taxes.

- (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.

- (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.
- (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 each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time of 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 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 17-540.
- (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 fee 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 17-540.
- (e) Any licensee who permits his license to expire through cancellation as provided in Section 17-340, 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 17-320.
- (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.
- (g) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the town for all applicable fees and penalties and shall be subject to the provisions of Sections 17-580 and 17-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections.

Sec. 17-340. Licensing: cancellation; revocation.

- (a) Cancellation. The tax Collector shall be authorized to cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly to the Town, has neither filed any return nor remitted to the Town any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.
- (b) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid to the Town under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector shall be authorized to revoke the Town Transaction Privilege and Use Tax License of said licensee.
- (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 within twenty (20) days the licensee so notified requests a hearing, he shall be granted a hearing before the Tax Collector.

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

Sec. 17-350. Operating without a license.

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.

Sec. 17-350.1. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

- (a) the gross income of the taxpayer attributable to any activity to any activity occurring in whole or in part in the Town.
- (b) the gross income taxable under this Chapter, divided into categories as stated in the official Town tax return.
- (c) the gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.
- (d) the gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
 - (1) if the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:
 - A) the Town Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and
 - B) the name, business address, and business activity of the customer, and
 - C) evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.
 - (2) if the transaction is claimed to be exempt for any other reason:
 - A) the name, business address, and business activity of the customer, and
 - B) evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.
- (e) with respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.

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- (f) with respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

Sec. 17-350.2. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (a) the total price of all goods acquired for use or storage in the Town.
- (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 Town.
- (c) documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease or license.
- (d) the gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) as applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) all construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) franchise and license fee payments and computations thereto which relate to:
 - A) utility service.
 - B) telecommunication service.
 - (4) the validity of any claims of proof of exemption, as provided by Regulation.
 - (5) a claimed alternative prior value for reconstruction.
 - (6) (Reserved)
 - (7) costs used to compute the "computed charge" claimed for retail service and repair.
 - (8) payments of tax to the Arizona Department of Transportation and computations therefore, when a motor-vehicle transporter claims such the exemption.
- (f) any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

Sec. 17-350.3. Recordkeeping: out-of-Town and out-of-State sales.

- (a) Out-of-Town Sales. Any person engaging or continuing in a business who claims out-of-Town 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-Town branches or locations.

- (b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:
- (1) documentation of location of the buyer at the time of order placement; and
 - (2) shipping, delivery, or freight documents showing where the buyer took delivery; and
 - (3) documentation of intended location of use or storage of the tangible personal property sold to such buyer.

Sec. 17-360. Recordkeeping requirements.

- (a) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by 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.
- (b) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:
- (1) only for future reporting periods, and
 - (2) only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the Town to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

Sec. 17-360.1. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Sec. 17-360.2. Proof of exemption: exemption certificate.

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 17-350.1 and 17-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, at the time of the transaction, in all material respects, of a certificate containing all the information set forth below. For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

Sec. 17-362. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

- (a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the Town.
- (b) The gross income taxable under this Chapter, divided into categories as stated in the official Town tax return.
- (c) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.
- (d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
 - (1) If the transaction is claimed to be exempt as a sale or as a sale, rental, lease, or license for use of rental equipment.
 - (A) The City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent town, if applicable, and state tax numbers of the town and state where the customer resides), and
 - (B) The name, business address, and business activity of the customer, and
 - (C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.
 - (2) If the transaction is claimed to be exempt for any other reason:
 - (A) The name, business address, and business activity of the customer, and
 - (B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.
- (e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.
- (f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.

- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

Sec. 17-364. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (a) The total price of all goods acquired for use or storage in the Town.
- (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 Town.
- (c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) Disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) Franchise and license fee payments and computations thereto which relate to:
 - (A) Utility service.
 - (B) Telecommunication service.

Sec. 17-366. Recordkeeping: out-of-Town and out-of-State sales.

- (a) Out-of-Town Sales. Any person engaging or continuing in a business who claims out-of-Town 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-Town branches or locations.
- (b) Out-of-State Sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:
 - (1) documentation of location of the buyer at the time of order placement; and
 - (2) shipping, deliver, or freight documents showing where the buyer took delivery; and
 - (3) documentation of intended location of use or storage of the tangible personal property sold to such buyer.

Sec. 17-370. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.

- (a) All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required under A.R.S. Section 42-5022 or by this Chapter or Regulation.
- (b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the

tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

Sec. 17-372. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Sec. 17-380. Inadequate or unsuitable records.

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:

- (a) to provide such other records required by this Chapter or Regulations; or
- (b) to correct or to reconstruct his records, to the satisfaction of the Tax Collector.

ARTICLE IV – PRIVILEGE TAXES

Sec. 17-400. 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 Town, such taxes to be collected by the Tax Collector.
 - (1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the Town or not, or whether derived from within the Town or from without.
 - (2) (Reserved)
- (b) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

- (c) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.
- (d) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

Sec. 17-405. Advertising.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising", except the following:
 - (1) the advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity". "Commonly Designated Business Entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.
 - (2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.
 - (3) the advertising of a product which may only be purchased from an out-of-State supplier.
 - (4) political advertising for United States Presidential and Vice-Presidential candidates only.
 - (5) advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.
 - (6) Advertising transportation services where a substantial portion of the transportation activity of the business entity involves interstate or foreign carriage.
- (b) (Reserved)

Sec. 17-405.1. Local advertising examples.

For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

- (1) retail sales and rental establishments doing business within the State when only one commonly designated business entity is identified by name in the advertisement.
- (2) Financial institutions doing business within the State whether part of a national chain or local business only.
- (3) Sales of real estate located within the State.

- (4) Health care facilities located within the State.
- (5) Hotels, motels, and apartments, whether a national chain or local so long as the advertisement identifies any location within the State.
- (6) Brokers doing business within the State whether stockbrokers, real estate brokers, insurance brokers, etc.
- (7) Nonprofit organizations, which even though tax exempt, have an office, whether national, local or branch, within the State.
- (8) Political activity, except United States Presidential and Vice-Presidential candidates.
- (9) Restaurants or food service establishments which have one or more branches, outlets, or franchises within the State even though the local franchisee or licensee may not be responsible for the placement of the advertisement.
- (10) Services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shop, 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.

Sec. 17-405.2. Advertising activity within the Town.

- (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 Town if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the Town limits. Remote studios patched to an in-Town studio and subject to engineering modulation or control at the in-Town studio are considered studios doing business in the Town.
- (b) Billboards and other outdoor advertising companies shall be considered to be doing business within the Town to the extent they have billboards or similar displays within the Town.
- (c) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 17-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 17-435.

Sec. 17-407. (Reserved)

Sec. 17-407.1. (Reserved)

Sec. 17-410. Amusements, exhibitions, and similar activities.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the Town or takes place entirely within the Town, which includes the following type or nature of businesses:
 - (1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls,

sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

- (2) (Reserved)
- (b) Deductions or Exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this section:
 - (1) income from golf green fees
 - (2) amounts retained by the Arizona Exposition and State Fair Board from ride ticket sales at the annual Arizona State Fair
 - (3) income received from a hotel business subject to tax under section 17-444, if all the following apply:
 - (A) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax.
 - (B) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection.
 - (C) The hotel business has provided an exemption certificate to the person engaging in business under this section.
 - (4) income that is specifically included as the gross income of a business activity upon which another section of this article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
 - (5) income from the arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business.
 - (6) exhibition events in this state sponsored, conducted or operated by a nonprofit organization this is exempt from taxation under Section 501(C)(4) or 501 (C)(6) of the Internal Revenue Code if the organization is associated with a major league baseball team or a National Touring Professional Golfing Association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from state transaction privilege tax under A.R.S. Section 42-5073.
 - (7) Until March 1, 2017, the gross proceeds of sales or gross income derived from entry fees paid by participants for events that consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.
 - (8) The gross proceeds of sales or gross income derived from entry fees paid by participants for events that are operated or conducted by nonprofit organizations that are exempt from taxation under Section 501(C)(3) of the Internal Revenue Code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual. If the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.
 - (9) (Reserved)

Sec. 17-415. Construction contracting: construction contractors.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the Town.
 - (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A. R. S. Section 45-604.
 - (2) (Reserved)

- (b) Deductions and exemptions.
 - (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
 - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).
 - (3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
 - A) Section 17-465, Subsections (g) and (p)
 - B) (Reserved)Shall be exempt or deductible, respectively, from the tax imposed by this Section.
 - (4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 17-110, that is deducted from the retail classification pursuant to section 17-465(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 the purposes of this paragraph, "permanent attachment" means that at least one of the following:
 - A) to be incorporated into real property.
 - B) to become so affixed to real property that it becomes part of the real property.
 - C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
 - (5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.
 - (6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to Section 17-465, Subsection (g) shall be exempt from the tax imposed under this section.

