

TUCSON, ARIZONA
 Supp. No. 99 – 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 March 31, 2013. 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. 99” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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TUCSON, ARIZONA
Supp. No. 99 – Instruction Sheet

TUCSON CODE

CONTAINING
THE CHARTER AND GENERAL ORDINANCES
CITY OF TUCSON, ARIZONA

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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.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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subscriber's premises to perform any repair or maintenance work related to licensee-installed equipment necessary to receive service, except for any such work which was necessitated solely by a negligent or wrongful act of said subscriber.

- (b) Where the actions of licensee, its agent(s) or subcontractors(s) can be shown upon a reasonable demonstration of evidence to have contributed to the theft, loss or damage or a converter or other equipment lawfully used by a subscriber, the subscriber's liability with respect to said converter or other equipment shall be reduced to the extent of such contributing actions.
- (c) Licensee shall be entitled to recover a reasonable fee for all checks returned due to insufficient funds.

(13) *Employee and vehicle identification.* All personnel and service vehicles of licensee or its subcontractors contacting subscribers or potential subscribers outside the office of licensee or performing any work within city rights-of-way must be clearly identified as associated with licensee through visible uniform insignia, photo identification devices, or signs affixed to the vehicle.

(14) *Rights reserved by city.* City reserves the right to establish additional, reasonable subscriber service standards from time to time, as may be necessary.
(Ord. No. 8937, § 2, 9-2-97)

Sec. 7A-21. Rates.

(1) The city may regulate rates except to the extent prohibited by state and federal law.

(2) Each licensee shall file with the city an up-to-date rate schedule of all subscriber and user rates, fees and charges for all cable services and products provided, which schedule shall be on file in the office of the telecommunications administrator at all times. Any and all proprietary special rates for institutions, motels, hotels, inns, multiple-family dwelling units (referred to below as "MDU" rates), shall be made

available for inspection promptly upon the city's request. Should a federal agency of competent jurisdiction rule that the City has no authority to review the MDU rates for reasonableness or to prevent discrimination, then the rates would only be available for inspection on the same basis as other books and records would be available for inspection. Licensee shall file any revised rate schedule with the telecommunications administrator in accordance with the requirements of section 7A-20.

(3) The system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, equipment, channels, studios and other services to all residents, businesses, public agencies or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use. The licensee shall not discriminate in the assessment, levy, charge, imposition or collection of rates, fees or charges on the basis of race, color, religion, ancestry, sex, age, disability which includes but is not limited to, HIV/AIDS, national origin, sexual orientation, gender identity, familial status and/or marital status.

(4) Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users, so long as the promotion is bona fide, temporary, and available to all similarly situated persons throughout the city.

(5) Licensee may request in writing and city may grant, temporary authority to licensees for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services to selected groups of subscribers at terms and conditions not generally available to all subscribers. The city may refuse to grant this waiver unless it is persuaded upon sufficient showing by licensee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all subscribers in a uniform, consistent and nondiscriminatory manner.

(Ord. No. 8937, § 2, 9-2-97; Ord. No. 11057, § 1, 3-27-13)

Sec. 7A-22. Reports.

(1) *Annual reports.* On or before March 31 of each year during the term of the license agreement, the licensee shall submit a written report to the licensing authority. The reports shall be submitted in accordance with forms prepared by the telecommunications administrator after providing a period for notice and comment and providing interested parties an opportunity for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the annual reports shall be prepared in accordance with the general business practices of a licensee and shall contain at least the following information regarding the previous calendar year:

- (a) A summary of activities in the development of the system, including but not limited to services begun or discontinued, total number of subscribers, homes passed, subscribers added or discontinued and user participation, all per the provisions of this chapter and the license agreement.
- (b) A list of all complaints and system downtime received or experienced during the reporting period. All such submitted data shall include complaint disposition and response time.
- (c) A summary by category of complaints, identifying the number and nature of complaints and their dispositions.
- (d) A fully audited revenue report, or a revenue report certified as correct by a Licensee’s chief financial officer.
- (e) A projected income statement and statement of projected construction for the next two (2) years.
- (f) A list of officers and members of the board of directors of the licensee and its parents.
- (g) A list of stockholders holding five (5) percent or more of the voting stock of the licensee or its parents.
- (h) A copy of the licensee’s annual report and those of its parents and subsidiaries.

- (i) A full schedule of all subscriber and user rates, fees and charges for all cable services provided.
- (j) A copy of subscriber and user agreements used by the licensee.

provided that, when it provides the information required by subsections (i) and (j), a licensee need not include proprietary MDU rates and agreements.

(2) *Annual surveys.* In addition to providing such other information as may be requested under section 7A-22(1), the licensee shall annually provide the following special reports:

- (a) An annual opinion survey report which identifies subscriber satisfaction/dissatisfaction with cable services offered by the licensee. Surveys required to make said report shall be scientifically valid. In lieu of this obligation, a licensee may agree in a license agreement to pay a fixed sum to the city so that the city may perform the survey.
- (b) An annual plant survey report, which shall be a survey of the licensee’s plant and a full report thereon including new construction and complete annual outages by area of the city. The purpose of the report is to assure the city that the plant is being operated and maintained in accordance with applicable law. Said report shall include but not be limited to an appropriate engineering evaluation and shall be conducted in conformance with standard engineering practices. This requirement does not apply during a period of initial construction, or upgrade mandated by a license.

(3) *Quarterly reports.* Within forty-five (45) days of the end of each calendar quarter, each licensee shall submit a written report to the licensing authority. The reports shall be submitted in accordance with forms prepared by the telecommunications administrator after providing a period for notice and comment and providing interested parties an opportunity for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the quar-

- (2) To submit to public view the named areas with cover of less than one (1) layer of fully opaque covering.

(1953 Code, ch. 18, § 9a; Ord. No. 2358, § 2, 11-5-62; Ord. No. 4486, § 1, 5-24-76)

Cross reference – Licensing of adult entertainment enterprises and establishments, § 7-206 et seq.

Sec. 11-30. Institutional vandalism, intimidation – Acts prohibited.

