

TUCSON, ARIZONA
Supp. No. 97 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through September 30, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current revision number appearing on the lower left corner of each page revised in this package is “Supp. No. 97” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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TUCSON, ARIZONA
Supp. No. 97 – Instruction Sheet

TUCSON CODE

CONTAINING
THE CHARTER AND GENERAL ORDINANCES
CITY OF TUCSON, ARIZONA

Adopted, October 19, 1964
Effective, January 20, 1965

Published by Order of the Mayor and Council

Republished 1987

Contains Supplement No. 97
Current through September 30, 2012

Published by:
AMERICAN LEGAL PUBLISHING CORPORATION
432 Walnut Street ✧ Suite 1200 ✧ Cincinnati, Ohio 45202
1-800-445-5588 ✧ www.amlegal.com

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Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

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**ARTICLE XV. STORMWATER ADVISORY
COMMITTEE (SAC) AND STORMWATER
TECHNICAL ADVISORY COMMITTEE
(STAC)***

Sec. 10A-160. Creation.

(a) The director of the planning and development service department (PDSO director) shall administratively create a stormwater advisory committee (SAC), a stormwater technical advisory committee (STAC), or both, in any specific instance where review, conclusions, recommendations, or any other advice or action by SAC or STAC is authorized or required by any provision of the Tucson Code, including, but not limited to, chapter 23 (Land Use Code), sections 2.8.6.2.D, 2.8.6.4.B, or 2.8.6.8.A; section 23A-62(4); section 26-12; or section 29-19; or by any regulations or policies promulgated under authority of the Tucson Code.

(b) The provisions of Tucson Code chapter 10A, article XIII (sections 10A-133 through 10A-139 inclusive) shall not apply to any SAC or STAC administratively created by the PDSO director under this section. In creating any SAC or STAC under this section, however, the PDSO director shall, as necessary and to the extent practicable in the particular instance, include members with one or more of the following areas of expertise or interest:

- (1) Registered professional civil engineers, licensed by the State of Arizona during the term of their membership;
- (2) Surface water hydrologists or water quality specialists;
- (3) Professional environmental consultants with a degree or expertise in biology or ecology;

- (4) Professional land use planners;
- (5) Water resources scientists, affiliated with either a local university program or a state or federal government agency which regulates water resources; and
- (6) Advocates for the preservation of washes.

(c) The director of the planning and development services department shall cooperate and regularly communicate with the director of the transportation department on matters related to this committee.
(Ord. No. 11016, § 3, 9-5-12)

Secs. 10A-161 – 10A-169. Reserved.

***Editor's note** – Ord. No. 11016, § 2, adopted September 5, 2012, repealed former §§ 10A-160 – 10A-164, relating to the stormwater advisory committee and the stormwater technical advisory committee and deriving from Ord. No. 9582, § 1, adopted August 6, 2001.

ARTICLE XVI. RESERVED*

Secs. 10A-170 – 10A-179. Reserved.

***Editor's note** – Article XVI, §§ 10A-170 – 10A-174, relating to the Technology Policy Advisory Committee, derived from Ord. No. 10176, § 1, adopted July 6, 2005, as amended by Ord. No. 10315, § 1, adopted September 6, 2006, was repealed by Ord. No. 10843, § 2, adopted October 19, 2010.

ROLL OFF COLLECTION SERVICE FEES	
Failed service attempt	\$65.00 per event per container for services contracted on or after 7/1/2012 \$80.00 per container for services contracted before 7/1/2012
Container cleaning at customer request	\$150.00 per event per container
Container painting at customer request	\$200.00 per event per container
Lease of city compactor and receiver box	\$310.00 per month per compactor plus box
Lease of city compactor receiver box only	\$100.00 per month per box
Base compactor installation	\$950.00 per compactor
Base compactor removal	\$500.00 per compactor

The following requirements apply to roll off services:

- (1) Scheduled/permanent roll off container service agreements are required when a customer has a roll off at the same location for ninety (90) days or more. At a minimum one roll off pull fee will be charged every thirty (30) days for permanent service.
- (2) Unscheduled/temporary roll off container service agreements are required when a customer has a roll off at the same location for less than ninety (90) days. Customers must contact the department when the container needs to be emptied. At a minimum one roll off pull fee will be charged every fifteen (15) days for unscheduled/temporary service.
- (3) For purposes of this section, the terms are defined as follows:
 - (a) *"Pull"* means emptying a roll off container and returning it to the site if needed.
 - (b) *"Initial delivery"* means the first time each container is delivered to a site.
 - (c) *"Relocation"* means moving a container on the same site without emptying it.
 - (d) *"Failed service attempt"* means a truck arrived at a container site but a problem caused by the customer prevented service (also called a "dry run").
 - (e) *"Base installation"* means the installation of guides, power unit, and power hook-up only. Customer request requiring additional materials and modifications will be charged at direct cost for labor and materials. Removal applies to disconnecting and removing city equipment whenever needed.

(D) *Commercial APC collection service fees.* The fees for APC collection service to commercial establishments are as follows:

COMMERCIAL APC COLLECTION SERVICE FEES		
Service	Container size (gallons)	Fees
Standard	48	\$18.50 per month per container
Standard	65	\$19.50 per month per container
Standard	95	\$20.50 per month per container
Standard	300	\$61.50 per month per container
Additional service per week	Any	\$25.00 per pickup per container
Additional recycle beyond second container	100 or less	\$10.00 per month per container
Container delivery	Any	\$20.00 for any number per request

The following requirements apply to commercial APC services:

- (1) “Standard” means standard commercial APC service consisting of refuse collection once per week (in the selected size) and recycling collection in ninety-five (95) gallon container once per week.
- (2) Each commercial establishment may receive up to two (2) ninety-five (95) gallon recycling containers (or the equivalent recycling volume in three hundred (300) gallon recycling containers) for each APC or front load refuse container.

(E) *Fees for commercial special services.* The fees for special services to commercial establishments are as follows:

COMMERCIAL SPECIAL SERVICE FEES		
Service	Container size	Fees
Temporary APC refuse	48, 65 or 95 gallons	\$50.00 per service per container
Temporary APC refuse	300 gallons	\$75.00 per service per container
Temporary front load refuse	2 – 8 cubic yards	\$100.00 per container for delivery/removal plus \$30.00 per pickup per 2 to 4 cubic yard container, \$35.00 per 6 cubic yard, \$40.00 per 8 cubic yard
Temporary APC recycle	95 gallons	\$20.00 per delivery truck load for delivery/removal plus \$10.00 per pickup
Temporary use of small recycling containers for customers with city refuse	Less than 95 gallons	\$20.00 per delivery truck load for delivery/removal
Temporary front load recycle	2 – 8 cubic yards	\$100.00 per container for delivery/removal and one pickup, plus \$30.00 per additional pickup.
Delinquent retrieval fee	2 – 8 cubic yards	\$50.00 per container
Bulky material service		Same fees as charged for special brush bulky service to residential establishments.

(k) *Sound amplification systems in vehicles.* Noise from sound amplification systems in vehicles cannot be practically regulated by imposing decibel limits as decibel measurements are difficult to obtain from moving vehicles. Noises prohibited by this subsection are in violation of this article notwithstanding the fact that there is no apparent violation of subsection (a) of this section.

- (1) Except as authorized by law, no person shall operate or permit the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any person or neighborhood in the vicinity.
- (2) Except as authorized by law, no person shall operate or permit the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person to be aware of vibration accompanying the sound at a distance of fifty (50) feet.
- (3) Exemptions. This subsection shall not apply to:
 - a. Amplification systems being operated to request assistance of an emergency nature or to warn of a hazardous situation;
 - b. Authorized emergency vehicles;
 - c. Vehicles operated by utility companies;
 - d. Vehicles used in parades, concerts, festivals, fairs or similar activities that remain within any sound limits approved by the city; or
 - e. Amplification systems in vehicles which are operated on private property with the permission of the owner and which are not plainly audible beyond the property line.

(l) *Penalty.* Any person found responsible under this section for a violation of this article shall be guilty

of a civil infraction and punished in accordance with minor section 1-8(2) and under the procedures outlined in Chapter 8 of this City Code. The court shall also enter an order of abatement against a party found responsible for a violation of this article pursuant to Chapter 8 of this City Code.

(m) *Enforcement.* The police department and city attorney are authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible for a violation of this section.

(Ord. No. 9816, § 15, 2-24-03; Ord. No. 10126, § 8, 3-1-05)

Sec. 16-32. Unruly gatherings.

(a) *Definitions.* For the purposes of this section, unless the context otherwise requires, the following terms or phrases are defined as:

Owner means any owner, as well as any agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy or use of the property.

Premises means the property that is the site of an unruly gathering. For residential properties, premises means the dwelling unit or units where the unruly gathering occurs.

Unruly gathering means a gathering of five (5) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering.

(b) *Abatement of unruly gathering.* A peace officer may abate an unruly gathering by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersal of the persons attending the gathering.

(c) *Notice of unruly gathering; posting; removal of notice prohibited; right to contest posting.*

- (1) *Contents of notice.* The premises at which the unruly gathering occurs shall be posted with a notice stating:
 - a. That an unruly gathering has occurred at the premises;
 - b. The date of the unruly gathering;
 - c. That any subsequent unruly gathering on the same premises within a one hundred eighty (180) day period shall result in liability for the penalties provided in this section. Parties liable include any persons in attendance causing the gathering to be unruly, or any owner, occupant or tenant of the premises at which the unruly gathering occurred, or any sponsor of the event constituting the unruly gathering; and
 - d. The right to contest the posting as provided in subsection (c)(4) of this section.
- (2) *Posting requirements.* Premises shall be posted with a notice as provided in this section each time an unruly gathering occurs. The owner, occupant or tenant of the premises or sponsor of the event constituting the unruly gathering, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

In the event that a premises is already posted at the time of a subsequent posting, the one hundred eighty (180) day period from the date of the existing posting shall be extended to one hundred eighty (180) days from the date of the subsequent posting. Once a premises is initially posted as a result of an unruly gathering and the conduct causing the gathering to be unruly has ceased, a resumption of unruly behavior on the premises resulting in another police response shall constitute a new and separate unruly gathering for purposes of this section.

- (3) *Removal of notice prohibited.* The owner, occupant, or tenant of the posted premises shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice is a civil infraction carrying a penalty of a minimum, mandatory one hundred dollar (\$100.00) fine, in addition to any other penalties which may be imposed under this section.
- (4) *Right to contest posting.*
 - a. An owner, occupant, or tenant of the posted premises may contest the posting of the notice by filing a written petition for review with the civil infractions division of the city court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten (10) days after the posting of the notice or, if the notice is given by mail, within fifteen (15) days after the date of the mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the written petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. In order to avoid the possibility of conflicting rulings, if more than one (1) petition is filed under this subsection relating to a single posting, for example by multiple lawful occupants of the posted premises, the court shall set only one (1) hearing and shall consolidate the petitions and notify all petitioners of the hearing date and time. At the hearing, the city has the burden of proving by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this section.
 - b. An owner of a posted premises, at any time after the posting or the mailing of the notice, may petition the court for an order directing the removal of the notice on the grounds that the owner has taken

reasonable and necessary actions, such as evicting a tenant responsible for the violation, to prevent the occurrence of a subsequent unruly gathering at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. At the hearing, the petitioner has the burden of proving by a preponderance of evidence that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent unruly gathering. This petition process is not available to an owner who was present at the unruly gathering and engaged in conduct causing the gathering to be unruly.

(d) *Notification of property owner.*

- (1) Notification of the posting of the notice of unruly gathering shall be mailed to any property owner at the address shown on the Pima County Property Tax Assessment Records. The notification shall advise the property owner that any subsequent unruly gathering within one hundred eighty (180) days on the same premises shall result in liability of the property owner for all applicable penalties as provided in this article. Notification shall be made by certified mail. The return receipt shall be prima facie evidence of service.
- (2) Additionally, notice shall be provided to an agent of the owner who controls or regulates the use of the premises, if known. Notice to the owner's agent may be provided by hand delivery or by certified or regular mail sent to the agent's last known address.
- (3) The failure to serve notice to any person described in this subsection shall not invalidate any citation or other proceedings as to any other person duly served, or relieve any such person from any duty imposed by this section.