- (7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this section.
- (8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this section.
- (9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. Section 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the Town:
 - (A) The certificate of qualification of the lake facility development issued by the Town pursuant to A.R.S. Section 9-499.08, Subsection D.
 - (B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.
 - (C) Any other information considered to be necessary.
- (10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:
 - (A) The attributable amount shall not exceed the value of the development fees actually imposed.
 - (B) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.
 - (C) "Development Fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or Title 48 regardless of the jurisdiction to which the fees are paid.
- (11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of

solar energy devices available to the Department of Revenue and the town, as applicable, for examination.

- (12) The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this paragraph. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section for the purposes of this paragraph;
- (A) Any term not defined in this paragraph that is defined in A.R.S. Section 42-5075 has the same meaning prescribed in A.R.S. Section 42-5075.
 - (B) Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in Section 17-415.1.
 - (C) Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter. Regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract. The change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.
 - (D) This paragraph does not apply to a contract that primarily involves surface or subsurface improvements to land and that is subject to A.R.S. Title 28. Chapter 19, 20 or 22 or A.R.S. Title 34, Chapter 2 or 6 even if the contract also includes vertical improvements, if a city or town imposes a tax on contracts that are subject to procurement processes under those provisions. The city or town shall include in the request for proposals a notice to bidders when those projects are subject to the tax. This subdivision does not apply to contracts with;
 - (i) community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.
 - (ii) any special taxing district not specified in item (i) of this subdivision if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.
- (13) The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the

purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph;

- (A) "mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in A.R.S. Section 49-701, except that solid waste facility does not include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.
 - (B) "municipal solid waste landfill" has the same meaning prescribed in A.R.S. Section 49-701.
 - (C) "recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.
 - (D) "renewable energy" has the same meaning prescribed in A.R.S. Section 41-1511.
- (c) "Subcontractor" means a construction contractor performing work for either:
- (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his Town Privilege License number.
 - (2) An owner-builder who has provided the subcontractor with a written declaration that :
 - A) the owner-builder is improving the property for sale; and
 - B) the owner-builder is liable for the tax for such construction contracting activity; and
 - C) the owner-builder has provided the contractor his Town Privilege License number.
 - (3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his Town Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

Sec. 17-415.1. Liability for MRRR amounts equal to Retail transaction privilege tax due.

- A. A person that is either a prime contractor subject to tax under section 17-415 or a subcontractor working under the control of such a prime contractor, that purchases tangible personal property, the purchase price of which was excluded from the tax base under the retail classification under Section 17-465(K) or was excluded from the use tax under Section 17-660(K) at the time of purchase, and that incorporates or fabricates the

tangible personal property into a project described in Section 17-460 and A.R.S. Title 42, Chapter 5 as follows:

1. The amount of liability shall be calculated and reported based on the location of the project and the taxes imposed under Section 17-460 and A.R.S. Title 42, Chapter 5.
 2. All deductions, exemptions and exclusions for the cost of tangible personal property incorporated or fabricated into the project.
 3. This subsection does not apply to tangible personal property that is incorporated or fabricated into any project under a contract that would otherwise be excluded from the tax base under Section 17-415, without regard to Section 16-415(B)(12).
 4. The amount of liability shall be reported within the reporting period that includes the person incorporates or fabricates the tangible personal property into the project.
 5. The person is not liable for the amount if the contractor who hired the person executes and provides to the person a certificate stating that the contractor providing the certificate is liable for any amount due under this subsection. The Department of Revenue shall prescribe the form of the certificate. If the person has reason to believe that the information contained on the certificate is erroneous or incomplete, the Town may disregard the certificate. The contractor providing the certificate is liable for the amount that otherwise would be due from the person under this subsection.
- B. A person that purchased tangible personal property, the purchase price of which was excluded from the tax base under Section 17-465(K) or was excluded from the Use Tax under Section 17-660(K) at the time of purchase, whose Transaction Privilege Tax License has been canceled and that subsequently uses, consumes, sells, or discards the tangible personal property is liable for an amount of tax determined under this Subsection. For the purposes of this subsection;
1. If the tangible personal property is incorporated or fabricated into a project described in Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O, or otherwise used or consumed by the person. The amount of liability shall be calculated and reported based on the person's purchase price of the tangible personal property, the location of the project, use or consumption and the taxes imposed under Section 17-460 and A.R.S. Title 42, Chapter 5.
 2. If the tangible personal property is sold in a manner that is not subject to tax under this Chapter or is discarded, the amount shall be calculated and reported based on the payment received by the person, the location of the person's principal place of business in this state and the taxes imposed under Section 17-460 and A.R.S. Title 42, Chapter 5.
 3. The person is not liable under this subsection for any amount if the person discards the tangible personal property and does not receive payment of any kind.
 4. The amount of liability shall be reported on or before the business day preceding the last business day of the month following the month in which the person uses the tangible personal property in a manner described in paragraph 1 or 2 of this subsection. No amount is due under this subsection at any time that the person stores the tangible personal property without using it in a manner described in paragraph 1 or 2 of this subsection.
 5. All deductions, exemptions and exclusions for the cost of tangible personal property provided in Section 17-415 apply to the tangible personal property incorporated or fabricated into a project described in Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O.

6. This subsection does not apply to tangible personal property that is incorporated or fabricated into any project under a contract that would otherwise be excluded from the tax base under Section 17-415 and A.R.S. Section 42-5075, without regard to Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O.
 7. The person is not liable for the amount if the contractor who hired the person executes and provides to the person a certificate stating that the contractor providing the certificate is liable for any amount due under this subsection for tangible personal property incorporated or fabricated into a project described in A.R.S. Section 42-5075, Subsection O. The department shall prescribe the form of the certificate. If the person has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. The contractor providing the certificate is liable for the amount that otherwise would be due from the person under this subsection.
- C. A person that fails to report or pay any amount due under subsection A or B of this section is liable for interest in a manner consistent with A.R.S. Section 42-1123 and penalties in a manner consistent with A.R.S. Section 42-1125.
- D. If a person has paid an amount described in this section on tangible personal property that the person reasonably believed to be described under Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O and a final determination is made that Section 17-415(B)(12) and A.R.S. Section 42-5075, Subsection O does not apply. The person is entitled to an offset for the amount paid under this Section against the amount of tax liability assessed under this chapter.

Sec. 17-415.2. Distinction between construction contracting and certain related activities.

- (a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
- (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
 - (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
 - (3) Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.
- (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
 - (2) Items attached or installed on tangible personal property are retail sales.
 - (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).

- (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (d) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
 - (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
 - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
 - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
 - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Sec. 17-415.3. Construction contracting: tax rate effective date.

- A. In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the "enactment date" as defined in this section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax.
- B. In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the tax collector, to verify that a contract was entered into before the enactment date.
- C. For purposes of this section, "enactment date" shall be:
 - (1) In the event an election is held, the date of election.
 - (2) In the event no election is held, the date of final adoption by the Mayor and Council.
 - (3) Notwithstanding the above, nothing in this section shall be construed to prevent the Town from establishing a later enactment date.

Sec. 17-416. Construction contracting: speculative builders.

- (a) The tax shall be equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the Town.

- (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
 - (2) "Improved Real Property" means any real property:
 - (A) upon which a new structure has been substantially completed; 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 Section 17-416.2; or
 - (D) where water, power, and streets have been constructed to the property line.For the purpose of paragraph (A), once a structure has been deemed "substantially complete" subsequent improvements to the structure shall not be considered for the purpose of determining the date on which a sale transaction would be taxable under this Section.
 - (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 Real Property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale, where the improvement to such property is not substantially complete at the time of the sale.
- (b) Exclusions.
- (1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Section 17-416.2.
 - (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)

Sec. 17-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.