(a) *Institutional vandalism.* A person commits the crime of institutional vandalism by knowingly vandalizing, defacing or otherwise damaging:

- (1) Any church, synagogue, mosque, or other building structure, or place used for religious worship and/or the grounds adjacent to, rented by, or owned by such entities.
- (2) Any cemetery, mortuary or other facility used for the purpose of burying or memorializing the dead.
- (3) Any school, educational facility or community center and/or grounds adjacent to, rented by, or owned by said entities.

(b) *Intimidation.* A person is guilty of intimidation if, by reason of the actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, gender identity, familial status and/or marital status of another individual or group of individuals, he/she causes that individual or group to suffer physical injury or loss or damage to such individual's or group's personal property.

(Ord. No. 8506, § 1, 5-22-95; Ord. No. 11057, § 2, 3-27-13)

Sec. 11-30.1. Same – Minimum penalty; subsequent convictions.

A person convicted for the first time of an offense prohibited by section 11-30 shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months and by a fine of not less than one hundred dollars (\$100.00) nor more than twenty-five hundred dollars (\$2,500.00). A person convicted for a second offense prohibited by section 11-30 shall be punished by imprisonment for not less than twenty (20) days nor more than six (6) months and by a fine of not

less than two hundred dollars (\$200.00) nor more than twenty-five hundred dollars (\$2,500.00). A person convicted for a third or subsequent offense prohibited by section 11-30 shall be punished by imprisonment for not less than forty (40) days nor more than six (6) months and by a fine of not less than four hundred dollars (\$400.00) nor more than twenty-five hundred dollars (\$2,500). No judge may grant probation to, or suspend the imposition of the minimum jail sentence and fine prescribed herein, upon a person convicted of any offense prohibited in section 11-30. In addition, a person convicted of any offense prohibited in section 11-30 may be placed on probation for a maximum of three (3) years. This shall not be construed to affect, in any way, the imposition of the minimum mandatory penalties herein.

(Ord. No. 8506, § 2, 5-22-95)

Sec. 11-31. Lampposts, hydrants, brackets; injuring.

Any person who shall negligently, willfully or maliciously injure, pull down or in any manner break any lamppost, bracket or hydrant shall be deemed guilty of a misdemeanor and shall be liable for the damage.

(1953 Code, ch. 18, § 21)

Sec. 11-32. Legal business; soliciting by police.

It shall be unlawful for the chief of police or any police officer or any other person connected with the police department to solicit legal business for either the defense or prosecution of any case pending or which may be filed in any court, or to urge, recommend or suggest to any person, whether in legal detention or not, that any particular person practicing law should or should not be employed for the defense or prosecution of such person or any other person.

(1953 Code, ch. 18, § 22)

Sec. 11-33. Aggressive solicitation, legislative findings; definitions.

(a) The mayor and council find that the increase in aggressive solicitation throughout the city has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to, and enjoyment of, public places, but has also led to an increased sense of fear intimidation and disorder.

(b) Aggressive solicitation may include, without limitation: approaching or following pedestrians; approaching or following children repeating solicitations despite refusals; using abusive or profane language to cause fear and intimidation; causing unwanted physical contact; or intentionally blocking pedestrian and vehicular traffic. The mayor and council further find that the presence of individuals who solicit money from persons at or near banks, automated teller machines, or in public transportation vehicles is especially troublesome because of the enhanced fear of crime in those confined environments. Such solicitation carries with it an implicit threat to both persons and property, as well as public safety.

(c) The law is not intended to limit any person from exercising the constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Rather, its goal is to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the city.

(d) Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use or the money or other thing of value. The solicitation may be, without limitation, by the spoken, written or printed word, or by other means of communication.

(e) Aggressive manner means and includes:

- (1) Intentionally or recklessly making physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Approaching or following the person being solicited, if that conduct is intended to or is likely to: a) cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon the property in the person's possession; or (b) intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit within five (5) feet of the person being solicited after the person

has made a negative response, if continuing the solicitation is intended to or is likely to: a) cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (b) intimidate the person being solicited into responding affirmatively to the solicitation;

- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver or a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to chapter 7 of the Tucson City Code, shall not constitute obstruction of pedestrian or vehicular traffic;
- (5) Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to: a) cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or b) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation.

(f) Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and/or mortgage and loan payments.

(g) Automated teller machine facility means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers after regular business hours.

(h) Check cashing business means any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of the banking laws.

ARTICLE I. DEFINITIONS**Sec. 15-1. Definitions.**

(A) The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where a different meaning is specified:

APC (Automated Plastic Containers) collection service means collection of refuse or recyclable materials in APCs.

Brush bulky service means collection of bulky wastes, not containing garbage, placed in piles at the location designated by the director and in accordance with requirements set by the director.

Bulky waste means large items of solid waste such as ovens, washers, dryers, freezers, water heaters, refrigerators, other household or commercial appliances, furniture, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.

Carryout bag means a bag that is provided by a retail establishment at the check stand, cash register, point of sale or other point of departure to a customer for the purpose of transporting food or merchandise out of the establishment. Carryout bags do not include:

- (a) bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items, such as nails and bolts, or to contain or wrap frozen foods, meat or fish, whether prepackaged or not, or to contain or wrap flowers or potted plants, or other items where dampness may be a problem, or to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs, or to safeguard public health and safety during the transportation of prepared take-out foods and prepared liquids intended for consumption away from the retail establishment; or
- (b) newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

City means the City of Tucson.

City fuel price means the price the city pays for equipment fuel and shall be adjusted quarterly to the average fuel price over the prior three (3) months.

Collection agency means the person, company, or governmental agency responsible for collection of solid waste from a residential or commercial establishment.

Collection services means services the city provides to collect any type of solid waste from residential and commercial establishments.

Commercial establishment means any building, lot, or complex that is not a residential establishment.

Commercial fees means fees the city charges for front load and roll off collection service to any type of customer, fees for APC collection service to commercial establishments, and fees for any other collection service provided to commercial establishments.

Commercial hauler means a person who transports solid waste to a disposal facility or who collects, transports, or disposes of solid waste for pecuniary or proprietary gain, benefit, or advantage, or who transports solid waste that was generated by any commercial activity, whether the commercial activity occurred on a commercial or residential establishment.