(e) *Unruly gathering a civil infraction; parties responsible.* An unruly gathering is unlawful and constitutes a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(1):

- (1) The person or persons who organized or sponsored the event constituting the unruly gathering, including any owner or occupant in attendance at the unruly gathering.
- (2) Any person in attendance at the unruly gathering who engaged in any conduct causing the gathering to be unruly.

(f) *Subsequent unruly gathering a civil infraction; parties responsible.* The occurrence of an unruly gathering on the same premises more than once in any one hundred eighty (180) day period is a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(2):

- (1) The owner of the property where the subsequent unruly gathering occurred, if either:
 - a. The owner was present when the property was posted, or
 - b. Notification of posting was mailed or delivered to the owner of the property per subsection (d), and the subsequent unruly gathering occurred not less than two (2) weeks after the mailing of such notification.
- (2) The occupant or tenant of the property where the subsequent unruly gathering occurred.
- (3) The person or persons who organized or sponsored the event constituting the subsequent unruly gathering.
- (4) Any person in attendance at the subsequent unruly gathering who engaged in any conduct causing the gathering to be unruly.

Nothing in this section shall be construed to impose liability on the owner, occupant, or tenant of the premises or sponsor of the event constituting the unruly gathering, for the conduct of persons who are in

attendance without the express or implied consent of the owner, occupant, tenant, or sponsor, as long as the owner, occupant, tenant or sponsor has taken steps reasonably necessary to prevent a subsequent unruly gathering or to exclude the uninvited persons from the premises, including owners who are actively attempting to evict a tenant from the premises. Where an invited person engages in unlawful conduct which the owner, occupant, tenant or sponsor could not reasonably foresee and could not reasonably control without the intervention of the police, the unlawful conduct of the person shall not be attributable to the owner, occupant, tenant or sponsor for the purposes of determining liability under this section.

(g) *Penalties.*

- (1) *Unruly gathering.* The penalty for a party found responsible for an unruly gathering, as provided in subsection (e), shall be a minimum mandatory fine of five hundred dollars (\$500.00). Additionally, if the party found responsible for an unruly gathering has previously been found responsible for an unruly gathering, regardless of the location of the prior violation, the penalty shall be a minimum mandatory fine of seven hundred and fifty dollars (\$750.00).
- (2) *Subsequent unruly gathering.* The penalty for a party found responsible for the occurrence of a subsequent unruly gathering, as provided in subsection (f), shall be a minimum mandatory fine of seven hundred fifty dollars (\$750.00) for a first violation, a minimum mandatory fine of one thousand dollars (\$1,000.00) for a second violation, and minimum mandatory fines of one thousand five hundred dollars (\$1,500.00) for each third or subsequent violation.
- (3) *Abatement.* The civil fines provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an unruly gathering. The court shall also enter an order of abatement against a party found responsible for a violation of this section pursuant to Chapter 8 of the Tucson Code.

(h) *Enforcement.* The police department is authorized to enforce the provisions of this section provided that enforcement is initiated by a complaint from a member of the public. The complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible. Peace officers shall enforce the provisions of this section using their sound discretion and the consideration of the totality of the circumstances, including but not limited to the use of the premises (e.g. residential, commercial, etc.). (Ord. No. 9816, § 15, 2-24-03; Ord. No. 10126, § 9, 3-1-05; Ord. No. 11014, § 1, 8-7-12)

Sec. 16-33. Placing refuse upon the property of another or public property; illegal littering or dumping prohibited; persons responsible.

(a) No person shall place any refuse upon any private or public property not owned or under the control of that person. In addition to any penalty that may be imposed by this chapter or the Tucson Code, such person shall be liable for all costs for the removal, abatement or enjoining of the refuse.

(b) No person shall litter, discard refuse, or allow refuse to be discarded except at the places and in the manner authorized in Chapter 15 of this Code.

(c) The following persons are jointly and individually liable for a violation of subsection (b):

- (1) The resident of the property upon which the debris has been discarded;
- (2) The person who discarded or allowed the debris to be discarded;
- (3) The person who owns or maintains a refuse container in which refuse is improperly placed or discarded; and
- (4) The person who generated the refuse. When an item contained in refuse discarded in violation of this section identifies a person, the item creates a rebuttable presumption that the person so identified generated the refuse. (Ord. No. 9816, § 15, 2-24-03)

Sec. 16-34. Public nuisance.

(a) Anything that is injurious to health, or is indecent or offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, is hereby declared to be a public nuisance. Any act or thing that affects an entire community or neighborhood, or any considerable number of persons, as herein described, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(b) Any person who knowingly maintains or commits a public nuisance, or who knowingly fails or refuses to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

(Ord. No. 9816, § 15, 2-24-03)

Sec. 16-35. Obstructing streets, alleys or sidewalks prohibited.

No person shall obstruct any public sidewalk, street or alley in the city by placing, maintaining or allowing to remain thereon any item or thing that prevents full, free and unobstructed public use in any manner, except as otherwise specifically permitted by law.

(Ord. No. 10126, § 10, 3-1-05)

Sec. 16-36. Posting of handbills prohibited.

(a) *Posting prohibited.* No person shall post, affix, display, paint or attach; or direct, permit, or cause any other person to attach any handbill upon any street lamp post, street sign, traffic sign or signal, traffic control device, curb, sidewalk, hydrant, tree, shrub, utility pole or any other public building, structure or object except as may otherwise be required or authorized by law; or upon any private structure or building, without the consent of the owner or person in control thereof.

(b) *Presumption.* For purposes of this section, there shall be a rebuttable presumption that any person or entity whose name, address, telephone number, e-mail address or other identifying information is indicated on the handbill, and any owner, manager, or responsible party of any business, product or service

which is the subject of the handbill, has directed or caused the posting or attaching of the handbill in violation of subsection (a).

(c) *Penalty.* A violation of this section is a civil infraction. In addition to any other penalties prescribed by law, any person found responsible for violating this section shall be fined not less than two hundred fifty dollars (\$250.00). Each handbill illegally posted shall constitute a separate violation, and shall be subject to a separate fine. In addition to the minimum fine(s), upon finding any person responsible for violating this section, the court shall order that person to reimburse the city for its costs in the removal of the illegal handbill(s) pursuant to subsection (d), as documented by a statement of costs presented to the court by the city.

(d) *Enforcement and abatement by code official.* The code official is authorized to enforce the provisions of this section. The code official may, but is not required to, initiate enforcement by issuing a notice of violation pursuant to section 16-45 to the person(s) responsible for a violation of this section, and therein direct and order the responsible person(s) to remove of the unlawful handbill(s). The code official is further authorized to remove or cause the removal of any handbills posted in violation of this section, with or without giving prior notice to the person(s) responsible for the violation.

(Ord. No. 10126, § 11, 3-1-05)

Sec. 16-37. Group dwelling public nuisance; abatement.

(a) *Definition of a group dwelling public nuisance.* A dwelling unit may be designated by the code official as a group dwelling public nuisance if all of the following apply:

- (1) The dwelling unit is treated as a lawful nonconforming group dwelling under LUC Section 3.5.7.1.I; and
- (2) The dwelling unit is the location of a documented pattern of nuisance activity which shall consist of at least three (3) incidents on separate dates within a two (2) year period resulting in criminal charges, or in civil infraction citations involving nuisance conduct; and

- (3) At least one (1) of the violations is a criminal offense or a violation of section 16-31 (excessive noise) or section 16-32 (unruly gatherings) of this code.

(b) *Maintaining a group dwelling public nuisance unlawful.* It is unlawful for a property owner to maintain a dwelling unit as a group dwelling public nuisance; and a group dwelling public nuisance shall be abated as provided in this section.

(c) *Property owner notification.* The code official shall first notify the property owner and an occupant that the dwelling unit may be designated as a group dwelling public nuisance. Such notice shall include the identification of the dwelling unit in violation; a description of the charges or citations upon which the designation is based; the address and phone number of a city representative to contact; and a description of the appeal rights that apply. The notice shall be delivered in the same manner as provided under section 16-45(e) for notices of violation. The notice shall provide the property owner ten (10) working days to respond to the proposed designation or to submit to the code official a remediation plan that will voluntarily abate the alleged violation(s). Within ten (10) working days of the date of property owner responds to the notice, or in the absence of a response within ten (10) working days of the expiration of the response period, the code official shall notify the property owner of the decision as to whether the dwelling unit is a group dwelling public nuisance. A property owner may appeal a designation of a group dwelling as a public nuisance under this paragraph within thirty (30) days of the designation by filing an appeal in accordance with section 16-73.

(d) *Abatement by remediation plan; appeal.* Where the code official has designated a dwelling unit as a public nuisance as provided above, the nuisance shall be abated as follows:

- (1) The code official shall first attempt to consult with the property owner in which the dwelling unit is located to determine appropriate steps to abate the group dwelling public nuisance through a remediation plan. Within fifteen (15) working days, the code official shall determine the appropriate

remediation plan to abate the group dwelling public nuisance. The code official may extend the time for completing the remediation plan by up to fifteen (15) days. By the same date, the remediation plan shall be delivered to the property owner, and shall be effective for one (1) year. Within five (5) days of delivery to the property owner, the designation as a group dwelling public nuisance and the remediation plan shall also be delivered to property owners within fifty (50) feet of the subject site and mailed to any registered neighborhood association that includes the subject site. Failure to deliver the designation and/or remediation plan to these nearby property owners shall not affect the validity of the designation or remediation plan. The code official shall keep and maintain any nuisance designation or remediation plan issued under this section as a public record, and shall make such documents available to any person upon request.

- (2) A property owner may file an administrative appeal to appeal the requirements of the remediation plan in accordance with section 16-70 of this chapter.

(e) *Subsequent violations a civil infraction; abatement by court order.* If, within twenty-four (24) months of the designation of a dwelling unit as a group dwelling public nuisance and the issuance of a remediation plan, the dwelling unit is the location of an additional violation or violations of the City Code or of any criminal laws or statutes, the property owner is responsible for a civil infraction. Upon finding a property owner responsible for a violation under this subsection, the court shall order such person to correct and abate the violations. Such order may include an order to reduce or limit the number of unrelated tenants in the dwelling unit to not more than four (4), except that any order limiting occupancy in this manner can only apply for a time period not to exceed six (6) months. A reduction of the number of tenants as a result of a court order issued pursuant to this paragraph shall not terminate or discontinue the nonconforming use of the dwelling unit.

DIVISION 4. LIQUOR AND VENDING MACHINE LICENSE TAX*

Sec. 19-51. Imposition – Liquor license tax.

Businesses in the city, selling alcoholic beverages, shall possess a city liquor license and pay a license tax as set out in section 19-52 of this article. (Ord. No. 7885, § 2, 8-3-92; Ord. No. 8128, § 5, 9-27-93)

Sec. 19-52. Quarterly – Liquor license fee schedule.

Series 1.	Distiller’s License	\$225.00
Series 2.	Brewer’s License	\$202.50
Series 3.	Winer’s License	\$103.50
Series 5.	Government License	\$342.00
Series 6.	Bar License – All Spirituous Liquor	\$274.50
Series 7.	Bar License Beer and Wine	\$117.00
Series 9.	Liquor Store License Packaged Goods	\$94.50
Series 10.	Beer and Wine Store License – Packaged Beer and Wine	\$90.00
Series 11.	Hotel/Motel License – All Spirituous Liquor Consumed on Premises	\$342.00
Series 12.	Restaurant License – All Spirituous Liquor Consumed on Premises	\$342.00
Series 14.	Club License	\$ 61.20
Series 17.	Governmental License to Serve and Sell Spirituous Liquor on Special Premises	\$405.00
Series 18.	Daily On-Sale Special Event License	None

(Ord. No. 7885, § 2, 8-3-92)

Sec. 19-53. Applications.