- (a) A sale of a home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:
 - (1) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and
 - (2) the seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and
 - (3) the seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.
- (b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family

- residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.
- (c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.
 - (d) "Owner", "Homeowner" and "Seller" as used in this Section 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.
 - (e) "Qualified trust" as used in this Section means any legal trust where a beneficiary of the trust is an individual that has been the resident of the property and that individual meets the criteria listed in subsection (a) of this Section.
 - (f) A sale of a home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:
 - (4) the property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and
 - (5) 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
 - (6) 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.
 - (g) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.
 - (h) 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.
 - (i) "Owner", "Homeowner" and "Seller" as used in this Section 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.
 - (j) "Qualified trust" as used in this Section means any legal trust where a beneficiary of the trust is an individual that has been the resident of the property and that individual meets the criteria listed in subsection (a) of this Section.

Sec. 17-416.2. 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; and
 - (2) the "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and
 - (3) the total cost of all construction contracting activities performed on said real property in the twenty-four (24) period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and
 - (4) the structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.
- (b) Except as provided in subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor, in the year immediately preceding the year in which the reconstruction improvements 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 improvements.
- (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 the reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory, such evidence shall consist, at a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long-term lending – not interim or construction financing will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.
- (d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or 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.

Sec. 17-417. 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%) 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 17-415(c)(2); and
 - (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.
- (a) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.
- (b) 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:
 - (ii) Section 17-465, Subsections (g) and (p)
 - (iii) (Reserved)shall be exempt or deductible, respectively, from the tax imposed by this Section.
 - B) the gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.
 - C) the gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to Section 16-465, Subsection (g) shall be exempt from the tax imposed under this section.
 - D) the gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used

directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this section.

- E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) The attributable amount shall not exceed the value of the development fees actually imposed.

(ii) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iv) "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 Section 9-463.05, Section 11-1102 or Title 48 regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

B) the gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 17-110, that is deducted from the retail classification pursuant to section 17-465(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 deductions provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) To become so affixed to real property that it becomes part of the real property.

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a

contract to provide and install a solar energy device. The contractor shall register with the Department of Revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the Department of Revenue and the town, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

- A) A tax credit equal to the amount of town privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- B) A tax credit equal to the amount of privileges taxes paid to this town, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- C) No credits provided herein may be claimed until time that the gross income against which said credits apply is reported.

(d)The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 17-540, will be based on reportable date.

(e)(Reserved)

Sec. 17-418. (Reserved).

Sec. 17-420. (Reserved).

Sec. 17-422. (Reserved).

Sec. 17-425. Job Printing

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.
- (b) The tax imposed by this Section shall not apply to:
 - (1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
 - (2) Out-of-Town sales.
 - (3) Out-of-State sales.
 - (4) job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 17-435(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.
- (6) (Reserved)

Sec. 17-425.1 Distinction between job printing and certain related activities.

- (a) Computerized Printing. Computerized versions of all items which would be taxable under Section 17-425 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.

Sec. 17-427. Manufactured buildings.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the Town. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.
- (b) Sales of used manufactured buildings are not taxable.
- (c) The sale prices of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. Sales of such items are subject to the tax under Section 17-460.
- (d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability.

Sec. 17-430. Timbering and other extraction.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:
 - (1) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
 - (2) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.
- (b) the rate specified in subsection (a) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the Town, regardless of the place of sale of the product or the fact that delivery may be made to a point without the Town or without the State.
- (c) if any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State

and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(d) (Reserved)

Sec. 17-432. Mining.

- (a) The tax rate shall be at an amount equal to one tenth of one percent (.1%), not to exceed one tenth of one percent, of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit, or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.
- (b) The rate specified in subsection (a) above shall be applied to the value of the entire product mined, smelted or produced for sale, profit, or commercial use, when such activity occurs within the Town, regardless of the place of sale of the product or the fact that delivery may be made to a point without the Town or without the State.
- (c) If any person engaging in any business classified in this section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the state in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

Sec. 17-435. Publishing and periodicals distribution.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:
 - (1) publication of newspapers, magazines, or other periodicals when published within the Town measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 17-405. 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 Town of newspapers, magazines, or other periodicals not published within the Town, measured by the gross income derived from subscriptions.
- (b) "Location of Publication" is determined by:
 - (1) location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or
 - (2) location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.
- (c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.
- (d) "Circulation," for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or

intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

- (e) Allocation of taxes between cities and towns. In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the Town shall include:
 - (1) that portion of the gross income from publication which reflects the ratio of circulation within this Town to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus
 - (2) only when publication occurs within the Town, that portion of the remaining gross income from publication occurs within the Town, that portion of the remaining gross income from publication which reflects the ratio of circulation within this Town to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.
- (f) The tax imposed by this section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

Sec. 17-435.1. 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.

Sec. 17-435.2. 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 17-405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 17-435.

Sec. 17-440. (Reserved)

Sec. 17-444. Hotels

The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

- (a) transient.
- (b) Exclusions. The tax imposed by this section shall not include:
 - (1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political

- subdivision of this state or of any other state in a privately operated prison, jail or detention facility.
- (2) Gross proceeds of sales or gross income that is properly included in another business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.
 - (3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article.
 - (4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 17-410 or Section 17-475 due to an exclusion, exemption or deduction.
 - (5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 17-445 or Section 17-450 as rental, leasing or licensing for use of real or tangible personal property.
 - (6) Income from providing telephone, fax or internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 17-470 as telecommunication services.

Sec. 17 -445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to two percent (2%) 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 Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:
 - (1) payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) however, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 17-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services or that is a cable operator, or charges for joint pole usage to a person engaged in the business of providing or furnishing utility or telecommunication services or that is a cable operator are exempt from the tax imposed by

this section. "Cable Operator" has the same meaning as prescribed by A.R.S. Section 9-505.

- (e) Exempt from the tax imposed by this section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) A person who has less than three (3) 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 with 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 three (3) lodging spaces.
- (g) Single-unit/single-tenant rental, leasing, or licensing. A person who has only one unit of commercial property rented or available for rent, lease, or license shall be deemed not to be in the business of rental, leasing, or licensing of real property, as provided by Regulation, and further provided that both of the following conditions exist:
 - (1) such lessor has income from any other source; and
 - (2) the scope and degree of rental activity clearly indicates that it is an investment rather than a business activity of the lessor.
- (h) (Reserved)

Sec. 17-445.1. When the rental, leasing, and licensing of real property is exempt as "casual".

- (a) The person who has less than three (3) 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 17-445 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 17-445 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 three (3) lodging spaces within the State.
- (b) For the purposes of this subsection (b) only, the term "rent" shall include "lease" and "license for use." For the purposes of determining if a single-unit/single-tenant commercial rental is "casual," the following provisions shall apply:
 - (1) A "unit" of real property means any single real property location, or any portion, rented to a single tenant. For example:
 - A) a three-story office building leased to a company as sole and single tenant is considered one unit of property.
 - B) a building where individual spaces are rented to two (2) or more individuals even though members of the same profession or business, on separate leases, is deemed two (2) or more units.

- C) a building owner who leases out a portion of that building to another has two (2) units of property rented or available for rent.
- (2) "Commercial" property is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.
- (3) If a person has one (1) unit of commercial property rented or available for rent, and has one or more "lodging spaces" also rented or available for rent, he shall be considered in the business of rental of real property, and may not claim the rental of his single unit of commercial property as "casual".
- (4) Income from a source in connection with the rental of real property, such as income for maintenance or service charges to the tenant, is not "income from another source."
- (5) "Income from another source" must be of an amount to indicate that the property is clearly held for investment. Minimal amounts received as interest from savings accounts, and the like, do not qualify.
- (6) A corporation, or a partnership comprising other than individual members of the same immediate family, is considered to be in business, and therefore even if it has only one unit of real property rented or available for rent, it cannot be deemed to have made a non-business investment, and cannot claim such rental as "casual".
- (7) Note that there are four (4) conditions for rental of commercial real property to be deemed "casual activity," which must all be met. They are, in brief:
 - A) the lessor has only one unit of commercial property rented or available for rent, counting any commercial property he occupies, if any; and
 - B) the lessor has no lodging rented or available for rent: and
 - C) the lessor has significant income from another source; and
 - D) the scope of the rental activity is clearly a non-business investment.