Container means any receptacle built to hold refuse and to be emptied by solid waste collection equipment.

Customer means any person or business entity that receives or utilizes services or programs offered by the department.

Department means the city's environmental services department.

Director means the director of the city's environmental services department, or the director's authorized designee(s).

Disposal facility means any active landfill, inactive landfill, debris fill, transfer station, temporary drop off site for any solid waste, waste storage site, or waste processing facility.

Disposal services means the operation and remediation of city disposal facilities for public use or benefit. Disposal services include landfilling or other processing of waste materials accepted at city disposal facilities.

Dwelling unit means an independent living space with its own permanent provisions for entrance/exit, living, sleeping, eating, cooking and sanitation.

Environmental services fee means the fee or fees charged for standard residential collection services provided to residential establishments.

Front load collection service means collection of solid waste in metal containers emptied with front loading trucks.

Garbage means all animal and vegetable or food wastes resulting from the processing, handling, preparation, cooking or consumption of food or food materials, or other such matter the accumulation of which may create a nuisance or be deleterious to public health or offensive to sight or smell.

Green waste means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Green waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

Guesthouse means a single dwelling unit on a lot with a conventional house.

Household hazardous waste means certain types of solid waste acceptable to the household hazardous waste program and facility in accordance with 40 CFR 261.

Lot means a separate parcel as recorded in county records.

Material recovery facility (MRF) means a lawfully zoned and operated site used for the processing and storage of recyclable materials.

Mobile home means a nonmotorized dwelling, transportable in one or more sections, constructed on a permanent chassis with wheels, suitable for year-round residential occupancy and requiring the same method

of water supply, waste disposal, and electrical service as a site-built dwelling. This term does not include a recreational vehicle or a trailer with provisions for living.

Mobile home park means five (5) or more mobile homes or active spaces for mobile homes on a lot where each mobile home does not have an individual city water meter.

Multi-family complex means any building or buildings, on abutting lots, that have two (2) or more dwelling units and are commonly owned or commonly managed. This term is intended to apply to a duplex, triplex, four-plex or apartment complex.

Owner means one (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership of property. By way of illustration, and not limitation, the term includes any person who is a mortgagee in possession, a trustee, a trustor, or a general or limited partner in a partnership.

Person includes a corporation, company, partnership, firm, association, society, or other legal entity, as well as a natural person.

Recreational vehicle park means land that is designated "RV" (Land Use Code, § 2.5.7) with "Traveler's Accommodation" as its principal Permitted Land Use.

Recyclable materials means those materials that the director designates to be part of a program that diverts material from disposal facilities for beneficial use.

Refuse means solid waste that contains garbage and is suitable for collection with standard containers and municipal waste collection equipment.

Resident means a person that lives in a dwelling unit and controls the generation and placement of solid waste.

Residential establishment means any building, lot, or complex whose primary use is for one (1) or more dwelling units. This term includes any single family residence, multi-family complex with up to twenty-four (24) dwelling units, mobile home that is not in a mobile

home park, or any establishment where the customer has qualified for the environmental services low income program. The term does not include multi-family complexes with twenty-five (25) or more dwelling units, mobile home parks, or recreational vehicle parks. The term does not include complexes of twenty-five (25) or more town homes that have front load collection service.

Residential self-hauler means any person delivering refuse or other solid waste to a city-operated solid waste disposal facility who is not a commercial hauler.

Responsible party means an owner, occupant, tenant, lessor, lessee, resident, manager, licensee, or other person, corporation, company, partnership, association or society residing on, owning or having control over a building, lot or complex, or who possesses, handles, stores or disposes of solid waste.

Retail establishment means a business making sales at retail, other than a food service establishment, that owns or controls more than ten thousand (10,000) square feet of total retail space, and has more than two (2) locations within the city limits where twenty-five (25) percent or more of gross sales include medicines and/or any food, drink, confection or condiment sold in pre-packaged form and/or intended to be prepared off the premises.

Roll off collection service means collection of solid waste in metal containers that are loaded onto a truck and transported to a disposal facility to be emptied.

Salvaging means the removal of solid waste from a disposal facility, collection site, collection container, or collection equipment with the permission of the owner or collection agency and in accordance with requirements set by the owner or collection agency.

Scavenging means the removal of solid waste from a disposal facility, collection site, collection container, or collection equipment without the permission of the owner or collection agency, or not in accordance with requirements set by the owner or collection agency.

Single family residence means: (a) a "single family dwelling, detached" as defined in the city land use code, or (b) a "single family dwelling, detached" plus one guesthouse.

Single use plastic bag means any carryout bag made from plastic or any material marketed or labeled as "biodegradable" or "compostable" that is neither intended nor suitable for continuous reuse as a carryout bag or that is less than 0.75 mil thick.

Single use plastic bags per transaction shall be defined as how many single use plastic bags are given to each customer during a single purchase or transaction. For example, if a store gives out one hundred thousand (100,000) bags during a reporting period and has conducted twenty thousand (20,000) transactions the number reported for that quarter will be five (5) bags per transaction.

Single use plastic bag recycling formula shall be defined as tons of single use plastic bag and plastic film collected by the retail establishments single use plastic bag and film plastic recycling collection program multiplied by thirty percent (30%). For example, if the total single use plastic bag and film plastic collected by retail establishments equals one hundred (100) tons, the amount recorded for recycling will be one hundred (100) tons multiplied by three tenths (0.30), or thirty (30) tons.

Small business waste acceptance program means the program and related facilities that accept certain types of solid waste from conditionally exempt small quantity generators in accordance with 40 CFR 261.

Solid waste means discarded materials resulting from common activities in a municipal community. This term includes refuse, garbage, recyclable materials, construction debris, demolition debris, green waste, and food waste.

Standard residential collection services means APC collection service once per week for refuse and recyclable materials, and brush bulky service twice per year. The director may designate the volume collected under standard residential collection service.

Town home means a dwelling unit that is designated for separate ownership on property commonly owned solely by the owners of the separate dwelling units. This term does not include separately owned dwelling units that are operated as a multi-family rental complex or apartment complex, however designated. The terms condominium and townhouse have the same meaning.