Application fees are based on full cost recovery. Application processing costs shall be reviewed in conjunction with the city’s biennial budget process to ensure that cost recovery is being achieved. Applications for liquor licenses for establishments located within the city limits, whether original or transfer, shall be made in accordance with the following procedure:

- (1) Application shall first be made with the State of Arizona Department of Liquor Licenses and Control in such form and manner as required by the director.
- (2) A copy of the state application will be sent to the city clerk by the State of Arizona Department of Liquor Licenses and Control.
- (3) An application for a special event license and an extension of premises shall be filed with the city clerk forty-five (45) days before the date of its proposed use in order to be considered timely. Applications filed between twenty-two (22) and forty-four (44) days prior to the date of proposed use shall incur additional late processing fees conforming to the schedule under subsection (4) below. No application for a special event license or extension of premises shall be accepted within twenty-one (21) days before its proposed use, except that the city clerk or the clerk’s designee may grant a one-time only waiver to an organization or applicant after consultation with the ward office where the use will occur.
- (4) Upon receipt of a copy of the state application by the city for a license, the applicant shall pay a nonrefundable application fee to the city conforming to the following schedule:

*Note – Formerly, Art. I, Div. 3. Renumbered Art. I, Div. 4 by § 10 of Ord. No. 10448.

<i>License Type</i>	<i>Applicable Fee</i>
<i>Regular</i>	
Original License	\$1,636.00
Location Transfer	\$1,636.00
Person Transfer	\$1,636.00
Person/Location Transfer	\$1,636.00
Continuation of Restaurant License	\$1,636.00
<i>Agent Change – Acquisition of Control – Restructure</i>	\$463.00
<i>Special Event/Wine Festival/Wine Fair</i>	
0 – 500 Attendees	\$125.00
501 – 2,500 Attendees	\$240.00
2,501 – 5,000 Attendees	\$297.00
Over 5,000 Attendees	\$480.00
Late Processing Fee (Day 30 to Day 44)	\$75.00
Late Processing Fee (Day 22 to Day 29)	\$125.00
<i>Temporary Extension of Premises</i>	
Initial Application	\$25.00 per 100 square feet, up to a maximum of \$526.00
Subsequent applications for the same type extension of premises as the initial, made within 12 months of the initial application	\$15.00 per 100 square feet, up to a maximum of \$526.00
Late Processing Fee (Day 30 to Day 44)	\$75.00
Late Processing Fee (Day 22 to Day 29)	\$125.00

<i>License Type</i>	<i>Applicable Fee</i>
<i>Permanent Extension of Premises</i>	
Initial Application	\$60.00 per 100 square feet, up to a maximum of \$1,344.00
Subsequent applications for the same type extension of premises as the initial, made within 12 months of the initial application	\$35.00 per 100 square feet, up to a maximum of \$1,344.00

(Ord. No. 7885, § 2, 8-3-92; Ord. No. 9839, §§ 1 – 3, 5-5-03; Ord. No. 10402, § 1, 5-15-07; Ord. No. 10554, § 1, 6-25-08, eff. 8-1-08; Ord. No. 10836, § 1, eff. 9-8-10; Ord. No. 10919, § 1, 8-9-11; Ord. No. 11022, § 1, 9-19-12)

Sec. 19-54. Vending machines license fees.

(a) Before being granted a distributor’s license, each applicant therefor shall pay an annual license tax which is hereby imposed in the amount of one hundred fifty dollars (\$150.00) for licenses issued prior to April 1; one hundred twelve dollars and fifty cents (\$112.50) for licenses issued after March 31 and prior to July 1; seventy-five dollars (\$75.00) for licenses issued after June 30 and prior to October 1; and thirty-seven dollars and fifty cents (\$37.50) for licenses issued after September 30 of each calendar year. All distributors’ licenses will expire on December 31 of each calendar year. In addition, there shall be paid an annual tax of six dollars (\$6.00) per machine operating or operated in the city, listed in the application. For each machine placed in operation by a new licensee and for each additional machine placed in operation by existing licensees on and after July 1 of each calendar year, the six dollars (\$6.00) tax shall be reduced to three dollars (\$3.00) for the calendar year remainder.

(b) Each owner-operator shall pay a six dollar (\$6.00) annual registration tax for each machine placed in operation prior to July 1 of each year and a three dollar (\$3.00) proportional registration tax for each machine placed in operation on or after that date. All machine registrations shall expire on December 31 of each year and must be renewed annually.
(Ord. No. 7885, § 2, 8-3-92)

Sec. 19-55. Business privilege license tax.

No provision of this division shall be construed to avoid payment of the business privilege license taxes in accordance with this chapter.

Secs. 19-56 – 19-65. Reserved.

DIVISION 5. TAX ON HOTELS RENTING TO TRANSIENTS*

Sec. 19-66. Tax imposed; nature and source of transient rental occupational license tax.

(a) *Six (6) percent tax.* Every person who operates or causes to be operated a hotel within the city is subject to and shall pay an occupational license tax in an amount equal to six (6) percent of the rent charged by the operator to a transient. The transient rental occupational license tax imposed on the class of lodging house operators serving transients as defined in section 19-1 is not on the privilege of doing business within the city, but is a license tax on the transient rental occupation. The tax, when due, constitutes a debt owed by the operator to the city which is extinguished only by payment thereof to the city. If the rent is charged by the operator to the transient in installments, the tax thereon shall be due as provided herein for the calendar month in which the installment was charged. Upon the transient's ceasing to occupy space in the hotel, the tax on any uncharged rent shall be due for that calendar month.

(b) *Two dollar (\$2.00) surtax.* In addition to the measure of tax established in subsection (a), there is imposed upon every person who operates or causes to be operated a hotel within the city an additional amount of tax at the rate of two dollars (\$2.00) for each twenty-four-hour period or fraction thereof that each occupancy is rented. The amount of such additional tax shall be separately identified in the reports required by the rules and regulations for administration of the transient rental tax to be made by the taxpayer to the city and on the books and records of the taxpayer. The

administrative rules and regulations aforementioned shall apply to this additional tax unless in conflict with this paragraph (b).

(c) *Exclusions.* The occupational license tax imposed by subsections (a) and (b) shall not apply to:

- (1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, Arizona, or any other state or a political subdivision of this state or of any other state in a privately operated prison, jail, or detention facility;
- (2) Gross proceeds of sales or gross income that is properly included in another business activity under chapter 19, article II and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity;
- (3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this division;
- (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 sections 19-410 or 19-475 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 sections 19-445 or 19-450 as rental, leasing, or licensing for use of real or tangible personal property; or
- (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

*Note – Formerly, Art. I, Div. 4. Renumbered Art. I, Div. 5 by § 10 of Ord. No. 10448.

be subject to tax under section 19-470 as telecommunication services.

(Ord. No. 7885, § 2, 8-3-92; Ord. No. 9838, § 1, 5-5-03; Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07; Ord. No. 10685, § 4, 6-16-09, eff. 7-1-09)

Sec. 19-67. Registration.

Within thirty (30) days after commencing business, each hotel within the city renting occupancy to transients shall be registered with the director of finance in the name of the operator. A transient rental tax license will be issued and will be at all times posted in a conspicuous place on the premises. The first of these licenses will be automatically issued to those hotels currently holding a city business privilege license, but this provision in no way relieves the operator of the responsibility of registering such hotel and obtaining a license after the effective date of the section. Thereafter, such license will be issued with the city business privilege license. The license shall, among other things, state the following:

- (1) Name of the operator;
 - (2) Address of the hotel;
 - (3) The date upon which the license was issued.
- (Ord. No. 7885, § 2, 8-3-92; Ord. No. 8128, § 6, 9-27-93)

Sec. 19-68. Determination of rent based upon method of reporting.

The method of reporting chosen by the taxpayer, as provided in section 19-520 shall necessitate the following adjustments to gross income for all purposes under this article:

- (1) *Cash basis.* When a person elects to report and pay taxes on a cash basis, rent for the reporting period shall include:
 - (A) The total amounts received on “paid in full” transactions, against which are allowed all applicable deductions and exclusions; and
 - (B) All amounts received on accounts receivable, conditional sales contract, or other similar transactions against which

no deductions and no exclusions from rent are allowed.

- (2) *Accrual basis.* When a person elects to report and pay taxes on an accrual basis, rent shall include all rent 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:

- (A) The amount deducted for the bad debt is deducted from rent 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 rental income; and
- (B) If any amount is subsequently collected on such charged-off account, it shall be included in rental income for the month in which it was collected without deduction for expense of collection.

(Ord. No. 7885, § 2, 8-3-92; Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-69. Exclusion of vendor issued coupons and rebates from rental income.

(a) The following items shall not be included in rent:

- (1) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from rental 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 rental income.
- (2) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from rental income as a cash discount. Rebates issued by a person other than the vendor may not be excluded from rental income, even when the vendee assigns his right to the rebate to the vendor.

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

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-70. Exclusion of combined taxes from rent; itemization; notice; limitations.

(a) *When tax is separately charged and/or collected.* The total amount of rental income shall be exclusive of combined taxes only when the person upon whom the tax is imposed establishes 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 rental income unless such records are completed and/or clarified to the satisfaction of the tax collector.

(b) *Remittance of all tax charged and/or collected.* When an added charge is made to cover city (or combined) transient rental tax, the person upon whom the tax is imposed shall pay the full amount of the city taxes due, whether collected by him or not. In the event the taxpayer collects more than the amount due, the excess shall be remitted 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, and the tax collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this division, the tax collector may determine the amount collected and collect the tax so determined in the manner provided in this division.

(c) *Itemization.* In order to be entitled to exclude from rent any amounts paid by customers for combined taxes passed on to such customers, the taxpayer shall show to the tax collector that the customer was provided with a written record of the transaction showing, at a minimum, the price before the tax, the

combined taxes, and the total cost. This shall be in addition to the record required to be kept under subsection (a) above.

(d) *When tax has been neither separately charged nor separately collected.* When the person upon whom the tax is imposed establishes 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 rent by 1.00 plus a decimal figure representing the effective combined tax rate expressed as a fraction of 1.00.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-71. Licensing requirements.

(a) *Generally.* Every person desiring to engage or continue in business activities within the city upon which a transient rental tax is imposed by this article shall make application to the tax collector for a transient rental tax license, accompanied by a non-refundable fee of twenty-five dollars (\$25.00), and no person shall engage or continue in business or engage in such activities without such a license.

(b) *Limitation.* The issuance of a transient rental license by the tax collector shall not be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07; Ord. No. 10448, § 5, 9-5-07, eff. 1-1-08)

Sec. 19-72. Special licensing requirements.

(a) *Partnerships.* Application for a transient rental license by a partnership engaging or continuing in business in the city shall provide, at a minimum, the names and addresses of all general partners. Licenses issued to persons engaged in business as partners, limited or general, shall be in the name of the partnership.

(b) *Corporations.* Application for a transient rental license by a corporation engaging or continuing in business in the city shall provide, at a minimum, the names and addresses of both the chief executive officer and chief financial officer of the corporation. Licenses issued to persons engaged in business as corporations shall be in the name of the corporation.

(c) *Multiple locations or multiple business names.* A person engaged in or conducting one (1) or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A “location” is a place of a separate business establishment.

(d) *Conditions.* Licenses shall not be issued until all legal requirements are met. It shall be a condition precedent to the issuance of a license that all statutes, ordinances, regulations, and other requirements affecting the public peace, health, and safety are complied with in total.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-73. Licensing; duration of license; transferability; display.

(a) Except as provided in section 19-74, the transient rental license shall be valid until request for cancellation and/or surrender of the license by the licensee or expiration through cessation by the licensee of the business activity for which it was issued.

(b) The transient rental license shall be nontransferable between owners or locations and shall be on display to the public in the licensee’s place of business.