Sec. 17-445.3. 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 17-444 or Section 17-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 17-455.
- (b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:
 - (1) any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and
 - (2) the lessor separately charges tenants for lodging and for furnishings: and
 - (3) the lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.

If all of the above conditions are met, such person shall report both sources of income separately to the Town.

Sec. 17-446. (Reserved)

Sec. 17-447.1 (Reserved)

Sec. 17-450. Rental, leasing, and licensing for use of tangible personal property.

- (a) The tax rate shall be at an amount equal to two percent (2%) 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 Town as provided by Regulation.
- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
 - (1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
 - (2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
 - (3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 17-410, or to a radio station, television station, or subscription television system.
 - (4) rental, leasing, or licensing for use of the following:
 - A) prosthetics.
 - B) Income-producing capital equipment.
 - C) Mining and metallurgical supplies.These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.
 - (5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement of rehabilitation programs or testing for mentally or physically handicapped persons.

- (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services or that is a cable operator, or charges for joint pole usage to a person engaged in the business of providing or furnishing utility or telecommunication services or that is a cable operator. "Cable Operator" has the same meaning as prescribed by A.R.S. Section 9-505.
- (8) the gross income from coin-operated washing, drying, and dry-cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.
- (9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) rental, leasing and licensing for use of 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.
- (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, as applicable, for examination.
- (12) leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by A.R.S. Section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in A.R.S. Section 28-1301.

Sec. 17-450.1 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.

Sec. 17-450.2 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 warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is EXEMPT.

Sec. 17-450.3. Rental, leasing, and licensing of 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.

Sec. 17-450.4. Rental, leasing, and licensing for use of tangible personal property: semi-permanently or permanently installed tangible personal property.

- (a) The term "semi-permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.
- (b) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.
- (c) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.
- (d) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.
- (1) For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.

- (2) Other similar examples include, but are not limited to: camping equipment, contracting equipment chain saw, forklift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, tow bars, sump pumps, arc welders.
- (e) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one of the other types of portable equipment or property described in subsection (d) above.

Sec. 17-450.5. 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 17-450; provided that the provisions of Regulation 17-100.2 have been met.
- (b) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be EXEMPT.
- (c) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property are exempt from the tax imposed by Section 17-450; however, such income is subject to the provisions of Sections 17-460 and 17-465, and the provisions of Regulation 17-465.1.

Sec. 17-452. (Reserved)

Sec. 17-455. Restaurants and Bars.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.
- (b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.
- (c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in

A.R.S. § 42-5061(A)49, that serves the food and beverages to its passengers, without additional charge, for consumption in flight.

- (e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.
- (F) The tax imposed by this section shall not apply to sales of low or reduced cost articles of food or drink to eligible elderly or homeless persons or persons with a disability by a business subject to tax under A.R.S. Section 42-5074 that contracts with the Department of Economic Security and that is approved by the Food and Nutrition Service of the United States Department of Agriculture pursuant to the Supplemental Nutrition Assistance Program established by the Food and Nutrition Act of 2008 (P.L. 110-246; 122 Stat. 1651;7 United States Code Sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the Supplemental Nutrition Assistance Program.
- (G) The tax imposed by this section shall not apply to sales by a nonprofit organization that is exempt from taxation under Section 501(C)(3), 501(C)(6) of the Internal Revenue Code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from taxation under A.R.S. Section 42-5073.
- (H) If a city, town or other taxing jurisdiction imposes a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on the sale of food items intended for human consumption as defined by rule adopted pursuant to A.R.S. Section 42-5106 or items prescribed by A.R.S. Section 42-5106, Subsection D for consumption on the premises. The tax must be applied uniformly with respect to all food items, and an additional tax or fee differential may not be assessed or applied with respect to any specific food item.
- (I) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

Sec. 17-460. Retail sales: measure of tax; burden of proof; exclusions.

- (a) The tax rate shall be at an equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.
- (b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
- (c) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:
 - (1) sales of stocks, bonds, options, or other similar materials.

- (2) sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
- (3) sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
- (4) gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
- (5) sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.
- (6) sales of cash equivalents. The gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. "cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:
 - (A) items or intangibles that are sold to one or more persons, through which a value is not denominated in money.
 - (B) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection (g) of this section.
- (d) (Reserved)
- (e) When this Town and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.
- (f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this Town 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.
- (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.
- (h) 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 at retail.
- (i) 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.

- (j) A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:
- (1) Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.
 - (2) Businesses classified under the:
 - (A) Advertising classification.
 - (B) Construction contracting classifications.
 - (C) Job printing classification.
 - (D) Manufactured buildings classification.
 - (E) Publishing and periodical distribution classification.
 - (F) Restaurants and bars classification.
 - (G) Telecommunications classification.
 - (H) Transporting for hire classification.
 - (I) Utility services classification.
 - (J) Wastewater removal services classification.

Sec. 17-460.1. 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 by only as gross income from such business activity and not sales at retail taxed by Section 16-460:
- (1) tangible personal property incorporated into real property as part of reconstruction or contracting, per Sections 17-415 through 17-418.
 - (2) (Reserved)
 - (3) job printing, per Section 17-425.
 - (4) mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground per Section 17-430.
 - (5) publication of newspapers, magazines, and other periodicals, per Section 17-435.
 - (6) rental, leasing, and licensing of real or tangible personal property, per Sections 17-445 or 17-450.
 - (7) restaurants and bars, per Section 17-455.
 - (8) telecommunications services, per Section 17-470.
 - (9) utility services, per Section 17-480.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.
- (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
 - (2) Items attached or installed on tangible personal property are retail sales.

- (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).
- (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.
- (d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
 - (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
 - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
 - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
 - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Sec. 17-460.2. 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.

Sec. 17-460.4. Retail sales: professional services.

- (a) "Professional Services" refer to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, workpapers, reports, etc. are not in a form which would be subject to retail sales to customers.

However, transfer of items in a form which would 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 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 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.

Sec. 17-460.5. Retail sales: monetized bullion; numismatic value of coins.

- (a) "Monetized Bullion" means coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.
- (b) Any coin shall be considered to have been transferred or acquired primarily for its "Numismatic value" if the sale or acquisition price:
 - (1) is equal to or greater than twice (2 times) the value of the metallic content of the coin as of the date of transfer or acquisition; and

- (2) is equal to or greater than twice (2 times) its face value, in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

Sec. 17-462. Retail sales: food for home consumption.

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in the business or selling food for home consumption at retail.
- (b) For the purpose of this section only, the following definitions shall be applicable:
 - (1) "Eligible grocery business" means an establishment that is deemed eligible to participate in the Supplemental Nutrition Assistance Program established by the Food and Nutrition Act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code Sections 2011 through 2036A) by the United States Department of Agriculture Food and Nutrition Service or an Establishment that proves to the satisfaction of the Department of Revenue that, based on the nature of the establishment's food sales, could be eligible to participate in the Supplemental Nutrition Assistance Program established by the Food and Nutrition Act of 2008.
 - (2) "Facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.
 - (3) "Food for consumption on the premises" means any of the following:
 - (A) "Hot prepared food" as defined below.
 - (B) Hot or cold sandwiches.
 - (C) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.
 - (D) Food served with trays, glasses, dishes, or other tableware.
 - (E) Beverages sold in cups, glasses, or open containers.
 - (F) Food sold by caterers.
 - (G) Food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.
 - (H) Any item contained in subsections (a)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.
 - (4) "Hot prepared food" means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.
 - (5) "Premises" means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.