(B) Words, terms, and phrases used in this chapter and not specifically defined in this section shall have the meaning commonly understood in the solid waste industry.

(Ord. No. 10539, § 1, 6-3-08, eff. 7-1-08; Ord. No. 10642, § 1, 3-24-09, eff. 9-24-09; Ord. No. 10674, § 1, 6-2-09, eff. 7-1-09; Ord. No. 10796, § 1, 5-25-10, eff. 7-1-10; Ord. No. 10895, § 2, 5-17-11, eff. 7-1-11; Ord. No. 11056, § 1, 3-19-13, eff. 7-1-13)

ARTICLE II. ADMINISTRATION

Sec. 15-2. Purpose.

(A) The purpose of this chapter is to preserve the health, safety and welfare of the citizens of the city through the management of solid waste. This purpose shall be achieved through the establishment of minimum standards for the safe and sanitary collection, storage, transportation, beneficial use and disposal of solid waste managed by the city or within the city.

(B) Whenever this chapter conflicts with any other portion of this Code, this chapter shall prevail with respect to any matters relating to solid waste management. The mayor and council for the city hereby determines that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the city.

(C) Nothing in this chapter is intended or shall be construed to impinge upon or supplant the authority of the Pima County Health Department, Arizona Department of Health Services or other public agency with jurisdiction.

(Ord. No. 10539, § 2, 6-3-08, eff. 7-1-08)

Sec. 15-2.1. Department of environmental services established; director of environmental services as head of department.

The department of environmental services is established. The head of the department shall be the director of environmental services whose appointment, compensation and removal shall be in accordance with sections 2, 6, and 11 of chapter V of the Charter.

(Ord. No. 10539, § 2, 6-3-08, eff. 7-1-08)

Sec. 15-2.2. Functions of the director.

(A) The director shall implement and enforce the provisions of this chapter for the promotion of the public health and safety; to regulate and control the storage, collection, disposal, and salvaging of solid waste within the city; to provide a public disposal site or sites for solid waste originating within the City of Tucson; and to remediate environmental problems resulting from solid waste. The director shall direct the establishment, maintenance and operation of such disposal site or sites. The director is further authorized to provide and/or approve of recyclable material collection sites, so that approved recyclable materials may be safely and expeditiously handled, and to direct the development, construction, maintenance, and operation of such sites. The director shall have the responsibility for environmental assessments of city acquisitions and dispositions of interest in real property.

(B) The director is hereby authorized and directed to make and impose administrative and operational rules, procedures and regulations necessary to the efficient implementation and enforcement of the provisions of this chapter including, but not limited to:

- (1) The collection, recycling, disposal, storage, salvaging, hauling and accumulation of solid waste by the city, residents, contractors, or any other person engaged in those activities or processes;
- (2) The operation of a transfer station(s), disposal site(s), recycling site(s), transfer site(s), temporary collection site(s), waste collection program(s), recycling or waste reduction program(s) or similar activities or other similar facilities as approved by the mayor and council;
- (3) The formulation of administrative policies and procedures regarding the collection of fees and applicable charges;
- (4) Such rules, procedures and regulations shall be binding upon and obeyed by all persons affected by this chapter after three (3) copies of any such rules, procedures and regulations shall have been filed in the office of the city clerk as a public record and there kept for use

or inspection by any member of the public at any time during the regular office hours of that office. A printed copy of such rules, procedures and regulations shall be furnished any member of the public upon request.

notice of violation allowing the alleged violator to remedy the complaint. An officer or official may issue a citation without first issuing a notice of violation.

(C) It is a civil infraction to violate standards established in the rules, procedures and regulations. (Ord. No. 10539, § 2, 6-3-08, eff. 7-1-08)

Sec. 15-3. Suspension or revocation of services.

In addition to the sanctions provided herein, the city may suspend or revoke any collection, recycling or disposal services and related facilities provided by the city, or by a contractor to the city, whenever it is found that the user of such collection, recycling, or disposal services, commits a serious or repeated violation of the laws of the state, the county, this chapter, or any rules, procedures and regulations promulgated hereunder, or fails to fully pay charges lawfully due the city or reimburse the city its costs associated with the remedying of any violation of any applicable health codes and ordinances of the city, county, state, and federal government.

(Ord. No. 10539, § 2, 6-3-08, eff. 7-1-08)

Sec. 15-4. Reserved.

Sec. 15-5. Public nuisances, enforcement.

(A) *Civil infraction declared.* Unless otherwise specifically stated in this chapter, a violation of any provision of this chapter shall be deemed a public nuisance and is punishable as a civil infraction pursuant to chapter 8 of this Code.

(B) *Authority to enforce.* Any police or peace officer or city code enforcement officer or designated refuse official (herein, citing official) who observes a violation of any provision of this chapter or of any civil infraction in other chapters of this Code relating to the management and maintenance of private property or waste collection within the city is empowered to issue a citation or seek a complaint. This includes, but is not limited to, sections in this Code where notices of violation may be issued by any department. Prior to issuing a citation or seeking a complaint, the officer or official may, in his or her discretion, issue a written

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**ARTICLE VI. DISPOSAL FACILITY
MANAGEMENT – RESERVED***

Secs. 15-50 – 15-59. Reserved.

ARTICLE VII. PLASTIC BAG RECYCLING

Sec. 15-60. Plastic bag recycling.

Retail establishments that provide plastic carry-out bags for their customers shall:

- (1) Provide a bin(s) for the collection of single use plastic bags and other film plastic in a visible location that is easily accessible to the consumer, and clearly marked as available for the purpose of collecting plastic carryout bags and other film plastic for recycling. At a minimum, these bins shall meet the Arizona Bag Central Station standard for collection bins for signage. The bin(s) shall be located near or at the entrance(s) of the retail establishment and be well maintained.
- (2) Recycle returned plastic bags.
- (3) Provide reusable carryout bags for purchase at retail locations.
- (4) Incorporate a “reduce, reuse, and recycle” message on all carry-out plastic bags distributed as part of the retail business.
- (5) Display informational material on the establishment’s plastic bag recycling program to educate customers. This information shall incorporate messages on the environmental benefits of recycling plastic bags or using reusable bags including greenhouse gas reduction, energy savings and litter reduction.