(c) Any licensee whose license expires through cancellation as provided in section 19-74, by a request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued and who thereafter applies for license shall be granted a new license as an original applicant and shall pay the current license fee. Any licensee who loses or misplaces his transient rental license which is still in effect shall be charged the current license fee for each re-issuance of a license.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-74. Licensing: cancellation; revocation.

(a) *Cancellation.* The tax collector may cancel the city transient rental license of any licensee as inactive:

- (1) If the taxpayer, required to report monthly to the city, has neither filed any return nor remitted to the city any taxes imposed by this article for a period of six (6) consecutive months;

- (2) If the taxpayer, required to report quarterly, has neither filed any return nor remitted any taxes imposed by this article for two (2) consecutive quarters; or

- (3) If the taxpayer, required to report annually, has neither filed any return nor remitted any taxes imposed by this article when such annual report and tax are due to be filed with and remitted to the tax collector.

(b) *Revocation.* If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid to the city under this division or if such licensee fails to comply with any provision of this article, the tax collector may revoke the city transient rental license of the licensee.

(c) *Notice and hearing.* The tax collector shall deliver notice to such licensee of cancellation or revocation of the transient rental license. If within twenty (20) days the licensee so notified requests a hearing, he shall be granted a hearing before the tax collector.

(d) *Relicensing.* 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 the taxpayer is in compliance with this article.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-75. Operating without a license.

It shall be unlawful for any person who is required by this article to obtain a transient rental tax license to engage in or continue in business within the city without a license. The tax collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this division.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-76. Recordkeeping requirements.

(a) Every person subject to the tax imposed by this division shall 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 division. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation or, when

records are maintained within an electronic data processing (edp) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. Every person subject to the tax imposed by this division shall keep and preserve such books and records for a period equal to the applicable limitation period as provided in section 19-28 for assessment of tax and all such books and records shall be open for inspection by the tax collector during any business day.

(b) The tax collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

- (1) Only for future reporting periods; and
- (2) Only by express determination of the tax collector that such specific recordkeeping is necessary due to the inability of the city to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-77. Recordkeeping; claim of exclusion, exemption, deduction, or credit; documentation; liability.

(a) All deductions, exclusions, exemptions, and credits provided in this division are conditional upon adequate proof and documentation of such as may be required either by this division or regulation.

(b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which the person is not entitled under this division, 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 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.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-78. 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 division, the taxpayer shall either:

- (1) Provide such other records as required by this division or regulation; or
- (2) Correct or reconstruct the taxpayer's records to the satisfaction of the tax collector.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Sec. 19-79. Administration.

Except as otherwise provided in this division, the administration of this division shall be governed by the provisions of division 5, article II and the regulations thereunder.

(Ord. No. 10360, § 3, 12-19-06, eff. 1-1-07)

Secs. 19-80 – 19-84. Reserved.

DIVISION 6. TAX ON SECONDHAND DEALERS AND PAWNBROKERS

Sec. 19-85. Tax imposed.

(a) *In general.* Except as provided in subsections (b) and (c), there is imposed on every secondhand dealer and pawnbroker operating in fixed location in the city an occupational license tax in the amount of one thousand dollars (\$1,000.00).

(b) *Out of city dealers.*

(1) A secondhand dealer described in subsection (b)(2) shall pay an occupational license tax as follows:

- (A) If the dealer conducts one (1) or two (2) shows in a calendar year, a tax of five hundred dollars (\$500.00).
- (B) If the dealer conducts three (3) or more shows in a calendar year, a tax of one thousand dollars (\$1,000.00).

- (2) A secondhand dealer liable for the tax imposed by subsection (b)(1) is one who:
- (A) Has not already paid the tax imposed by subsection (a) in that year; and
 - (B) Conducts business at a location that is not that person's or entity's actual business address, such as a hotel, meeting hall, convention center, or other short term leased or rented location

(c) *Exclusion.* A secondhand dealer or pawnbroker who has submitted less than one thousand (1,000) reports to the chief of police, as required by section 7-98, in the calendar year prior to the date the tax imposed by subsection (a) is due is exempt from the tax imposed by such subsection. The chief of police shall transmit to the director of finance the names of all secondhand dealers and pawnbrokers subject to such tax no later than January 15 of each year.
(Ord. No. 10790, § 6, 5-18-10, eff. 1-1-11)

Sec. 19-86. Due date of tax.

The tax imposed by section 19-85 is due and payable on March 1.
(Ord. No. 10790, § 6, 5-18-10, eff. 1-1-11)

Sec 19-87. Administration.

The administration of this division shall be governed by division 5, article II, and the regulations thereunder.
(Ord. No. 10790, § 6, 5-18-10, eff. 1-1-11)

Secs. 19-88 – 19-98. Reserved.

Sec. 22-21. Employee contributions for past services.

On December 16, 1953, or as soon thereafter, as may be practicable, the director of personnel is hereby authorized and directed to give all officers and employees occupying, or on authorized leave from, offices and positions included in the agreement as of the date old-age and survivors insurance coverage becomes effective as to their offices and positions the following notice in writing:

“You are hereby notified that the mayor and council of the City of Tucson, pursuant to the authority granted by chapter 126, Arizona Laws of 1951, has entered into an agreement with the employment security commission of Arizona providing for the extension of old-age and survivors insurance coverage as provided by title II of the Federal Social Security Act to certain officers and employees of the city. This agreement includes the office or position occupied by you, or from which you hold an authorized leave, to be effective December 1, 1953, such coverage being retroactive to January 1, 1951. Your continuation in office or occupancy of your position, or retention of the right to reoccupy your position on expiration of leave therefrom, after such date shall constitute acknowledgment on your part of your ability for the payment to the director of finance of an amount equal to the tax which would have been imposed upon you for salary or wages received by you as an employee of the city by section 1400 of the Federal Internal Revenue Code if your services to the city subsequent to January 1, 1951, and prior to December 15, 1953, had constituted employment as defined by section 1426 of such code. You will be notified subsequently of the amount of this contribution which will be due and payable within sixty (60) days after the effective date of such coverage.”

(1953 Code, ch. 20, § 32)

Sec. 22-22. Collection of employee contributions for past services.

The director of finance shall compute and take the necessary steps to collect amounts due from each officer and employee under the provisions of section 22-21. Officers and employees entitled to withdraw their accumulated contributions to the abolished retirement system as provided under section 22-1(9) [of the 1953 Code], may discharge their liability under section 22-21, in whole or in part, by filing with the board of trustees, established by section 22-2 [of the 1953 Code], an assignment in writing, in such form as shall be deemed legally sufficient by the city attorney, authorizing and directing the director of finance to transfer and apply all or such portion thereof as may be necessary of the amount standing to their credit in trust fund A established by section 22-1(8) [of the 1953 Code]. Such board of trustees is hereby authorized and directed to convert such portion of the assets of the abolished system credited to fund A as may be necessary to effect the payment of the amounts so assigned; and the director of finance is hereby authorized and directed to transfer the same to the general fund of the city, together with such other amounts as may be collected directly from such officers and employees in discharge of the liability imposed under the provisions of section 22-21, to be disbursed therefrom in accordance with the provisions of section 22-17.

(1953 Code, ch. 20, § 32)

Sec. 22-23. Duties of director of personnel.

The director of personnel is hereby charged with the duty of causing all officers and employees of the city included under the agreement to be informed as to their obligations and rights under such agreement and old-age and survivors insurance coverage.

(1953 Code, ch. 20, § 34)

Secs. 22-24 – 22-29. Reserved.

ARTICLE III. TUCSON SUPPLEMENTAL RETIREMENT SYSTEM*

DIVISION 1. TYPES OF RETIREMENT AND BENEFITS

Sec. 22-30. Definitions.

Sec. 22-30(a). “Accrued benefit” means the amount of the retirement benefit that the member has earned as of any particular date, based on the member’s average final monthly compensation and credited service as of the date of the calculation.

Sec. 22-30(b). “Accrued service” means a member’s service credit under the system for vesting and benefit accrual purposes which is earned (1) for personal service rendered to the city in exchange for compensation (including certain approved leaves of absence), (2) for accrued and unused leave earned during employment with the city prior to entering the end of service program (subject to the restrictions set forth in section 22-36(b)(2)), or (3) in connection with a direct trustee-to-trustee transfer from the Arizona State Retirement System pursuant to section 22-36(c)(1). With regard to the accrued service earned pursuant to (1) or (2) above, a member shall earn 1/2080 of a year of service credit for each hour of compensation. A member who is compensated on less than a full-time basis shall receive credit for a proportionate part of a full year of accrued service. Accrued service shall be expressed as whole and fractional years.

***Editor’s note** – Ord. No. 10657, §§ 1 – 6, adopted April 28, 2009, effective July 1, 2009, amended Art. III in its entirety to read as herein set out. Former Art. III, §§ 22-34 – 22-55, pertained to similar subject matter, and derived from Ord. No. 9645, § 2, adopted Dec. 17, 2001; Ord. No. 9701, § 1, adopted April 15, 2002; Ord. No. 9754, § 1, adopted August 5, 2002; Ord. No. 9776, §§ 1 – 4, adopted Oct. 7, 2002; Ord. No. 9826, § 1, adopted March 24, 2003; Ord. No. 10011, §§ 1, 2, adopted August 2, 2004; Ord. No. 10047, § 1, adopted Oct. 11, 2004; Ord. No. 10093, § 1, adopted Dec. 6, 2004; Ord. No. 10157, § 1, adopted June 7, 2005; Ord. No. 10158, § 1, adopted June 7, 2005; Ord. No. 10283, §§ 1 – 3, adopted June 6, 2006; Ord. No. 10284, §§ 1 – 4, adopted June 6, 2006; Ord. No. 10303, § 1, adopted July 6, 2006; Ord. No. 10320, § 1, adopted Sept. 19, 2006; Ord. No. 10322, § 1, adopted Sept. 26, 2006; Ord. No. 10428, § 1, adopted June 26, 2007; Ord. No. 10445, § 1, adopted Sept. 5, 2007; Ord. No. 10483, §§ 1 – 4, adopted Nov. 27, 2007; Ord. No. 10489, § 1, adopted Jan. 8, 2008; Ord. No. 10511, § 1, adopted March 25, 2008.

Sec. 22-30(c). “Accumulated contributions account” means the sum of all member contributions made by the employee, not to include employer contributions, and the interest credited to the member contributions during the period the member contributions are on deposit with the Tucson Supplemental Retirement System.

Sec. 22-30(d). “Actuarial Equivalent” means a Retirement Benefit payment option of equal value to another Retirement Benefit payment option, computed on the basis of appropriate actuarial assumptions. The Board shall determine, in accordance with Section 22-44(h), the applicable mortality table and interest rates, which shall be used in making Actuarial Equivalent determinations under the System, upon receipt of advice and experience analysis from the System actuary. The actuarial assumptions approved by the Board shall be set forth in an “Addendum to TSRS Code Sec. 22-30(d) – TSRS Actuarial Assumptions” (the “Addendum”) which shall be updated by the Board from time to time as necessary. The Addendum shall be maintained in the offices of the System Administrator.

Sec. 22-30(e). “Additional service” means whole and fractional years of additional service credit which is purchased by the member in accordance with section 22-36(c)(2) through section 22-36(g). Additional service is recognized for benefit accrual and benefit eligibility purposes hereunder, but is not recognized for vesting purposes.

Sec. 22-30(f). “Adjusted income base” means, for the purposes of section 22-39(f), the member’s compensation as of the member’s termination date, adjusted thereafter for each fiscal year of disability retirement to approximate the average compensation increase for active employees of the city. The member’s termination date compensation shall be adjusted annually by the sum of (1) the actual city wide cost of living percentage increase for active employees funded by the city in the applicable fiscal year, plus (2) a three and eight-tenths percent (3.8%) average merit increase for any fiscal year during which merit increases for active employees are funded by the city. The adjusted income base shall be determined by the board, in its discretion and on a uniform and non-discriminatory basis, for any disabled member.