- (6) "Food for home consumption" means all food, except food for consumption on the premises, if sold by any of the following:
- (A) An eligible grocery business.
 - (B) A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.
 - (C) A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.
 - (D) A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.
 - (E) Vending machines and other types of automatic retailers.
 - (F) A person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a county sheriff.
- (c) Income derived from the following sources is exempt from the tax imposed by this section:
- (1) Sales of food for home consumption to a person regularly engaged in the business of selling such property.
 - (2) Out-of-town sales or out-of-state sales.
 - (3) Charges for delivery or other "direct customer services" as prescribed in Section 17-100.2.
 - (4) Items purchased with United States Department of Agriculture coupons issued under the Supplemental Nutrition Assistance Program pursuant to the Food and Nutrition Act of 2008 (P.L. 88-525; 78 Stat 703; 7 United States Code sections 2011 through 2036b) by the United States Department of Agriculture Food and Nutrition Service or food instruments issued under Section 17 of the Child Nutrition Act (P.L. 111-296; 42 United States Code Section 1786.
 - (5) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
 - (6) 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. Section 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 purpose 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.
 - (7) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(C)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost, for the purposes of this subsection, "accessories" means paper plates,

plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

- (d) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 17-520, report to the tax collector in a manner prescribed by the tax collector all sales of food for home consumption exempted from taxes imposed by this Chapter.
- (e) Recordkeeping.
 - (1) Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this chapter. A retailer may use any method of reporting that property reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III.
 - (2) Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the tax collector, a person cannot demonstrate to the tax collector that such records and reports do properly reflect all sales of food for home consumption, the tax collector may re-compute the amount of tax to be paid as provided in Sections 17-370 and 17-545(b).
- (f) If a city, town or other taxing jurisdiction imposes a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on the sale of food items intended for human consumption as defined by rule adopted pursuant to A.R.S. Section 42-5106 or items prescribed by A.R.S. Section 42-5106, Subsection D for home consumption, the tax must be applied uniformly with respect to all food, and an additional tax of fee differential may not be assessed or applied with respect to any specific food item.

Sec. 17-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 17-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) Out-of-Town sales or out-of-State sales, including tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.
- (c) charges for delivery, installation, or other direct customer services as prescribed in Section 17-100.2.
- (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) Tangible personal property sold to a person engaged in the business of renting, leasing or licensing for use such property under the rental, leasing, and licensing for use of tangible personal property classification if such property is to be rented, leased or licensed for use by such person.
- (i) sales of mining and metallurgical supplies.
- (j) sales of:

- (1) 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;
 - (2) use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739.
 - (3) natural gas or liquefied petroleum gas used to propel a motor vehicle.
 - (4) motor vehicle fuel and use fuel to a qualified business under A.R.S. Sections 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in A.R.S. Section 41-1516.
 - (5) repair parts installed in equipment used directly by a qualified business under A.R.S. Section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying forest products removed from qualifying projects as defined in A.R.S. Section 41-1516.
- (k) sales of tangible personal property to:
- (1) 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.
 - (2) a person that is not subject to tax under Section 415(B)(12) and that has been provided a copy of a certificate under A.R.S. Section 42-5009, Subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the motor vehicle dealer ships or delivers the motor vehicle to a destination outside this State.
- (m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) the following shall be deducted from the tax base for the retail classification:
- (1) the gross proceeds of sales or gross income derived from sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.
 - (2) the gross proceeds of sales or gross income derived from sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.
 - (3) the gross proceeds of sales or gross income derived from 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.
 - (4) the gross proceeds of sales or gross income derived from sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph (3) of the subsection.

- (5) fifty percent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies that is not deducted under paragraphs (1) through (4) of this subsection.
- (6) for the purposes of this subsection:
 - (A) "overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.
 - (B) "subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.
- (o) sales of 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 17-455 or the equivalent excise tax upon such income.
- (p) Tangible personal property sold to:
 - (1) a qualifying hospital;
 - (2) a qualifying health care organization if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services;
 - (3) a qualifying health care organization if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one;
 - (4) a qualifying community health center;
 - (5) a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost;
 - (6) for taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy;
 - (7) a qualifying health sciences educational institution;
 - (8) any person representing or working on behalf of another person described in subdivisions (1) through (7) of this paragraph if the tangible personal property is

incorporated or fabricated into a project described in A.R.S. Section 42-5075, subsection O.

- (q) (Reserved).
- (r) sales of the following to persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry or ratites;
 - (1) livestock and poultry to persons engaging in the businesses of farming, ranching or producing livestock or poultry.
 - (2) livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the businesses of farming, ranching and producing or feeding livestock, poultry, or livestock or poultry products or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.
 - (3) implants used as growth promotants and injectable medicines, not already exempt under the definition of "prosthetic", for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.
 - (4) neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.
- (s) sales of groundwater measuring devices required by A.R.S. Section 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 or "art creations", such as jewelry, macramé, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, aesthetic and utilitarian, are not exempt, whether sold by the artist or by another.
- (u) seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563. This includes sales made directly by owners, proprietors or tenants of agricultural lands or farms who sell livestock or poultry feed that is grown or raised on their lands to any of the following:
 - (1) persons who feed their own livestock or poultry.
 - (2) persons who are engaged in the business of producing livestock or poultry commercially.
 - (3) Persons who are engaged in the business of feeding livestock or poultry commercially or who board livestock noncommercially.
- (w) (Reserved)

Sec. 17-465.1. Retail sales: repair services.

- (a) Fair market value of parts and labor charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part, which ordinarily sells to the customer at \$10, at \$5 and including the difference as "service" or "labor". In the absence of satisfactory evidence supplied by the taxpayer as to

industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit, to estimate the gross income subject to tax.

- (b) Notwithstanding Regulation 17-350.1(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.

Sec. 17-465.2. 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 17-460.
- (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 17-460 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 17-460. 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 17-465 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 17-460.

Sec. 17-465.3. Retail sales: sale of containers, paper products, and labels.

- (a) The sale of a container or similar packaging material which contains personal property and which is transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such nontaxable containers include but are not limited to:

- (1) packaging materials sold to a manufacturer of video equipment for containment of the product during shipment.
 - (2) Cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.
 - (3) bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are used to contain and measure the amount purchased by the customer.
 - (4) shopping bags and similar merchandising bags sold to grocery stores, department stores or other retailers.
 - (5) gift wrappings and gift boxes sold to department stores or other retailers.
- (b) Sales of non-returnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks, and other similar food accessories to a restaurant or others taxable under Section 17-455 for transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink or condiment are sales for resale and not taxable.
- (c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper and other appropriate materials, the wrapping charge shall be considered a sale.
- (d) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.
- (e) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.

Sec. 17-465.4. Retail sales: aircraft acquired for use outside the State.

"Aircraft acquired for use outside the state" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

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

Sec. 17-470. Telecommunication services.

- (a) The tax rate shall be at an amount equal to two percent (2%) 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 Town.
 - (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 Town 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 Town 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 telephone, fax, or internet access services provided at an additional charge by a hotel business subject to taxation under section 17-444.
- (b) Resale telecommunication services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the Town to engage in such business.
- (c) Interstate transmission. Charges by a provider of telecommunication services for transmissions originating in the Town and terminating outside the State are exempt from the tax imposed by this section.
- (d) Tax credit offset for franchise fees. There shall be allowed as an offset, up to the amount of tax due, any amounts paid to the Town for license fees or franchise fees, but such offset shall not be allowed against taxes imposed by any other Section of this Chapter. Such offset shall not be deemed in conflict with or violation of subsection 17-400(b).
- (e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in A.R.S. Section 9-505, shall be exempt from the tax imposed by this Section.
- (f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 17-460 are exempt from the tax imposed under this Section.
- (g) Internet access services. The gross income subject to tax under this section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:
- (1) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.
 - (2) "Internet Access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.
- (h) Alarm monitoring services. The gross income subject to tax under this section shall not include sales of monitoring services relating to an alarm system as defined in A.R.S. Section 32-101.
- (i) Over-The-Top services. The gross income subject to tax under this section shall not include sales of over-the-top services. For the purposes of this paragraph

“over-the-top services” means audio or video programming services that are received by the purchaser by means of an internet connection, regardless of the technology used, that include linear or live programming and that are generally considered comparable to programming provided by a radio or television broadcast station and includes related on demand programming provided at no additional charge, regardless of whether the services are provided independently or packaged with other audio or video programming.

Sec. 17-475. Transporting for hire.