***Editor’s note** – Ord. No. 10796, § 10, adopted May 25, 2010, effective July 1, 2010, repealed this article and § 15-50, which pertained to disposal facility management and prohibiting disposal at city facilities of solid waste collected, received or transported from outside Pima County, derived from Ord. No. 10539, § 6C., adopted June 3, 2008, effective July 1, 2008.

- (6) Retail establishments shall report to the City of Tucson ES director through an independent auditor the single use plastic bags per transaction, total number of single use plastic bags given out and tons of film plastic collected through the single use plastic bag and film collection program in accordance with the following schedule:

Report	Report Period	Report Date
Report 1	4/1/13 - 6/30/13	7/31/13
Report 2	7/1/13 - 9/30/13	10/31/13
Report 3	10/1/13 - 12/31/13	1/31/14
Report 4	1/1/14 - 3/31/14	4/30/14
Report 5	4/1/14 - 6/30/14	7/31/14
Report 6	7/1/14 - 9/30/14	10/31/14
Report 7	10/1/14 - 12/31/14	1/31/15
Report 8	1/1/14 - 3/31/15	4/30/15

The information reported to the city shall be a cumulative number for all retail establishments and not segregated by each store or chain.

ES staff will calculate the number of single use plastic bags recycled by applying the single use plastic bag recycling formula.

The initial report shall include a list of all retail establishments reporting during the initial reporting period. Subsequent reports shall include an updated list and shall include the names of any retail establishments that are new, out of business or failed to report.

- (7) Retail establishments shall provide training for all checkout and bagging clerks upon hire. The training shall include information and instructions to reduce plastic bag consumption. Training shall be reinforced on an ongoing basis.
- (8) Retail establishments shall implement a public educational awareness program for Retail establishment employees and the general public. This program shall provide education to school age children and the

general public on reducing plastic bag consumption and increasing plastic bag recycling. The program will include the use of contests, in-store promotions, videos and social media.

- (9) District managers representing all retail establishments shall meet with the ES director or designee on quarterly basis. The meeting agenda shall include a review of the progress made by retail establishments to reduce the consumption of plastic bags by consumers and increase the in-store recycling of single use plastic bags.

(Ord. No. 10642, § 2, 3-24-09, eff. 9-24-09; Ord. No. 11056, § 2, 3-19-13, eff. 7-1-13)

Secs. 15-61 – 15-69. Reserved.

ARTICLE VIII. LITTER FEE

Sec. 15-70. Refuse collection permit.

The city manager or his or her designee shall administer and enforce a permit program for all non-exempt commercial haulers as defined in this section.

(A) For purposes of this section, a commercial hauler is anyone who operates a front load, rear load, side load or roll off collection vehicle within the City of Tucson at any time.

(B) Commercial haulers who own or operate three (3) or fewer total collection vehicles, as described above, regardless of where they are stored or operated, are exempt from the permit fee established by this article.

(Ord. No. 10796, § 11, 5-25-10, eff. 7-1-10; Ord. No. 10800, § 1, 6-8-10, eff. 7-1-10; Ord. No. 10986, § 9, 5-22-12, eff. 7-1-12)

Sec. 15-70.1. Proceeds from the refuse collection permit.

Proceeds from the permits shall be used to administer, enforce and collect litter in the city. Permits for collection of refuse from business or residential establishments within the city shall be issued by the city under the following conditions:

(A) The commercial hauler must submit an application, on a form provided by the city, to the city. This permit shall include the requirement of an annual per-vehicle license fee of one thousand dollars (\$1,000.00) per vehicle used in the collection of refuse within the City of Tucson. Any commercial hauler with a current, valid permit found to be collecting refuse within the City of Tucson with a nonlicensed vehicle shall forfeit the cash permit surety and the commercial hauler’s permit shall be suspended until such time as the permit surety is fully reimbursed and fees for each nonpermitted vehicle are received by the city.

(B) The commercial hauler’s permit application, as provided by the city, shall include the name, business addresses and telephone numbers of all owners, partners, general managers and principal officer, as well as emergency telephone numbers, business references and such other information as deemed necessary.

(C) Permits issued pursuant to this section shall be nontransferable. The permits including the requirement to license each vehicle shall be issued for one (1) year commencing July 1 and ending June 30. Applications for renewal shall be made at least forty-five (45) days prior to expiration of the current permit. Applicable fees may be prorated monthly on permits issued during the fiscal year.

(D) Each licensed vehicle operating within the City of Tucson shall display a decal, provided by the city, affixed permanently and clearly visible on the driver’s side of the vehicle. Commercial haulers in the permit program will be subject to an annual inspection by the City of Tucson.

(Ord. No. 10986, § 9, 5-22-12, eff. 7-1-12)

Sec. 15-71. Suspension or revocation of permits.

(A) In addition to the sanctions provided, the city may suspend or revoke any permit authorized or required by this chapter, or suspend or revoke any collection, recycling or disposal services provided by a commercial hauler, whenever it is found that the holder of such permit, or user of such collection services, commits a serious or repeated violation of the laws of the state, the county, this chapter, or any rules and regulations promulgated hereunder, or fails to fully reimburse the city its costs associated with the

remedying of any violation of any applicable health codes and ordinances of the city, county, state, and federal government.

(B) A commercial hauler whose permit is revoked may not re-apply for a permit under this chapter for thirty-six (36) months after the effective date of the revocation.

(Ord. No. 10796, § 11, 5-25-10, eff. 7-1-10)

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MOTOR VEHICLES AND TRAFFIC

Division 4. Basic Parking Controls

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- Sec. 20-226.3. Angle parking.
- Sec. 20-226.4. Angle parking, direction.
- Sec. 20-227. Designation of common-carrier passenger vehicle stands.
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- Sec. 20-228.1. Same – Revocation.
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- Sec. 20-230.6. Overtime parking prohibited; “feeding” meters prohibited.
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- Sec. 20-234. Hazard flashers mandatory.
- Sec. 20-235. Public parking prohibited in parking lots or spaces reserved for city officers or employees.
- Sec. 20-236. Height limit restriction.
- Sec. 20-237. Obedience to markings; double parking prohibited.
- Secs. 20-238 – 20-245. Reserved.