Sec. 22-30(g). “*Alternate payee*” means member’s spouse, former spouse or dependent children/step-children or person identified as an alternate payee in a plan approved domestic relations or child support order.

Sec. 22-30(h). “*Annual required contribution*” or “*ARC*” means the annual amount necessary to fund the city’s normal cost to run the system plus that amount necessary to satisfy the annual amortization requirements for the system’s unfunded accrued liability, as determined by the system’s actuary in accordance with sound actuarial principles, and as set by the board on a fiscal year basis. The annual required contribution is expressed as a percentage of the city’s active member payroll costs for a fiscal year. Changes in accrued liabilities and actuarial experience may increase or decrease the annual required contribution.

Sec. 22-30(i). “*Average final monthly compensation*” or “*AFMC*” means the member’s average compensation for the applicable employment period, as defined below, within the one hundred twenty (120) months immediately preceding the member’s termination date, during which the member’s compensation was the highest. The “applicable employment period” for a tier I member shall be a period of thirty-six (36) consecutive calendar months of employment with the city and the “applicable employment period” for a tier II member shall be a period of sixty (60) consecutive calendar months of employment with the city. If the member has less than the number of consecutive calendar months of employment required for the applicable employment period calculation (thirty-six (36) months or sixty (60) months), the AFMC shall be the average of the compensation earned by the member during the period of employment with the city. For tier I members, accumulated unused vacation and sick leave hours may be included in the thirty-six (36) month period at the member’s final pay rate, with an equal number of hours subtracted from the beginning of the thirty-six (36) month period, provided that the member contribution requirements of section 22-34(f) are satisfied. Accumulated unused vacation and sick leave hours shall not be included in the calculation of average final monthly compensation for tier II members. The calculation of average final monthly compensation is subject to the special adjustment rules set forth in section 22-43(b) (part-time employment) and section 22-43(c) (unpaid authorized leave). For the period beginning on July 1, 2009, and ending on June 30,

2010, any active member who is subject to a reduction in pay in lieu of furlough shall continue to receive compensation credit for purposes of AFMC calculation during the reduction period at the rate of pay in effect for the member immediately preceding the pay reductions in lieu of furlough.

Sec. 22-30(j). “*Beneficiary*” means any person(s) or estate entitled to receive benefits under this article as designated by a member of the system in accordance with section 22-33(f).

Sec. 22-30(k). “*Board*” means the Tucson Supplemental Retirement System Board of Trustees.

Sec. 22-30(l). “*Code*” means the Internal Revenue Code of 1986, as amended.

Sec. 22-30(m). “*Compensation*” means base salary, vacation and sick leave pay and worker’s compensation pay equal to base salary for which an employee in a covered position receives credited service. In certain cases and pursuant to the provisions of this article, compensation may be imputed to hours included in credited service for which no services are performed. Compensation cannot be earned after retirement.

Sec. 22-30(n). “*Credited service*” means the accrued service and additional service to which the member or the member’s beneficiary shall be entitled.

Sec. 22-30(o). “*Death benefit*” means the cash lump sum payable upon the death of a vested member and equal to two (2) times the value of the deceased member’s accumulated contributions account.

Sec. 22-30(p). “*Disability retirement benefit*” means the retirement benefit payable to a member who is qualified for disability retirement as set forth in section 22-39(a) and which is calculated in accordance with section 22-39(c).

Sec. 22-30(q). “*Domestic relations order*” means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction and issued pursuant to a state domestic relations law that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a member.

Sec. 22-30(r). “Early retirement benefit” means the retirement benefit payable to a member who is eligible for early retirement as set forth in section 22-37(a)(1)(B) and which is calculated in accordance with section 22-37(b).

Sec. 22-30(s). “Employer contribution” means the difference between the annual required contribution and the member contribution rate, determined on a fiscal year basis.

Sec. 22-30(t). “Interest” means the annual rate or rates of interest declared by the board from time to time in accordance with the provisions of section 22-44(h) and credited to the members’ accumulated contributions accounts in accordance with the board’s declaration. Interest is credited as simple interest with no compounding and is deposited two (2) times per year, subject to the authority of the board to modify the Interest crediting method from time to time.

Sec. 22-30(u). “Legal or personal representative” means the court appointed or duly authorized legal representative of an employee, a member, an estate or a minor child.

Sec. 22-30(v). “Member” means an employee who is eligible to accrue retirement benefits under the system or, as the context may indicate, a former employee who has accrued refund rights or retirement benefits under the system.

Sec. 22-30(w). “Member contribution rate” means the portion of the annual required contribution to be paid by the members in any particular fiscal year, determined in accordance with section 22-34(a) or section 22-34(b), as applicable.

Sec. 22-30(x). “Normal retirement age” means the age at which a member is eligible for a normal service retirement. For tier I members hired by the city prior to July 1, 2009, the normal retirement age is sixty-two (62). For tier I members hired by the city on or after July 1, 2009, and prior to July 1, 2011, the normal retirement age is the later of the member’s sixty-second (62nd) birthday or the date on which the member is credited with at least five (5) years of accrued service. For tier II members, the normal retirement age is the later of the member’s sixty-fifth (65th) birthday or the date on which the member is credited with at least five (5) years of accrued service.

Sec. 22-30(y). “Normal retirement benefit” means the retirement benefit payable to a member who is eligible for a normal service retirement as set forth in section 22-37(a)(1)(A). For tier I members, the normal retirement benefit shall equal two and twenty-five one hundredths (2.25) percent of the member’s average final monthly compensation multiplied by the number of years of the member’s total credited service. For tier II members, the normal retirement benefit shall equal two and no one hundredths (2.00) percent of the member’s average final monthly compensation multiplied by the number of years of the member’s total credited service.

Sec. 22-30(z) “Prior government or military service” means time as an employee of the United States government, a state of the United States, a political subdivision of a state, this political subdivision, a tribal government (with the exception of any services rendered to the tribal government after January 1, 2007, which were commercial in nature), the Armed Forces of the United States, a state’s National Guard, the reserves of any military establishment of the United States or any state whether on active or reserve duty; and, such service is not treated as credited service with any other retirement system for which the member is entitled to receive a benefit.

Sec. 22-30(aa). “Qualified military service” means service in the uniformed services of the United States, as defined in section 414(u)(5) of the Code.

Sec. 22-30(bb). “Retirement benefit” means the monthly benefit payable to a member who satisfies the conditions for normal retirement, early retirement, deferred retirement or disability retirement.

Sec. 22-30(cc). “Retirement points rule” means, for tier I members, the rule of eighty (80). The rule of eighty (80) is defined as the sum of the member’s age and years of credited service equaling at least eighty (80). For tier II members, the “retirement points rule” means the rule of eighty-five (85). The rule of eighty-five (85) is defined as the sum of the member’s age and years of crediting service equaling at least eighty-five (85); provided, however, that the member is at least sixty (60) years of age.

Sec. 22-30(dd). “Spouse” means the lawfully recognized husband or wife of a member. The term “spouse” also includes the domestic partner of a member, provided that the member files a valid a

domestic partnership registration statement with the city's finance department, in accordance with chapter 17, article IX of the Tucson Code, as amended. With regard to domestic partners, the system administrator may rely exclusively on the finance department's domestic partnership records. In its discretion, the system administrator may require any member or purported spouse to produce reasonable documentation of an individual's status as a spouse hereunder.

Sec. 22-30(ee). "System" means the Tucson Supplemental Retirement System, as set forth in the chapter 22, article III of the Tucson City Code, as amended.

Sec. 22-30(ff). "Termination date" means the member's last day of active employment with the city as the result of resignation, discharge, layoff, retirement, death or total and permanent disability.

Sec. 22-30(gg). "Tier I member" means a member who was hired by the city prior to July 1, 2011. A rehired member shall reenter the system as a tier I member only if all of the following conditions are satisfied as of the date of rehire: (1) The rehired employee was a tier I member of the system during the employee's previous employment with the city, (2) the rehired employee was a vested member as of the most recent termination date, and (3) the rehired employee has not requested a refund of the member's accumulated contributions account or a transfer of his accrued benefit in accordance with section 22-41. All other rehired members shall reenter the system as tier II members.

Sec. 22-30(hh). "Tier II member" means a member who was hired by the city on or after July 1, 2011, or a rehired member who is not entitled to be a tier I member as set forth in section 22-30(gg).

Sec. 22.30(ii). "Total and permanent disability" means the inability to engage in any substantial gainful activity with the city by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months.

Sec. 22.30(jj). "Trust fund" means the custodial or trust account(s) maintained under the system as set forth in section 22-31.

Sec. 22-30(kk). "Vested" means a member who has accumulated a minimum of five (5) years of accrued service. A vested member is entitled to receive a retirement benefit under the system. (Ord. No. 10657, § 1, 4-28-09, eff. 7-1-09; Ord. No. 10696, § 1, 8-5-09, eff. 7-1-09; Ord. No. 10711, § 1, 9-9-09, eff. 7-1-09; Ord. No. 10712, § 1, 9-9-09, eff. 7-1-09; Ord. No. 10915, § 1, 6-21-11, eff. 7-1-11; Ord. No. 11020, § 1, 9-11-12, eff. 7-1-09)

Sec. 22-31. Trust fund.

The trust fund maintained in connection with the system which is intended to constitute a tax-qualified retirement plan trust fund as described in Section 401(a) and 501(a) of the Code and shall consist of all the assets of the system to be held in trust for the benefit of its members and their beneficiaries. The board shall select an appropriate custodial financial institution for deposit of the system's trust fund. (Ord. No. 10657, § 1, 4-28-09, eff. 7-1-09)

Sec. 22-32. Exclusive benefit.

The Tucson Supplemental Retirement system shall operate for the exclusive purpose of providing benefits to the members and their beneficiaries. It is prohibited for any part of the corpus or income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of the members or their beneficiaries. (Ord. No. 10657, § 1, 4-28-09, eff. 7-1-09)

Sec. 22-33. Membership.

Sec. 22-33(a). *Mandatory membership.* All permanent employees in the classified service who are employed by the city on a full time basis shall be contributing members of the system upon their date of hire by the city as a condition of their employment. For purposes of this chapter, full time basis is defined by the Tucson City Code Civil Service Rules and Regulations. Additionally, certain permanent part-time employees hired by the city before October 4, 2004, entered the system as contributing members and shall remain grandfathered members pursuant to city Ordinance 10047. Permanent full time employees who, without a break in service, elect to work less than full time shall remain contributing members of the system.

Sec. 22-33(b). *Optional Membership.* Full-time appointed officers, full-time employees in the offices of

the Mayor and City Council and full-time unclassified employees in the City Manager's office (collectively, "Appointed Positions") may elect membership in the System within ninety (90) days of their formal appointment to an Appointed Position. Accrued Service accrues from the beginning of the first payroll period commencing after an application for participation in the System has been accepted by the System Administrator. Similarly, a Member who transfers directly from a mandatory membership position defined in Section 22-33(a) above to an Appointed Position without a Termination Date may elect to waive membership in the System within ninety (90) days of their formal appointment to the Appointed Position. In the case of an individual who waives membership while serving in an Appointed Position, Accrued Service and Member contributions shall cease on the effective date of the membership waiver, as determined by the System Administrator in a uniform and non-discriminatory manner. A waiver of membership pursuant to this Section shall not constitute a termination of membership for purposes of determining a Member's right to a refund of Accumulated Contributions or entitlement to Retirement Benefits.

Sec. 22-33(c). Termination of membership. Should any member leave city employment with less than five (5) years of accrued service and for any reason other than death, the member shall cease to be a member of the system and will receive a refund of the member's accumulated contributions account in accordance with section 22-41(b). As set forth in section 22-41(e), the refund of the accumulated contributions account triggers an immediate forfeiture of credited service.

Sec. 22-33(d). Exclusion from membership. The following individuals are excluded from membership: (1) nonpermanent city employees and permanent part-time city employees whose membership has not been grandfathered by the city in accordance with section 22-33(a); (2) employees occupying positions covered by the State of Arizona Public Safety Personnel Retirement System; (3) leased employees, as defined in Section 414(n) of the Code, and (4) independent contractors.