The tax rate shall be at an amount equal to two percent (2%) 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 Town to another point within the State:

- (a) transporting of persons or property by railroad; provided, however, that the tax imposed by this Subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this state if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State. For purposes of this paragraph, “a single shipment” means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.
- (b) transporting of oil or natural or artificial gas through pipe or conduit.
- (c) transporting of property by aircraft.
- (d) transporting of persons or property by motor vehicle, including towing and the operation of private car companies, as such are defined in Article VII, Chapter 14, Title 42, Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:
 - (1) gross income subject to the tax imposed by Article IV, Chapter 16, Title 28, Arizona Revised Statutes.
 - (2) gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.
 - (3) (Reserved)
 - (4) (Reserved)
- (e) (Reserved)
- (f) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:
 - (1) income that is specifically included as the gross income of a business activity upon which section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
 - (2) income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.
 - (3) any amount attributable to fees collected by transportation network companies issued a permit pursuant to A.R.S. Section 28-9552.

- (4) transporting for hire persons by transportation network company drivers on transactions involving transportation network services as defined in A.R.S. Section 28-9551.
- (5) transporting for hire persons by vehicle for hire companies issued a permit pursuant to A.R.S. Section 28-9503.
- (6) transporting for hire persons by vehicle for hire drivers on transactions involving vehicle for hire services as defined in A.R.S. Section 28-9501.
- (g) the tax imposed by this section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

Sec. 17-475.1. 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.

Sec. 17-480. Utility services.

- (a) The tax rate shall be at an amount equal to two percent (2%) 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 with the Town.
 - (2) (Reserved)
- (b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 17-460 and 17-465, and not considered gross income taxable under this Section.
- (c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by 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.

- (f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (g) The tax imposed by this Section shall not apply to:
 - (1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
 - (2) revenue received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.
- (h) The tax imposed by this section shall not apply to sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a department of environmental quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.
- (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.
- (j) The tax imposed by this Section shall not apply to the portion of gross proceeds of sales or gross income attributable to transfers of electricity by any retail electric customer owning a solar photovoltaic energy generating system to an electric distribution system, if the electricity transferred is generated by the customer's system.
- (k) (Reserved)

Sec. 17-485. (Reserved)

ARTICLE V - ADMINISTRATION

Sec. 17-500. Administration of this Chapter; rule making.

- (a) The administration of this Chapter is vested in and exercised by the Town of Duncan, and except as otherwise provided, and all payments shall be made to the Town of Duncan. The Town may, pursuant to an intergovernmental agreement, contract with the State of Arizona Department of Revenue for the administration of the tax. In such cases, "Tax Collector" shall also mean the Arizona Department of Revenue, when acting as agent in administering this tax.
- (b) The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.
- (c) Except where such Regulations would conflict with administrative regulations adopted by the Town Council or with provisions of this Chapter, all regulations on the Transaction

Privilege Tax adopted by the Arizona Department of Revenue under the authority of A.R.S. Section 42-105 shall be considered Regulations of this Chapter and enforceable as such.

- (d) Taxpayers shall be subject to the State Taxpayer Bill of Rights (A.R.S. § 42-139 ET SEQ.).
- (e) The Unified Audit Committee shall publish uniform guidelines that interpret the Model City Tax Code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005.
 - (1) Prior to finalization of uniform guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment.
 - (2) Pursuant to A.R.S. Section 42-6005(D), when the state statutes and the Model City Tax Code are the same and where the Arizona Department of Revenue has issued written guidance, the department's interpretation is binding on cities and towns.

Sec. 17-510. Divulging of information prohibited; exceptions allowing disclosure.

- (a) Except as specifically provided, it shall be unlawful for any official or employee of the Town to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.
- (b) The Town 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 Town Attorney or other legal advisor to the Town designated by the Town Council, officials, or employees of the Town 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 Town.
- (f) The Tax Collector shall provide information to appropriate representatives of any Arizona city or town 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 17-435 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 Town has an agreement.

Sec. 17-515. (Reserved)

Sec. 17-516. (Reserved)

Sec. 17-517. (Reserved)

Sec. 17-520. Reporting and payment of tax.

- (a) The taxpayer shall be required to use the report form authorized by the Tax Collector and shall mail or deliver the same, together with remittance for the amount of tax due, payable to the Town of Duncan, to the Tax Collector or any Town representative or agent authorized to receive such payment. The tax return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return.
- (b) Payment. If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.
- (c) Requirement of Security. If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party 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 17-417.

Sec. 17-520.1. (Reserved)

Sec. 17-520.2. 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 Town. 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.

Sec. 17-530. When tax due; when delinquent; verification of return; extensions.

- (a) Except as otherwise specified in this Section, the taxes levied under this Chapter shall be due and payable monthly on or before the twentieth (20th) day of the month next succeeding the month in which the tax accrues.
- (b) Any person who is engaged in or conducting business in two or more locations or under two or more business names shall file the return required under this chapter by electronic means.
- (c) The department, for any taxpayer whose estimated annual liability for taxes imposed or administered by A.R.S. Title 42, Chapter 5, Article 1 or A.R.S. Title 42, Chapter 6 is between two thousand dollars and eight thousand dollars, shall authorize such taxpayer to pay such taxes on a quarterly basis. The department, for any taxpayer who estimated annual liability for taxes imposed or administered by A.R.S. Title 42, Chapter 5, Article I or A.R.S. Title 42, Chapter 6 is less than two thousand dollars shall authorize such taxpayer to pay such taxes on an annual basis.
- (d) Delinquency Date. The taxes levied under this chapter will be considered delinquent in accordance with A.R.S. Section 42-5014, as follows:
 - (1) For Taxpayers that are required or elect to file and pay electronically in any month, if not received by the department on or before the last business day of the month.
 - (2) For all other taxpayers, if not received by the department on or before the business day preceding the last day of the month.
- (e) Jeopardy reporting. If the Tax Collector determines that the collection of any tax due to the town 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.
- (f) 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.

Sec. 17-540. Interest and civil penalties.

Any taxpayer who shall have failed to timely pay any taxes imposed by this Chapter, or file a report for the same in a timely manner, or fail or refuse to allow examination of records by the Tax Collector, shall be subject to any interest or civil penalties on such tax in like manner as such interest and penalties are provided in A.R.S. Sections 42-134 and 42-136 for the State Transaction Privilege Tax.

- (a) (Reserved)
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)

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- (e) (Reserved)
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)

Sec. 17-541. (Reserved)

Sec. 17-542. Prospective application of new law or interpretation or application of law.

- (a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.
- (b) If the Tax Collector adopts a new interpretation or application of any provision of this chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
 - (1) The changes in interpretation or application applies prospectively only unless it is favorable to taxpayers.
 - (2) The Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- (c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this chapter.
- (d) (Reserved)

Sec. 17-545. Deficiencies; when inaccurate return is filed; when no return is filed; estimates.

- (a) If a taxpayer has failed to file a return or if the Tax Collector is not satisfied with the return or payment of tax required, the Tax Collector may re-determine the tax due, plus penalties and interest, and notify the taxpayer, as provided and prescribed by A.R.S. Sections 42-117 and 42-118.
 - (1) (Reserved)
 - (2) (Reserved)
- (b) Estimates by the Tax Collector. Any estimate made by the Tax Collector is to be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Tax Collector's estimate. It is the responsibility of the taxpayer to prove that the Tax Collector's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Tax Collector.

Sec. 17-546. (Reserved)

Sec. 17-550. Limitation periods.

- (a) Except as provided elsewhere in this Chapter, deficiency assessments for the taxes imposed by this Chapter must be issued within the limitation periods prescribed in A.R.S. Section 42-113, and must meet the provisions of A.R.S. Section 42-117.

- (b) (Reserved)
- (c) In cases of failure to file a return or a false or fraudulent return, the limitation period shall be as prescribed in A.R.S. Section 42-118.
- (d) Special provisions relating to owner-builders. The limitation for an owner-builder subject to the tax as prescribed in Section 17-417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 17-417.

Sec. 17-555. 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 17-550.
- (b) (Reserved)
- (c) (Reserved)
- (d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.
- (e) The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 17-545(b), concerning estimates, shall apply.
- (f) (Reserved)

Sec. 17-555.1. (Reserved)

Sec. 17-556. (Reserved)

Sec. 17-560. Erroneous payment of tax; credits and refunds; limitations.