Division 5. Nuisance Parking Controls

- Sec. 20-246. Penalty.
- Sec. 20-247. Parking for certain purposes prohibited.
- Sec. 20-248. Parking regulations for peddlers.
- Sec. 20-248.1. Parking regulations for peddlers in certain central business district streets.
- Sec. 20-249. Freight curb loading zones; location of provisional zones in parking meter zones.
- Sec. 20-249.1. Same – When nonauthorized vehicles prohibited in provisional zones.
- Sec. 20-250. Parking on property of another prohibited without permission.
- Sec. 20-251. Parking in parks and playgrounds.
- Sec. 20-252. Parking on city-owned property.
- Sec. 20-253. Parking for purposes of sale on unpaved lots.
- Sec. 20-254. Parking prohibited during certain hours on certain streets.
- Sec. 20-255. Residential permit parking.
- Sec. 20-257. Special events permit parking.
- Sec. 20-258. Additional permit parking programs; fees; city manager may establish additional permit parking programs and an annual parking permit fee.
- Sec. 20-259. Expired registration.
- Sec. 20-260. Stopping, standing, parking prohibited between the curb and sidewalk or in an unimproved pedestrian area impeding continuous pedestrian use.
- Sec. 20-261. Unattended and inoperable vehicles prohibited.
- Sec. 20-262. Truck parking on streets not designated as truck routes prohibited.
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- Sec. 20-276. Buses stopping on crosswalks, within intersections prohibited.
- Sec. 20-277. Stopping, standing or parking prohibited in specified places.
- Sec. 20-278. Stopping, standing or parking prohibited in additional specified places.
- Sec. 20-279. Parallel parking.
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ARTICLE I. IN GENERAL

Sec. 20-1. Definitions.

The words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in A.R.S. title 28, except for the words and phrases defined herein, as follows:

Sec. 20-1(1). Alley means any public or private way set aside as a right-of-way for municipal services, or street or alley purposes and as a means of reaching the rear end of lots or buildings.

Sec. 20-1(2). Annual permit means a permit allowing the operation or movement, during a calendar year, of a specific vehicle, or vehicle and load, along truck routes established pursuant to section 20-15 of this Code.

Sec. 20-1(3). Bicycle zone means a place adjacent to a curb reserved for the exclusive use or purpose of parking bicycles. Such zone shall be designated by blue and white marking on the curb or signs appropriately marked for the exclusive use of bicycles, or by both such signs and blue and white curb markings.

Sec. 20-1(4). Booting means to place a device on a vehicle to prevent the vehicle's movement until the device is removed.

Sec. 20-1(5). Business district means the area contiguous to and including a street, where within any six hundred (600) feet along the street there are buildings used for business or industrial purposes which occupy at least three hundred (300) feet of frontage on one side, or three hundred (300) feet collectively on both sides of the street.

Sec. 20-1(6). Central business district means all streets and portions of streets within the area described as follows: All that area bounded by the following streets: On the north by Sixth Street; on the east by Fourth Avenue; on the south by Cushing Street to Stone Avenue and from Stone Avenue by East Fourteenth Street; and on the west by Granada Avenue.

Sec. 20-1(7). Commercial vehicle means any vehicle originally registered for commercial use, or any vehicle rated for a load capacity in excess of one (1) ton, or any vehicle not originally designed for personal private passenger transportation.

Sec. 20-1(8). Curb means the raised edge or curblines along the lateral lines of a roadway, or in the absence of a raised edge, the curblines or lateral lines along the edge of the vehicular travel lanes, to include any designated or marked road shoulder.

Sec. 20-1(9). Disabled or handicapped curb loading zone means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials for the physically disabled as defined in section 20-222 of this Code. Such zone shall be designated by blue marking on the curb, or by appropriate signs, or by both such signs and blue curb markings.

Sec. 20-1(10). Divided highway or street means any street or highway within the city that has been divided into two (2) roadways by leaving an intervening space, island or other physical barrier, or clearly indicated dividing section so constructed as to obstruct or impede vehicular traffic.

Sec. 20-1(11). Envelope permit means a permit issued for the operation or movement, during a calendar year, along truck routes established pursuant to section 20-15 of this Code, of a nonspecific and nonreducible vehicle, or vehicle and load, that does not exceed two hundred fifty thousand (250,000) pounds in gross weight, fourteen (14) feet in width, sixteen (16) feet in height, one hundred twenty (120) feet in length, and has at least four (4) axles.

Sec. 20-1(12). Freight curb loading zone means a space adjacent to a curb for the exclusive use of authorized vehicles, as defined in section 20-195.1 of this Code, during the loading or unloading of freight. Such zone shall be designated by yellow marking on the curb, or by appropriate signs, or by both such signs and yellow curb markings.

Sec. 20-1(13). Impound means to tow or remove a vehicle and then store the vehicle at a garage or lot designated by the police department or maintained by the city.

Sec. 20-1(14). In governmental service means owned or operated by any federal, state, county, or municipal agency, or any agency whose primary source of operating revenue is public taxation.

Sec. 20-1(15). Mobile home means a nonmotorized dwelling, as defined in section 23-21 of this Code.

Sec. 20-1(16). Mobile home permit means a permit issued for a one-time, one-way, continuous movement of a specific mobile home, whose dimensions and/or weight exceed the limits set forth in A.R.S. title 28, sections 1002 through 1031, or any successor provision(s), along a designated route to a designated location. Any subsequent movement of the mobile home, whether from the designated location back to its original location, or to any other location, shall require a new and separate mobile home permit.

Sec. 20-1(17). Motor vehicle means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Sec. 20-1(18). No parking zone means a space adjacent to a curb which is designated by red markings on the curb, or by appropriate signs, or by both such signs and red markings on the curb.

Sec. 20-1(19). Official time standard means whenever certain hours are named herein, they shall mean standard time or such time as may be in current use in the city.

Sec. 20-1(20). Oversize or overweight vehicle, load or mobile home means a vehicle, load or mobile home whose dimensions and/or weight exceed the limits set forth in A.R.S., title 28.