Sec. 22-33(e). Reentry into membership. Any former member who is reemployed by the city in an eligible job classification shall become a member of the system. The member contributions required from a

rehired member shall be determined in accordance with section 22-34(c) and credited service accrued by the rehired member shall be determined in accordance with section 22-36(h). The accrued benefit earned by a rehired member shall be determined based on the member's status as a tier I member or a tier II member, as those terms are defined in section 22-30(gg) and 22-30(hh), respectively. The rules set forth herein regarding rehired members shall apply to members who return to employment with the city following a layoff or any other event which constitutes a termination date under section 22-30(ff).

Sec. 22-33(f). Designation of beneficiary(ies). Each employee, or designated legal representative, shall file a statement designating a beneficiary(ies) or contingent beneficiary(ies) within thirty (30) days after becoming a member of the system. Any member who is married and wishes to designate a non-spouse beneficiary must provide spousal consent to the beneficiary designation. Until such statements are filed, any death benefit, survivor annuity or refund of member contributions payable upon the member's death shall be paid to the member's spouse, if the member was married at death, or to the member's estate, if the member is not married at death. Upon receipt and acceptance of a statement designating a beneficiary(ies) by the system administrator, the designation shall become effective and shall remain in effect until an updated statement is received and accepted by the system administrator. A change in the marital status of a member does not impact the validity or enforceability of a beneficiary designation on file with the system administrator. A member must update the beneficiary designation to reflect changes in marital status, as necessary. Upon ratification by the board of a member's application for retirement benefits, the member's beneficiary designation shall become irrevocable with regard to any joint and survivor annuity elected in accordance with section 22-42(c). All other beneficiary designations become irrevocable upon the member's death. There shall be no liability on the part of the city, the board or the system administrator with respect to any payment made in accordance with the most recent beneficiary designation on file with the system administrator. (Ord. No. 10657, § 1, 4-28-09, eff. 7-1-09; Ord. No. 10711, § 2, 9-9-09, eff. 7-1-09; Ord. No. 10712, § 2, 9-9-09, eff. 7-1-09; Ord. No. 10915, § 2, 6-21-11, eff. 7-1-11; Ord. No. 11020, § 2, 9-11-12, eff. 7-1-09)

Sec. 22-34. Membership contributions.

Sec. 22-34(a). Fixed contribution rate. Each member hired prior to July 1, 2006, shall make mandatory member contributions to the system for every pay period during which the member receives compensation in an amount equal to five (5) percent of the member's compensation. The finance director shall deduct this amount and credit it to the member's accumulated contributions account.

Sec. 22-34(b). Variable contribution rates. Each member hired on or after July 1, 2006, shall make mandatory member contributions to the system for every pay period during which the member receives compensation in an amount equal to forty (40) percent of the annual required contribution. Notwithstanding the foregoing, the member's annual contribution rate (1) shall in no event be less than five (5) percent of compensation and (2) shall be subject to an annual

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to the amount of the full disability retirement benefit paid by TSRS. For purposes of this paragraph, employer provided benefits means social security benefits, worker's compensation payments, TSRS pension benefits or long term disability payments.

(Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 10696, § 3, 8-5-09, eff. 7-1-09; Ord. No. 10775, § 2, 4-6-10, eff. 7-1-10)

Sec. 22-40. Death benefits.

Sec. 22-40(a). Generally.

- (1) If the member dies prior to the board's ratification of the member's application for retirement benefits, if any, the death benefit or survivor annuity payable as the result of the member's death shall be determined in accordance with this section. If the member dies after the board has ratified the member's application for retirement benefits, including an end of service participation agreement, any survivor benefits payable as a result of the death of the member shall be determined in accordance with the member's retirement benefit payment election. Notwithstanding any other provision herein to the contrary, a member who satisfied the conditions for normal or early retirement and filed the appropriate paperwork with the system administrator to pre-select retirement benefits prior to July 1, 2009, shall be treated as a member whose application for retirement benefits has been ratified by the board for purposes of this paragraph.
- (2) If a member dies while performing qualified military service on or after January 1, 2007, the member shall be treated as if he returned to employment with the city on the day before the date of death.

Sec. 22-40(b). Spouse as beneficiary. If the spouse is the member's beneficiary and the spouse dies before the death benefit is paid, the available death benefit shall be paid to the beneficiary of the spouse, and if none, then to the legal representative of the spouse's estate.

Sec. 22-40(c). Death before vested interest. Should a member with less than five (5) years of accrued service die, the member's accumulated contributions account balance, determined as of the member's date of death, shall be paid in a lump sum to the member's beneficiary. If the beneficiary(ies) predeceases the member, the member's accumulated contributions account balance shall be paid to the member's spouse, if the member was married at death, or to the legal representative of the member's estate, if the member is not married at death.

Sec. 22-40(d). Death after vested interest. If a member who is credited with five (5) or more years of accrued service dies before reaching normal or early retirement, a death benefit will be paid to the member's beneficiary(ies). If the beneficiary(ies) predeceases the member, the death benefit shall be paid to the member's spouse, if the member was married at death, or to the legal representative of the member's estate, if the member is not married at death.

Sec. 22-40(e). Death while eligible for retirement. If a vested member dies after attaining normal or early retirement eligibility (determined in accordance with sections 22-37(a)(1)(A) or (B), as applicable) but prior to the board's ratification of the member's application for retirement benefits, a death benefit or survivor annuity will be paid as follows:

- (1) *Default for spouse.* If the member's spouse is the beneficiary (and except as set forth in paragraph (3) below), a survivor annuity will be paid to the spouse and will equal the benefit the spouse would have received if the member had retired on the day before death and had elected to receive a joint and 100% survivor annuity. In determining the amount of the survivor annuity, the retirement benefit payable on account of the member's presumed retirement shall be calculated in accordance with the early retirement reduction provisions of section 22-37(b), if applicable. The survivor annuity described in this paragraph is payable only to a spouse of a deceased member.
- (2) *Default for single non-spouse beneficiary.* If the member has designated a single beneficiary other than a spouse, a survivor

annuity will be paid to the beneficiary and will equal the benefit the beneficiary would have received if the member had retired on the day before death and had elected to receive an annuity certain and for life with a period certain of one hundred eighty (180) months, commencing in the month following the date of the member's death and paid until the end of the period certain. If the beneficiary dies prior to the completion of the period certain, a one-time lump sum payment equal to the present value of the remaining period certain payments to the estate of the beneficiary. In determining the amount of the survivor annuity, the retirement benefit payable on account of the member's presumed retirement shall be calculated in accordance with the early retirement reduction provisions of section 22-37(b), if applicable.

- (3) *Default for multiple beneficiaries.* The survivor annuities described in paragraphs (1) and (2) above are payable only to a spouse or single beneficiary. If the member has designated multiple beneficiaries, a death benefit will be paid to the multiple beneficiaries in accordance with the member's designation, regardless of whether the spouse is named as one of the multiple beneficiaries.
- (4) *Death benefit election.* A spouse or single beneficiary entitled to receive a survivor annuity under paragraph (1) and (2) above may elect, in his or her discretion, to waive the survivor annuity and receive a death benefit. To make the death benefit election, the spouse or beneficiary shall sign a statement acknowledging that the survivor annuity and death benefit options have been satisfactorily explained and shall make a written election to receive the death benefit, all in accordance with the policies and procedures of the system administrator.

Sec. 22-40(f). Refund guarantee. A member who elects a single life annuity pursuant to section 22-42(b) or a joint and survivor annuity pursuant to section 22-42(c) shall be guaranteed a refund if the member and their beneficiary or survivor die before the monthly

retirement benefits paid equal or exceed two (2) times the value of the member's accumulated contributions with interest at time of retirement. The member's estate (or heirs to the estate) will receive a lump sum amount equal to that amount, reduced by the retirement benefits paid to date.

Sec. 22-40(g). Payment following death. Following the death of a member, the system administrator will notify the beneficiary(ies) or the surviving spouse, as applicable, regarding the right to receive a refund of member contributions, a death benefit or a survivor annuity. Any lump sum benefit available to a spouse or beneficiary(ies) under this article shall be paid in accordance with sections 22-43(f) and (g).

(Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 10696, § 4, 8-5-09, eff. 7-1-09; Ord. No. 10711, § 3, 9-9-09, eff. 7-1-09; Ord. No. 10712, § 3, 9-9-09, eff. 7-1-09; Ord. No. 10915, § 6, 6-21-11, eff. 7-1-11)

Editor's note – Section 8 of Ord. No. 10915, adopted June 21, 2011, provides that the amendments made to Sec. 22-40(f) are effective retroactively to July 1, 2009.

Sec. 22-41. Refund of accumulated contributions accounts; transfers to other systems.

Sec. 22-41(a). Member's request for refund. A member may request a refund of the member's accumulated contribution account following the member's termination date by filing the appropriate refund application with the system administrator. If the member was dismissed from city service, the member's application for a refund shall not be approved and disbursed until the member's separation from employment with the city becomes final and is no longer subject to any administrative or judicial review.

Sec. 22-41(b). Refund to Non-Vested Member. Any Member who terminates from City service prior to becoming a Vested Member shall cease to be a Member and shall be eligible to request a refund of his Accumulated Contributions Account as set forth in Section 22-33(c). The System Administrator shall contact the former Member as soon as reasonably possible following the Termination Date and shall provide information regarding the available refund. In the event that the former Member's termination is subject to administrative or judicial review, no refund shall be processed until such termination is final and binding. In the event the former Member does not consent to receipt of the refund of the Member's

Accumulated Contributions Account within a reasonable period following notification by the System Administrator and the Member's Accumulated Contributions Account balance is more than one thousand dollars (\$1,000.00), but does not exceed five thousand dollars (\$5,000.00), the System Administrator may transfer the Accumulated Contributions Account balance to an individual retirement account established for the benefit of the Member in accordance with Code Section 401(a)(31)(B). If the Member's Accumulated Contributions Account balance equals one thousand dollars (\$1,000.00) or less and the Member fails to consent to receipt of the refund, the System Administrator may, in its discretion, issue a refund check to the Member without the Member's consent. If the Member's Accumulated Contributions Account balance equals five thousand dollars (\$5,000.00) or more and the former Member fails to consent to receipt of the refund, the System Administrator shall hold the Accumulated Contributions Account in the System for a period of three (3) years from the Termination Date, at which time the System Administrator shall escheat the Accumulated Contributions Account to the State of Arizona. The amount escheated to the State of Arizona shall not include Interest credited to the Accumulated Contributions Account after the Termination Date.

Sec. 22-41(c). Beneficiary's request for refund. Upon the death of a member, a beneficiary may request a refund of the member's accumulated contributions account or a death benefit. The beneficiary's right to receive a refund or a death benefit shall be determined in accordance with the provisions of this chapter and such determination shall take into account any retirement benefit payments made to the member prior to death, if any.

Sec. 22-41(d). Transfer to other Arizona Systems. Following a member's termination date and prior to the member's retirement or request for a refund of the member's accumulated contribution account, the member may request a transfer of the member's vested accrued benefit and/or the member's accumulated contributions account to a public retirement system maintained by the State of Arizona or any municipality of the State of Arizona, to be processed in accordance with Arizona Revised Statute Sections 38-730, 38-923 and 38-924, as amended. A transfer from the system shall not cause the system to incur any unfunded accrued liability, except in the case of a transfer to the Arizona State Retirement System in accordance with

the reciprocity rules in effect with regard to transfers between the system and ASRS and which shall not cause any significant detriment to the funded status of the system.