- (a) Except as provided in Section 17-565, the period within which a claim, meeting the requirements of subsection (c) of this section, for credit may be filed, or refund allowed or made if no claim is filed, shall be as provided in A.R.S. Sections 42-1106 and 42-1118. For purposes of this section, "claimant" means a taxpayer that has paid a tax imposed under this article and has submitted a credit or refund claim under this section. Except where the taxpayer has granted a customer a power of attorney to pursue a credit or refund claim on the taxpayer's behalf, claimant does not include any customer of such taxpayer, whether or not the claimant collected the tax from the customers by separately stated itemization.
- (b) (Reserved)
- (c) A credit or refund claim submitted by a claimant for credit or refund of any taxes, penalties, or interest paid must be in writing and:
 - (1) identify the name, address and city tax identification number of the taxpayer; and
 - (2) identify the dollar amount of the credit or refund requested; and
 - (3) identify the specific tax period involved; and

- (4) identify the specific grounds upon which the claim is based.
- (d) (Reserved)
- (e) (Reserved)
- (f) Interest shall be allowed on the overpayment of tax for any credit or refund authorized pursuant to this section at the rate and in the manner set forth in Section 17-540(a). Interest shall be calculated from the date the tax collector receives the claimant's written claim meeting the requirements of subsection (c) of this section.
- (g) The denial of a refund by the tax collector is subject to the provisions of A.R.S. Section 42-1119.
- (h) Claimants shall be subject to the State Taxpayer Bill of Rights (A.R.S. Section 42-2051 et.seq.), except that reasonable fees and other costs may be awarded and are not subject to the monetary limitations of A.R.S. Section 42-2064 if the tax collector's position was not substantially justified or was brought for the purpose of harassing the claimant, frustrating the credit or refund process or delaying the credit or refund. For the purposes of this section, "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, not to exceed the amounts actually paid for expert witnesses, the cost of any study, analysis, report, test, project or computer program that is found to be necessary to prepare the claimant's case and necessary fees for attorneys or other representatives.
- (i) (Reserved)
- (j) Any refund paid under the provisions of this section shall be paid from the privilege tax revenue accounts.

Sec. 17-565. Payment of tax by the incorrect taxpayer or the incorrect Arizona city or town.

- (a) When it is determined that taxes have been reported and paid to the Town by the wrong taxpayer, any taxes erroneously paid shall be transferred by the Town to the Privilege Tax Account of the person who actually owes and should have paid such taxes, provided that the town receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax.
- (b) An assignment and waiver provided under this Section, must:
 - (1) identify the name and town privilege license number of the person who erroneously paid the tax and the person who should have paid the tax.
 - (2) provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid.
 - (3) authorize the Town treasurer to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax.
- (c) When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town; provided that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The Town shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.
- (d) This section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. Section 42-1452. The limitations and procedures set forth in A.R.S. Section 42-1452 shall apply to all payments under this Section.

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- (e) When reference is made in this Section to this Town or an Arizona city or town, and payments made to or requested from this town 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 Town or an Arizona city or town.

Sec. 17-567 (Reserved)

Sec. 17-570 Administrative review; petition for hearing or for redetermination; finality of order.

- (a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-123.
- (b) Administrative review.
 - (1) Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-122, as modified by Section 17-571.
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
 - (5) Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-122. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-124.
 - (6) (Reserved)
 - (7) (Reserved)
 - (8) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) Taxpayers shall be subject to the state taxpayer bill of rights (A.R.S. Section 42-139 ET. SEQ.).

Sec. 17-571. Jeopardy assessments.

- (a) If the Tax Collector believes that collection of any amounts imposed by this Chapter will be jeopardized by delay, he shall issue notice to the taxpayer in accordance with the provisions of A.R.S. Section 42-120.
- (b) In cases where such jeopardy notice has been issued, the taxpayer must meet the provisions of A.R.S. Section 42-120, concerning appeals of jeopardy assessments, before any request for administrative review shall be honored. Any bond or collateral that may be required shall meet the provisions of A.R.S. Section 42-112.
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)

Sec. 17-571.1. Collection of tax in jeopardy.

Evidence that collection of tax due is in jeopardy shall include documentation that:

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- (a) the taxpayer is going out of business.
- (b) the taxpayer has no Town 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 Town 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 17-555.1.

Sec. 17-572. (Reserved)

Sec. 17-575. Judicial review.

- (a) Appeal of a State Board of Tax Appeals decision to the courts is valid only if all the provisions of A.R.S. Section 42-124 are met.
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) The Town has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirement of this chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:
 - (1) the taxpayer asserts a reasonable dispute regarding the issue.
 - (2) the taxpayer has fully cooperated with the tax collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the tax collector.
 - (3) the taxpayer has kept and maintained records as required by the Town.
- (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 Town 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 Town to recover any amounts claimed to be due to it by virtue of the original assessment.
- (g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure.

Sec. 17-577. (Reserved)

Sec. 17-578. (Reserved)

Sec. 17-580. 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, an exemption from taxes imposed by this Chapter.
- (b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.
- (c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

Sec. 17-590. 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 Town 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 Town council and further, stating that the town claims a lien therefor.
 - (2) The notice of claim of lien shall be signed by the tax collector under his official seal or the official seal of the Town, 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 within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.
 - (3) Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the Town, but shall be payable to

and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection (b) below.

- (4) Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, interest, recording costs and lien processing fees referred to above and lien release fees imposed by the county recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the Town.
- (b) Actions to recover tax. The Arizona Department of Revenue, or any agent or representative authorized by that Department, may bring action, in the name of the Town, to recover taxes as provided in A.R.S. Section 42-125.

Sec. 17-595. Collection of taxes when there is succession in and/or cessation of business.

- (a) In addition to any remedy provided elsewhere in this Town 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 of 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 17-416 and 17-417.
 - (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 17-416 (A)(4) and all of the requirements of Section 17-416(B)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale.
 - (2) In the event a creditor or its affiliate uses the acquired improved real property for any business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated. Before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 17-416 and 17-417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the

month in which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition.

- (3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this subsection. Neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate.
 - (4) If the tax liability imposed by either Section 17-416 or Sections 17-417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the tax collector by the debtor subsequent to payment of the tax by the creditor or its affiliate. The amount so paid may constitute a credit. As equitably determined by the tax collector in good faith. Against the tax imposed on the creditor or its affiliate by either paragraph 1 or paragraph 2 of this subsection.
 - (5) Notwithstanding anything in this chapter to the contrary, if a creditor or its affiliate is subject to tax as described in paragraph 1 or paragraph 2 of this subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due.
- (d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all Town 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.

ARTICLE VI – USE TAX

Sec. 17-600. (Reserved)

Sec. 17-601. (Reserved)

Sec. 17-602. (Reserved)

Sec. 17-610. (Reserved)

Sec. 17-620. (Reserved)

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Sec. 17-630. (Reserved)

Sec. 17-640. (Reserved)

Sec. 17-650. (Reserved)

Sec. 17-660. Use tax: exemptions.

The storage or use in the Town of the following tangible personal property is exempt from the Use Tax imposed by this Article:

- (a) tangible personal property brought into the Town by an individual who was not a resident of the Town at the time the property was acquired for his own use, if the first actual use of such property was outside the Town, unless such property is used in conducting a business in Town.
- (b) tangible personal property not exceeding two hundred dollars in any one month purchased by an individual at retail outside the continental limits of the United States for the individual's own personal use and enjoyment.
- (c) charges for delivery, installation, or other customer services, as prescribed in Section 17-100.2.
- (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) tangible personal property acquired by a person engaged in the business of renting, leasing or licensing for use such property under the rental, leasing, and licensing for use of tangible personal property classification if such property is to be rented, leased or licensed for use by such person.
- (i) mining and metallurgical supplies.
- (j) purchases of:
 - (1) 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 16, Title 28, Arizona Revised Statutes.
 - (2) Use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739;
 - (3) natural gas or liquefied petroleum gas used to propel a motor vehicle;
 - (4) motor vehicle fuel and use fuel to a qualified business under A.R.S. Section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in A.R.S. Section 41-1516;
 - (5) repair parts installed in equipment used directly by a qualified business under A.R.S. Section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in A.R.S. Section 41-1516.
- (k) tangible personal property purchased by:
 - (1) 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.
 - (2) a person that is not subject to tax under Section 415(B)(12) and that is not subject to tax under Section 415(B)(12) and that has been provided a copy of a certificate under

A.R.S. Section 42-5009, Subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

- (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 17-410, 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 17-455, but not food consumed by owners, agents, or employees of such business.
- (p) tangible personal property purchased by:
 - (1) a qualifying hospital;
 - (2) a qualifying health care organization if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services;
 - (3) a qualifying health care organization if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one;
 - (4) a qualifying community health center;
 - (5) a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost;
 - (6) for taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy;
 - (7) a qualifying health sciences educational institution;
 - (8) any person representing or working on behalf of another person described in subdivisions (1) through (7) of this paragraph if the tangible personal property is incorporated or fabricated into a project described in A.R.S. Section 42-5075, subsection O.
- (q) (Reserved).