Sec. 20-1(21). Passenger curb loading zone means a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or their personal effects. Such zone shall be designated by white marking on the curb, or by appropriate signs, or by both such signs and white curb markings.

Sec. 20-1(22). Police officer means every officer of the municipal police department or any certified law enforcement officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Sec. 20-1(23). Recreational vehicle means a motor vehicle or vehicle combination that is designed and customarily used for private pleasure use and includes vehicles commonly called motor homes, pickup trucks with campers, travel trailers, boat trailers, or horse trailers.

Sec. 20-1(24). Residence district means the area contiguous to and including a street, not comprising a business district, where for a distance of three hundred (300) feet or more the property along the street is predominantly improved with residences.

Sec. 20-1(25). Right-of-way means the privilege of the immediate use of the street, highway and alleys.

Sec. 20-1(26). Roadway means that portion of a street improved, designed, and used for vehicular travel.

Sec. 20-1(27). Sidewalk means that portion of a street between the curbs, or the lateral lines of a roadway, and the adjacent property lines, is improved for the use of pedestrians.

Sec. 20-1(28). Single trip permit means a permit issued for a one-time, one-way, continuous operation or movement of a specific vehicle, or vehicle and load, along a designated route to a designated location. Where the single trip permit is for both a vehicle and load, it shall be permissible under that permit to completely unload the vehicle at the designated location and thereafter return the empty transporting vehicle directly to its original location, so long as the return trip is completed within twenty-four (24) hours of beginning the movement of vehicle and load that is authorized under the permit.

Sec. 20-1(29). Thirty-day permit means a permit allowing the operation or movement of a specific vehicle, or vehicle and load, along a designated route for a period of thirty (30) days from the date of issuance.

Sec. 20-1(30). Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together, while using any highway, street or alley for purposes of travel.

Sec. 20-1(31). Traffic agent means any person authorized by this code to enforce any provisions of this code.

Sec. 20-1(32). Traffic division means the traffic division of the police department of the city; or in the event a traffic division is not established, then such term, whenever used herein, shall be deemed to refer to the police department of the city.

Sec. 20-1(33). Unimproved pedestrian area means that portion of a street between the curbs, or the lateral lines of a roadway, and the adjacent property lines, which is not improved with a sidewalk, is not landscaped, and is physically capable of continuous pedestrian use. An unimproved pedestrian area less than four (4) feet wide is determined to be incapable of pedestrian use.

(1953 Code, ch. 17, § 1; Ord. No. 1821, § 3, 4-21-85; Ord. No. 4502, § 2, 6-21-76; Ord. No. 4653, § 1, 5-16-77; Ord. No. 5931, § 2, 12-19-83; Ord. No. 6041, § 1, 6-25-84; Ord. No. 6988, § 1, 6-20-88; Ord. No. 7757, § 1, 1-27-92; Ord. No. 8270, § 1, 11-21-94; Ord. No. 8464, § 1, 3-20-95; Ord. No. 8958, § 7, 9-22-97; Ord. No. 10418, § 2, 6-12-07; Ord. No. 11063, § 1, 3-27-13)

State law reference – Similar provisions, A.R.S. 20-8-602.

Sec. 20-2. Civil traffic violations.

It shall be a civil traffic violation for any person, firm or corporation to violate any of the provisions of article I, II, III, IV, V or VI of this chapter.

(1953 Code, ch. 17, § 6; Ord. No. 5391, § 3, 8-3-81; Ord. No. 5931, § 3, 12-19-83)

Sec. 20-3. Penalties.

Unless otherwise specifically provided in this chapter, the violation of any provision of article I, II, III, V or VI shall result in the imposition of a civil sanction which shall not exceed five hundred dollars (\$500.00).

(1953 Code, ch. 17, § 23c; Ord. No. 5391, § 4, 8-3-81; Ord. No. 5931, § 4, 12-19-83; Ord. No. 9492, § 2, 11-27-00)

Sec. 20-4. Applicability to public employees.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, this state, county or city; and it shall be unlawful for any such driver to violate any of the provisions of this chapter except as otherwise permitted in this chapter or by state statute.

(1953 Code, ch. 17, § 8)

State law reference – Similar provisions, A.R.S. § 28-623.

Sec. 20-5. Applicability to pushcarts, animals, animal-drawn vehicles.

Every person propelling any pushcart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions which by their very nature can have no application.

(1953 Code, ch. 17, § 10)

State law reference – Similar provisions, A.R.S. § 26-625.

Sec. 20-6. Reserved.

Sec. 20-7. Office of traffic engineer created; general powers, duties.

The office of city traffic engineer is hereby established. The duties of the traffic engineer shall be, among other things, to regulate traffic under the provisions of this chapter and the traffic ordinances of the city. It shall be the general duty of the traffic engineer to establish, change, remove or prohibit, as conditions may require, boulevard stops, pedestrian lanes, parking spaces, parking time limits, safety and loading zones, U-turns and right- and left-hand turns, traffic lanes, public carrier stands and other necessities of traffic, subject to the approval of the city manager, and under such regulations as he may prescribe; provided, that nothing in this section shall be construed as conferring upon the office of traffic engineer the duties or authority over traffic of the chief of police.

(1953 Code, ch. 17, § 2)

Sec. 20-8. Enforcement duties of police.

It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all traffic laws of the city and all of the state vehicle laws applicable to traffic in the city.

(1953 Code, ch. 17, § 3)

Sec. 20-9. Police authorized to direct traffic; emergency authority.

Officers of the police department, community service officers or such officers as are assigned by the chief of police are hereby authorized to direct all traffic

by voice, hand or signal in conformance with state and city traffic laws; provided, that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, such officers may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.
(1953 Code, ch. 17, § 4; Ord. No. 4605, § 1, 1-3-77)

Sec. 20-10. Authority of officers of fire department.

Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.
(1953 Code, ch. 17, § 5)

Sec. 20-11. Reserved.

Editor’s note – Section 20-11, requiring obedience to police and fire officers, derived from the 1953 Code, ch. 17, § 7, was repealed by § 1 of Ord. No. 5931, adopted Dec. 19, 1983.