Sec. 22-41(e). Forfeiture of credited service and tier I status. Any refund or transfer of a member's accumulated contributions account or a transfer of member's accrued benefit shall trigger an immediate forfeiture of all credited service earned by the member. In the case of a vested member, a refund or transfer under this section 22-41 and the related forfeiture of credited service will result in the loss of the member's (or beneficiary's) retirement pension rights under the system. If a former member requests a refund of the member's accumulated contributions account or a transfer of the member's accrued benefit, the former member shall forfeit any and all rights to tier I member status and, if the former member is rehired by the city, may reenter the system only as a tier II member, subject to all applicable participation requirements. (Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 10915, § 7, 6-21-11, eff. 7-1-11; Ord. No. 11020, § 3, 9-11-12, eff. 7-1-09)

Sec. 22-42. Retirement benefit payment options.

Sec. 22-42(a). Explanation of benefit options. A member who is eligible to receive a retirement benefit may request from the system administrator information regarding the retirement benefit payment options available. No pension is automatically payable hereunder, except as provided in section 22-40, death benefits, and all eligible members must make appropriate retirement elections under the system. The member and spouse, if any, shall sign a statement acknowledging that the retirement benefit payment options have been satisfactorily explained and shall make a written election of one (1) of the retirement benefit payment options, all in accordance with the policies and procedures of the system administrator. The benefit election can be revoked or changed by the member by filing a written notice of revocation or change with the system administrator, subject to any applicable spousal acknowledgement requirements, any time prior to ratification of the retirement benefit by the board. The benefit election is irrevocable upon board ratification of the member's application for retirement benefits.

Sec. 22-42(b). Single life annuity. A member eligible for retirement may elect to receive his retirement benefit payable in a single life annuity, ending with the monthly payment made in the month of the member's death. The single life annuity shall be the normal form of benefit for purposes of calculating the retirement benefits under the system. Any election of an alternative annuity option under the system shall result in the payment of an annuity which is the actuarial equivalent of the single life annuity payable to the member.

Sec. 22-42(c). Joint and survivor annuity. A member eligible for retirement may elect to receive his retirement benefit payable in a joint and survivor annuity which provides payments to the member for the remainder of the member's life and then provides payments to the surviving beneficiary for the remainder of the beneficiary's life. In making this election, the monthly benefit to be paid to the surviving beneficiary following the death of the member may be one hundred (100) percent, seventy-five (75) percent or fifty (50) percent of the monthly benefit the member had been receiving. All payments will cease upon the death of the member or the beneficiary, whichever shall occur last.

Sec. 22-42(d). Annuity certain and for life. A member eligible for retirement may elect to receive his retirement benefit payable in an annuity for a term certain and for life. This benefit allows a member to ensure payment of a benefit over the member's lifetime, and in the event of the member's death before the end of a "period certain," continuing payment of the benefit until the end of the "period certain" to a surviving beneficiary or contingent beneficiary. A member may elect to receive a term certain annuity with a guaranteed payment period of sixty (60) months, one hundred twenty (120) months or one hundred eighty (180) months. For purposes of the annuity for a term certain and for life, the guaranteed payment period shall begin with the earlier of the first monthly benefit payment made to the member or the first monthly end of service program accrual, if applicable. Should the member live beyond the period certain elected, no survivor benefits shall be paid to the member's beneficiary(ies). Should the member, the beneficiary and any contingent beneficiary die before the expiration of the term certain, the board shall make a one-time lump sum payment equal to the present value of remaining period certain payments to the estate of the person last receiving a benefit under the annuity.

Sec. 22-42(e). Failure to elect benefit option or commencement date. Failure to elect a benefit option will result in the member receiving a single life annuity, assuming the member survives until the pension commencement date. Failure to elect a date on which payment begins will result in payments made in accordance with the minimum required distribution provisions of section 22-43(e) and Code Section 401(a)(9). Notwithstanding the foregoing, the provisions of section 22-40 apply when a vested member dies while eligible for retirement and prior to the board's ratification of the member's application for retirement benefits.

(Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 10711, § 4, 9-9-09, eff. 7-1-09; Ord. No. 10712, § 4, 9-9-09, eff. 7-1-09)

Sec. 22-43. Administration of benefit payments; benefit calculations.

Sec. 22-43(a). Payment of small accounts. If the accrued benefit of a member, including any refund of an accumulated contributions account, has a present value of five thousand dollars (\$5,000.00) or less at the time the benefit becomes payable, a lump sum distribution shall be paid to the member within thirty (30) days following their benefit election and the satisfaction of any applicable spousal consent requirements.

Sec. 22-43(b). Special rules for members with part-time employment. When a member has earned accrued service during part-time employment or both full-time and part-time employment, the monthly retirement benefit, in the form of benefit elected, will be computed using the following special rules.

- (1) Special rules for computing average final monthly compensation for a member who had part-time or both full-time and part-time employment. Average final monthly compensation shall be determined by:
 - (A) For periods of full-time hours worked, the average of the highest thirty-six (36) consecutive months of compensation of the last one hundred twenty (120) consecutive months of compensation divided by thirty-six (36), or if the member has less than thirty-six (36) consecutive months of compensation divided by the actual number of months of compensation.

- (B) For periods of part-time hours worked, the average of the highest annualized thirty-six (36) consecutive months of compensation of the last one hundred twenty (120) consecutive months of compensation divided by thirty-six (36), or if the member has less than thirty-six (36) consecutive months of compensation divided by the actual number of months of compensation.
- (2) Special rules for computing annualized months of compensation for a member who had a part-time or both full-time and part-time employment.
- (A) Determine the actual compensation paid to an employee during a two thousand eighty-hour (2,080) period in any consecutive twelve-month calendar period.
- (B) Divide the actual number of hours for which an employee was compensated by two thousand eighty (2,080).
- (C) Divide the result obtained in "A" by the result obtained in "B."

Annualized monthly compensation shall be the result obtained under "C" divided by twelve (12).

Sec. 22-43(c). Special rule for members with authorized leave without pay. When a member has taken authorized leave without pay, including periods of qualified military service, the member's average final monthly compensation shall be computed by imputing compensation for the authorized leave period, at the compensation rate in effect for the member immediately preceding the commencement of the leave period. For the period beginning on July 1, 2009, and ending on June 30, 2010, furlough periods shall be considered periods of authorized leave without pay for purposes of this section 22-43(c).

Sec. 22-43(d). Limitation on compensation. In no event may the compensation of a member considered under this system exceed the limit set forth in Section 401(a)(17) of the Code, as adjusted for cost-of-living

increases in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any fiscal year period, not exceeding twelve (12) months, over which compensation is determined beginning in such calendar year.

Sec. 22-43(e). Maximum benefit allowable. Notwithstanding anything hereunder to the contrary, the annual benefit payable to a member in the form of a straight life annuity shall not exceed the annual dollar limitation in effect under Code Section 415(b), as adjusted in accordance with paragraph (1) below (the "annual dollar limitation"). For the 2009 Limitation Year, the annual dollar limitation is \$195,000.00. If the benefit the member would otherwise accrue in a limitation year would produce an accrued benefit in excess of the annual dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the annual dollar limitation. For purposes of this section, the annual benefit shall not include the annual benefit attributable to either mandatory member contributions or rollover contributions.

- (1) *Cost of living adjustments.* The annual dollar limitation shall be adjusted for each calendar year to take into account any cost-of-living increase adjustments for that calendar year allowable pursuant to applicable regulations or rulings of the United States Treasury Department under Section 415(d) of the Code. Any such adjustment shall be effective only as of the first day of the calendar year for which such adjustment is announced. Cost-of-living adjustments to the annual dollar limitation made after a member retires shall apply to that member, provided that in no event shall such cost-of-living adjusted amounts exceed the Code Section 401(a)(17) limitation on compensation for that member determined as of the member's termination of employment.
- (2) *Minimum benefits.* Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under the system shall be deemed not to exceed the annual dollar limitation if:

- (A) The benefits payable for a limitation year under any form of benefit with respect to such member do not exceed ten thousand dollars (\$10,000.00) multiplied by a fraction: (i) the numerator of which is the member's number of years (or part thereof, but not less than one (1) year) of credited service (not to exceed ten (10)), and (ii) the denominator of which is ten (10); and
- (B) The city has not at any time maintained a defined contribution system in which the member participated (for this purpose, mandatory employee contributions under a defined benefit system are not considered a separate defined contribution system).
- (3) *Service and participation reductions.* If the member has less than ten (10) years of participation in the system, the annual dollar limitation shall be multiplied by a fraction: (1) the numerator of which is the number of years (or part thereof, but not less than one (1) year) of participation in the system, and (2) the denominator of which is ten (10).
- (4) *Early payment adjustments.* The annual dollar limitation shall be adjusted if the member's benefit commencement date is before age sixty-two (62).
- (A) *Limitation Years Beginning on or after July 1, 2007.* With regard to annuities commencing in Limitation Years beginning on or after July 1, 2007 and when the Member's benefit commencement date is before age 62, the Annual Dollar Limitation for the Member's benefit commencement date shall be the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's benefit commencement date that is the actuarial equivalent of the lesser of (i) the Annual Dollar Limitation (adjusted under Section 22-43(d)(3), if required) computed using a 5% interest rate and the applicable mortality table under Code Section 417(e)(3) and expressing the Member's age based on completed calendar months as of the benefit commencement date and (ii) the Annual Dollar Limitation (adjusted under Section 22-43(d)(3), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the System at the Member's benefit commencement date to the annual amount of the immediately commencing straight life annuity under the System at age 62.
- (B) *Limitation Years Beginning Before July 1, 2007.* With regard to annuities commencing in Limitation Years beginning before July 1, 2007 and when the Member's benefit commencement date is before age 62, the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's benefit commencement date that is the actuarial equivalent of the Annual Dollar Limitation (adjusted under Section 22-43(d)(3), if required) computed using a 5% interest rate and the mortality table described in Rev. Rul. 2001-62.
- (C) Notwithstanding the other requirements of this Section, no adjustment shall be made to the Annual Dollar Limitation to reflect the probability of a Member's death between the Member's benefit commencement date and age 62 if benefits are not forfeited upon the death of the Member prior to the benefit commencement date. To the extent benefits are forfeited upon death before the benefit commencement date, such an adjustment shall be made.
- (5) *Alternative benefit payment options.* Except as provided below, if a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section.

- (A) (i) *Limitation Years Beginning on or After July 1, 2007.* With regard to annuities commencing in Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:
- (a) the annual amount of the straight life annuity (if any) payable to the Member under the System commencing at the same benefit commencement date as the Member's form of benefit; and
- (b) the annual amount of the straight life annuity commencing at the same benefit commencement date that has the same actuarial present value as the Member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table under Code Section 417(e)(3).
- (ii) *Limitation Years Beginning Prior to July 1, 2007.* With regard to annuities commencing in Limitation Years beginning prior to July 1, 2007, the actuarial equivalent straight life annuity is equal to the greater of:
- (a) the annual amount of a straight life annuity (if any) payable to the Member under the System commencing at the same benefit commencement date as the Member's form of benefit; and
- (b) the annual amount of the straight life annuity commencing at the same benefit commencement date that has the same actuarial present value as the Member's form of benefit, computed using a 5% interest rate assumption and the mortality table described in Rev. Rul. 2001-62.
- (6) *Definitions.* For purposes of this section, the term "limitation year" shall mean the calendar year beginning on January 1 and ending on December 31. The term "applicable mortality table" shall mean the mortality table prescribed by the Internal Revenue Service based on the actual experience of pension plans and projected trends in such experience.
- (7) *Incorporation by reference.* The additional requirements of Code Section 415(b) and the treasury regulations promulgated there under, as applicable to governmental plans maintained in accordance with Code Section 414(d), are hereby incorporated by reference.
- (8) *Late Payment Adjustments.* The Annual Dollar Limitation shall be adjusted if the Member's benefit commencement date is after age 65.
- (A) *Limitation Years Beginning on or after July 1, 2007.* With regard to annuities commencing in Limitation Years beginning on or after July 1, 2007 and when the Member's benefit commencement date is after age 65, the Annual Dollar Limitation for the Member's benefit commencement date shall be the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's benefit commencement date that is the actuarial equivalent of the Annual Dollar Limitation (adjusted under Section 22-43(e)(3), if required), computed with a 5% interest rate and the applicable mortality table under Code Section 417(e)(3) (and expressing the Member's age based on completed calendar months as of the benefit commencement date).