ARTICLE VII. ACCESS TO CARE PROGRAM

SEC. 17-700 Legislative Intent.

This ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of the Town of Duncan 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 Town of Duncan that provide significant amounts of uncompensated care to uninsured and low-income patients, pursuant to S.B. 1357;
- (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;
- (C) Promoting access to health care for residents of the Town of Duncan, including low-income, uninsured and otherwise vulnerable populations, by ensuring the financial stability and viability of acute care hospital systems in the town; and
- (D) Promoting economic development and protecting and expanding jobs in the health sector and related fields within the Town of Duncan.

SEC. 17-701. Definitions.

For the purposes of this article only, the following definitions shall apply:

"Access to Care Fund" means the fund established pursuant to Section 17-705.

"Access to Care Tax (ATC TAX)" means the tax imposed pursuant to Section 17-710.

"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.

"Administrative Costs" means the costs to the tax collector of collecting, administering, enforcing and transferring the ATC tax, which may include: time, materials, overhead, and litigation costs.

"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.

"CFR" means the Code of Federal Regulations.

"CMS" means the Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.

"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.

"Delinquency Date" means the day after the due date.

"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 17-715(E).

"Effective Date" means 30 days after the date of passage of this ordinance.

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"Inpatient Discharges" means the annual number of days of inpatient hospital care provided to patients, calculated pursuant to Sections 17-710.

"Medicare Cost Report" means the hospital cost report required for hospitals participating in the Medicare Program under Title XVII of the SSA, using CMS form 2552-96.

"Non-federal Share" means the portion of AHCCCS expenditures that are not reimbursed by the state or local sources, pursuant to Section 1902(A)(2) of the SSA.

"Participating Hospital" means a health care institution located in the Town of Duncan that is licensed as a hospital by the Arizona Department of Health Services under Arizona Revised Statutes Title 36, Chapter 4, Article 2.

"Quarter" means a three-month period from January to March, April to June, July to September, or October to December.

"S.B. 1357" means Senate Bill 1357, enacted by the Arizona Legislature, during its fiftieth legislature, first regular session of 2011.

"Safety Net Care Pool" means the funding pool established pursuant to the AHCCCS Demonstration Project authorized under Section 1115 of the SSA.

"Shortfall Amount" means the amount of any ATC tax payment that a participating hospital owes but does not pay by the due date.

"SSA" means the Social Security Act.

"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 Town to AHCCCS pursuant to Section 17-725.

"Transfer Funds" means the funds to be transferred to AHCCCS as specified in Section 17-725(B).

"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.

"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.

"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.

Sec. 17-705. Creation of Access to Care Fund.

- (A) An access to care fund is created as a restricted sub fund with the town. The fund shall be used to account for the access to care program monies and shall contain only the following:
 - (1) Proceeds from ATC Tax Payments;
 - (2) Penalties and interest for late ATC Tax Payments; and
 - (3) Monies repaid to the town by AHCCCS in connection with the ATC Tax or the uncompensated care payments.
- (B) No monies in the access to care fund shall revert to, or lapse into any other fund, including the Town General Fund, except the amounts for administrative costs as provided for in Section 17-720(A) and amounts from penalties and interest as provided for in Section 17-720(E).

Sec. 17-710. Imposition of Access To Care Tax and Rate.

- (A) As of the effective date, there is hereby levied and imposed an ATC Tax equal to \$_____ per inpatient discharge for each participation hospital.
- (B) In patient discharges for each participating hospital is calculated as the sum of the following lines from worksheet S-3, Part 1, Column 15, of the participating hospital's Medicare Cost Report Lines 12, 14 & 14.01.
- (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.

Sec. 17-715. Collection of Tax.

- (A) Except as specified in (E) and section 17-735, 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 17-710(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 within the UC Payment period.
- (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).
- (C) Each participating hospital shall file an ATC Tax Form with the town 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 17-735 have occurred.
- (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 17-750.
- (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 17-735 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).

- (F) The tax collector shall account for all ATC Tax payments and all shortfall amounts remitted pursuant to section 17-715(D) in the access to care fund.

Sec. 17-720. Use of Access to Care Tax Fund.

Monies in the Access to Care Fund may be utilized for the following purposes:

- (A) Up to \$ _____ of the collected tax payments each quarter may be used by the town to cover the administrative costs, such amount may be increased by the town upon written notice to the participating hospitals 30 days prior to the next transfer date if the town incurs unanticipated costs including costs for administration, litigation or bankruptcy proceedings related to the tax.
- (B) To transfer funds to AHCCS pursuant to Section 17-725 and an intergovernmental agreement for the purpose of providing local funding for the non-federal share of;
 - (1) Uncompensated care payments to participating hospitals; and
 - (2) Expanded health care coverage to individuals through AHCCCS.
- (C) To refund to participating hospitals any ATC Tax overpayment or amounts otherwise collected in error.
- (D) To refund to participating hospitals pursuant to Section 17-745 any amounts repaid by AHCCCS to the tax collector after recoupment of uncompensated care payments funded by tax proceeds transferred by the town.
- (E) With respect only to penalties and interest collected pursuant to Section 17-750, to transfer to the town's general fund to be used for any town-authorized purpose or any budgeted purpose consistent with the general fund rules.

Sec. 17-725. Transfer to AHCCCS.

- (A) From the ATC Tax payments collected each quarter, the tax collector shall retain the administrative costs.
- (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.
- (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 fund equals the ATC fund remainder.
- (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 with 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 17-715(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.
- (E) In the event that a participating hospital owes a shortfall amount pursuant to Section 17-715(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 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.

Sec. 17-730. No Impact on Patients or Payers.

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.

Sec. 17-735. Requirements for Implementation.

The tax shall not be due or payable unless and until all of the following occurs:

- (A) CMS approves the uncompensated care payments and the ATC Tax; and
- (B) AHCCCS agrees to return to the town 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
- (C) The town enters into an intergovernmental agreement with AHCCCS.

Sec. 17-740. Termination.

- (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 town 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
 - (2) The date on which AHCCCS' authorization to accept town funds for the non-federal share of AHCCCS payments pursuant to S.B. 1357 expires; or
 - (3) December 31, 2013.
- (B) The ATC Tax shall terminate prior to the date in subsection (A) upon any of the following conditions:
 - (1) The ATC Tax is determined not to be a permissible source of non-federal share funding; or
 - (2) The ATC Tax is otherwise determined to be unlawful under town, state or federal law; or
 - (3) A statewide hospital tax or other assessment is adopted and takes effect.

Sec. 17-745. Impact of Termination or Recoupment.

- (A) In the event that the AHCCCS refunds all or part of any transfers made to it pursuant to Section 17-725(B). The town 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 17-710.
- (B) In the event that the ATC Tax terminates under Section 17-740, 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.

Sec. 17-750. Interest and Penalties.

- (A) In the event a participating hospital owes a shortfall amount to the tax collector pursuant to Section 17-715(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 17-540.
- (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.
- (C) Penalties provided for under Section 17-540 are not applicable.
- (D) Penalties provided for under Section are due and payable upon notice by the tax collector.

Sec. 17-755. 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 17-510.
- (B) Nothing in this ordinance may be read as a waiver of any rights the tax collector may have under the code or by town charter with regards to the ability to enforce and/or collect all monies owed by the participating hospitals except where expressly stated.
- (C) All other provisions in the code or town charter are applicable unless expressly stated otherwise.

CHAPTER 17

TAX CODE

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