- (B) *Limitation Years Beginning Before July 1, 2007.* With regard to annuities commencing in Limitation Years beginning before July 1, 2007 and when the Member's benefit commencement date is after age 65, the Annual Dollar Limitation shall be the amount calculated in accordance with (A) above, but without adjusting the Member's age based on completed calendar months as of the benefit commencement date.
- (C) Notwithstanding the other requirements of this Section, no adjustment shall be made to the Annual Dollar Limitation to reflect the probability of a Member's death between age 65 and the Member's benefit commencement date if benefits are not forfeited upon the death of the Member prior to the benefit commencement date. To the extent benefits are forfeited upon death before the benefit commencement date, such an adjustment shall be made.

Sec. 22-43(f). Minimum required distributions. The board and the system administrator shall make reasonable and good faith efforts to comply with the requirements of the treasury regulations promulgated pursuant to Code Section 401(a)(9), notwithstanding any provision herein to the contrary. The obligations of the board and the system administrator shall be interpreted and construed in a manner consistent with the relief afforded to governmental plans under Section 823 of the Pension Protection Act of 2006 and the Treasury Department's proposed regulations promulgated pursuant thereto, at Treas. Reg. Sec. 1.401(a)(9)-1, Q&A-2(d). When processing distributions required by Code Section 401(a)(9), the system administrator shall make reasonable and good faith efforts to begin the payment of such distributions no later than the April 1 of the calendar year following the later of the calendar year in which the member attains the age of 70½ or the calendar year containing the member's termination date. Death benefit distributions also shall be processed in accordance with a reasonable and good faith interpretation of the requirements of Code Section 401(a)(9).

Sec. 22-43(g). Eligible rollover distributions. Notwithstanding anything herein to the contrary, the member or distributee may elect to have any portion of an eligible rollover distribution received from the system paid directly to an eligible retirement plan. An eligible rollover distribution shall be made pursuant to the requirements of Code Section 401(a)(31) and Code Section 402, and the applicable regulations promulgated there under, and in the manner prescribed by the board.

- (1) *Distributee.* A "distributee" includes a member or former member. In addition, the member's or former member's surviving spouse and any alternate payee under a domestic relations order, are distributees with regard to the interest of the spouse or former spouse. A distributee also includes the member's non-spouse designated beneficiary. In the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Section 409(a) or Section 408(b) of the Code that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Code. Section 402(c)(11) of the Code provides that a direct rollover of a distribution to a non-spouse beneficiary is a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code. Accordingly, the distribution to a non-spouse beneficiary is not subject to the direct rollover requirements of Section 401(a)(31) of the Code, the notice requirements of Section 402(f) of the Code, or the mandatory withholding requirements of Section 3405(c) of the Code.
- (2) *Eligible retirement plan.* An "eligible retirement plan" is an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the system, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan

described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to an alternate payee under a domestic relations order. An "eligible retirement plan" also is a Roth IRA described in Section 408A(b) of the Code, provided that any distribution to such Roth IRA is made in accordance with the provisions of Section 408A of the Code.

- (3) *Eligible rollover distribution.* An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includible in gross income; and (iv) any other distribution that is reasonably expected to total less than two hundred dollars (\$200.00) during a year. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax member contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Section 408(a) or (b) of the Code, (2) to a qualified defined contribution plan described in Section 401(a) of 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible,

or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Sec. 22-43(h). Assignments prohibited. Except as set forth in section 22-43.1, none of the money, pensions or other benefits payable by the system shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

(Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 11020, § 4, 9-11-12, eff. 7-1-09)

Sec. 22-43.1. System approved domestic relations orders.

Sec. 22-43.1(a). Benefits subject to domestic relations orders. The right of a member to a retirement benefit, to the refund of a member's accumulated contributions account, or any other benefit under the provisions of the system shall be subject to award pursuant to a system approved domestic relations order.

Sec. 22-43.1(b). System administrator review and approval. The system administrator is responsible for the review and approval of any domestic relations order impacting benefits or rights of a member under this system and which is presented to the system administrator in a timely fashion. The system administrator shall determine whether the domestic relations order can be administered and benefits paid in accordance with the applicable requirements of the order, the system and the Code. Any domestic relations order accepted by the system administrator shall be referred to as a system approved domestic relations order. To the extent permitted by law, the system administrator's decision regarding a domestic relations order shall be final and binding. The city, the board, and the system administrator shall not be responsible for the payment of any system benefits in contravention of a domestic relations order when the domestic relations order is not timely presented to the system administrator for review.

Sec. 22-43.1(c). System approved domestic relations order. No domestic relations order shall be accepted by the system administrator if the order requires the system to provide any type, form or time of payment that is not provided under this Code, as determined by the system administrator in its discretion. Additionally, any system approved domestic relations order must reasonably identify the Tucson Supplemental Retirement System and specify all of the following: (1) the name and last known mailing address of the member; (2) the name and last known mailing address of each alternate payee covered by the order; (3) the method of determining the amount of the member's system benefits to be paid to each alternate payee covered by the order; (4) the number of payments or period to which the order applies; and (5) whether survivor benefits are payable to the alternate payee upon the death of the member.
(Ord. No. 10657, § 3, 4-28-09, eff. 7-1-09)

DIVISION 2. ADMINISTRATION OF THE SYSTEM

Sec. 22-44. Board of trustees.

Sec. 22-44(a). Administration. The board of trustees shall be responsible for, and shall have the power and authority necessary to effectuate the administration, management and operation of the system. The board shall construe, interpret and implement the provisions of this article, in its discretion and pursuant to uniform and non-discriminatory rules, policies and procedures.

Sec. 22-44(b). Membership. The membership of the board shall be exempt from all provisions of section 10A-134 of the Tucson Code. The board shall consist of the following seven (7) members:

- (1) A chairman, to be appointed by the mayor, subject to the approval of the city council;
- (2) The city's human resources director or his/her designee;
- (3) The city's finance director or his/her designee;

- (4) Two (2) contributing members nominated and elected by the contributing members of the system in a manner that the board shall prescribe by regulation;
- (5) One (1) retired member nominated and elected by the retired members of the system in a manner that the board shall prescribe by regulation;
- (6) One (1) member appointed by the city manager.

Sec. 22-44(c). Qualifications. The individuals appointed to the board by the mayor, as chairman of the board, and by the city manager shall be appointed based on the individual's business experience with emphasis on a discipline such as law, retirement administration, accounting or investments.

Sec. 22-44(d). Compensation. The members of the board shall serve without compensation but shall be reimbursed for expenses incurred by them in the performance of their board duties.

Sec. 22-44(e). Term of office. The term of office of board members nominated and elected by members in accordance with section 22-44(b)(4) and (5) above shall be three (3) years. The chairman of the board shall serve a term of four (4) years. The city manager's appointee shall serve at the discretion of the city manager or until the appointee resigns by providing advance notice to the board and the city manager. The directors of human resources and finance shall be standing members of the board and not subject to annual terms. Any employee or retiree representative board member who is elected to two (2) consecutive terms shall not be eligible to succeed themselves.

Sec. 22-44(f). System budget. The board shall annually prepare and maintain a budget setting forth the administrative costs of the system. The system budget shall include separate line items for the primary administrative expenses of the system, including, but not limited to, recordkeeping, accounting fees, actuarial expenses, investment fees and expenses, audit expenses, staffing costs, other independent professional expenses, and professional development fees and expenses for board members and the system

administrator. The system budget shall be presented to mayor and council in connection with the board's annual report on the system.

Sec. 22-44(g). Employment of professionals. The board may employ managers, consultants, actuaries, technical advisors and professionals, including legal counsel and medical practitioners, and staff personnel as may be necessary for the proper administration of the system. Professionals employed by the board shall discharge their duties in accordance with and be subject to the highest prevailing industry standard of care for their respective disciplines.

Sec. 22-44(h). Establishing interest rates and actuarial assumptions; actuarial studies. The board shall establish, from time to time, the interest rate(s) applicable to member accumulated contributions accounts and the assumed earnings rate applicable to end of service program benefits, as well as the applicable crediting methodologies. The board also shall adopt from time to time such mortality, service and other tables, as well as the assumed interest rate, as are necessary and proper for the administration and funding of the system. Additionally, the board shall cause an actuarial study to be completed with regard to all of the experience of the system no less frequently than every five (5) years. Upon receipt and review of the results of the actuarial study(ies), the board shall if necessary revise the actuarial assumptions used in the calculation of contributions and/or the preparation of the annual valuations.

Sec. 22-44(i). Retirement incentives. The board may, pursuant to duly adopted board policies, recommend retirement incentive programs and/or an extension of the scheduled termination date of incentive programs such as the end of service program; provided that the recommended action shall have no significant detrimental effect on the annual required contribution or the funded status of the system and is consistent with the employment and retention goals and objectives of the city, as determined by the board in consultation with the system's actuary and the city manager's office.

Sec. 22-44(j). Prohibited interest and fiduciary responsibility. No member of the board shall have any interest, direct or indirect, in the gains or profits of an investment made by the board, except as a member or beneficiary of the system. No member of the board shall, directly or indirectly, for himself or as an agent, in any manner use the moneys or other assets of the system, except to make such payments from the system as are authorized by the board; nor shall any member of the board become an endorser or surety or in any manner an obligor for moneys loaned by or

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CODE COMPARATIVE TABLE – SUBSEQUENT ORDINANCES

Ordinance Number	Date	Section	Disposition
10967	2-28-12	1	Ch. 7, Art. XXI, Div. 1 (tit.)
		2	Added 7-449
		3	7-450
		4	7-453
		5	Added 7-465 – 7-479
		6	Rpld 11-2
10986	5-22-12	1	15-10.1
		2	15-16.1
			15-16.6
		3	15-31.1
			Added 15-31.4
			Added 15-31.5
			Added 15-31.6
			Added 15-31.7
			Added 15-31.8
			Added 15-31.9
		4	15-32.2
			15-32.5
		5	15-33.1
			15-33.2
		6	15-34.3
	15-34.6		
	15-34.7		
7	15-34.8		
8	15-36		
9	15-70		
	Added 15-70.1		
10987	5-22-12	1	27-32.1
			27-33
			27-34
10989	6-5-12	2	10-31 (note)
		3	10-31(7) (note)
			10-31(8) (note)
			10-33 (note)
			10-33.1 (note)
			10-34 (note)
			10-34.1 (note)
			10-35 (note)
			10-48 (note)
			10-49 (note)
			10-52 (note)
			10-53 (note)
			10-53.1 (note)
			10-53.2 (note)
			10-53.3 (note)
	10-53.4 (note)		
	10-53.5 (note)		

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Ordinance Number	Date	Section	Disposition
10991	6-12-12	1	22-86
		2	22-95
10992	6-12-12	1	Added 28-39
10993	6-12-12	1	28-147 (eff. 7-1-13)
			28-148 (eff. 7-1-13)
			28-149 (eff. 7-1-13)
			28-150 (eff. 7-1-13)
			28-151 (eff. 7-1-13)
			28-151.1 (eff. 7-1-13)
			28-151.2 (eff. 7-1-13)
			28-151.3 (eff. 7-1-13)
			28-151.4 (eff. 7-1-13)
			28-151.5 (eff. 7-1-13)
10996	6-19-12	1	8-2.5
10999	6-19-12	1	Added 27-52
11000	6-26-12	1	21-10
		2	21-12
		3	21-13.1
		4	21-14
		5	21-16
		6	Added 21-18.1
		7	21-51
11014	8-7-12	1	16-32
11016	9-5-12	2	Rpld 10A-160 – 10A-164
		3	Added 10A-160
11020	9-11-12	1	22-30(d)
		2	22-33(b)
		3	22-41(b)
		4	22-43(e)
11022	9-19-12	1	19-53

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