Sec. 20-11.1. Appointment of park rangers as special policemen.

The police chief may in his sound discretion certify as peace officers certain persons employed by the city parks and recreation department as park rangers, provided they meet the following qualifications:

Sec. 20-11.1(1). Attend a full training course at the Tucson Police Academy.

Sec. 20-11.1(2). Be not less than twenty-one (21) years of age.

Sec. 20-11.1(3). Be a citizen of the United States and of good moral character and able to read and write the English language understandably.
(Ord. No. 2954, § 1, 1-16-67; Ord. No. 4605, § 2, 1-3-77)

Sec. 20-11.2. Jurisdiction of special policemen.

(a) The authority of the park rangers as special policemen shall be limited to when they are on duty as park rangers and when they are off duty but in the parks and in the park ranger’s uniform and shall be limited,

further, in that such authority shall exist only in public parks of the city or while in fresh pursuit out of public parks:

- (1) When the person to be arrested has committed a misdemeanor or felony in the presence of the park ranger in the parks; or
- (2) When the park ranger has reasonable ground to believe a felony has been committed in the parks, and reasonable grounds to believe the persons to be arrested has committed it.

(b) Public parks shall include all those grounds dedicated or deeded to the city for park purposes or those that are used for public park and recreation purposes, grounds maintained by the parks and recreation department and all structures or improvements included within any of the above areas when such structures are maintained or their use controlled by the parks and recreation department.
(Ord. No. 2954, § 1, 1-16-67; Ord. No. 3010, § 2, 6-5-67; Ord. No. 4605, § 3, 1-3-77)

Sec. 20-11.3. Authority of special policemen.

A park ranger, as a special policemen, shall be considered as and have the authority of a peace officer to make arrests within their jurisdiction, as set forth in section 20-11.2 of this chapter.
(Ord. No. 2954, § 1, 1-16-67; Ord. No. 4605, § 4, 1-3-77)

Sec. 20-11.4. Status of special policemen.

Special policemen shall not be a part of, nor affiliated or connected in any official capacity with, the city police department. Special policemen shall exercise such other limited police powers as may be delegated to them by the police chief. A special policemen shall not be subject to, or acquire any rights under any police pension fund of the state or of the city.
(Ord. No. 2954, § 1, 1-16-67)

Sec. 20-252. Parking on city-owned property.

No person shall park a motor vehicle in or on city-owned property, other than public streets or alleys, when signs prohibiting or regulating parking have been placed thereon by the director of transportation as authorized by this chapter, unless in compliance with such erected signs.

(Ord. No. 9196, § 1, 1-25-99)

Sec. 20-253. Parking for purposes of sale on unpaved lots.

It is unlawful to park a motor vehicle for the purpose of sale upon any lot or area which is not paved within the city. The display of any signs or other markings indicating that a motor vehicle is for sale shall be prima facie evidence that the motor vehicle has been parked for the purpose of sale. For the purposes of this section, a lot or area which is not paved means the absence of any of the surfacing methods described in chapter 23. The provisions of this section shall not apply to a maximum of one (1) motor vehicle parked for the purpose of sale where the motor vehicle is owned by the resident of the lot or area on which the motor vehicle is parked, and the sale of such motor vehicle would come within the meaning of a casual activity or sale as described in section 19-100.

(Ord. No. 9196, § 1, 1-25-99)

Sec. 20-254. Parking prohibited during certain hours on certain streets.

When signs are erected in each block giving notice thereof, it is unlawful to park a vehicle between the hours as specified by the signs.

(Ord. No. 9196, § 1, 1-25-99)

Sec. 20-255. Residential permit parking.

(a) The ParkWise program manager may designate a residential area or areas consisting of streets or portions of streets on which the parking of motor vehicles may be restricted in whole or in part to motor vehicles bearing a valid parking permit issued pursuant to these provisions by the program manager and approved by mayor and council to residents of the area so designated. The program manager shall provide for the issuance of permits and cause parking signs to be erected in the area indicating the times and

conditions under which parking shall be by permit only. A permit shall be issued upon application and payment of the applicable fee but only to the owner or operator of a motor vehicle who resides on property immediately adjacent to a street within the residential permit parking areas.

(b) It shall be unlawful for any person to:

- (1) park a motor vehicle in a residential parking permit area during the designated hours unless the vehicle is equipped with a valid permit or valid visitor's pass;
- (2) falsify information to obtain a residential parking permit or visitor's pass;
- (3) fail to surrender a residential parking permit or visitor's pass to the ParkWise program manager on demand if such permits or passes are used in violation of these provisions or if the holder of the permit or pass is no longer entitled to the pass or permit;
- (4) knowingly park a motor vehicle displaying a residential parking permit or visitor's pass in a permit parking area during the designated hours when the holder of the permit or pass is not entitled to possess the permit or pass;
- (5) use a residential permit or visitor's pass outside of the designated residential permit parking area for which the residential parking permit is issued or outside of the five hundred (500) foot distance from the qualified residence for which the visitor's pass is issued; or
- (6) otherwise violate these regulations, including, but not limited to, the issuance or use of residential parking permits or visitor's passes.

(c) The owner of a vehicle may contest the revocation of a permit by filing a written application for a hearing with the civil infractions division of city court requesting that the court determine whether justification existed for the revocation of the permit existed under the provisions of this article. The application shall be filed within ten (10) days after the

revocation of the permit 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 application for a hearing and shall notify both the applicant and the director of transportation of the hearing date. At the hearing, the city shall prove by a preponderance of evidence that the revocation of the permit was justified pursuant to the provisions of this article.

(Ord. No. 9196, § 1, 1-25-99; Ord. No. 10918, § 4, 8-9-11)

Sec. 20-257. Special events permit parking.

The director of transportation may designate special events parking permit areas consisting of streets or portions of streets on which the parking of motor vehicles may be restricted during posted specified hours to motor vehicles bearing valid special events parking permits or visitor’s passes issued pursuant to these provisions. The director of transportation shall provide for issuance of permits and shall place signs (which may be temporary) which indicate the hours and conditions under which parking shall be by permit or visitor’s pass only.

It is unlawful for any person to:

(a) Park a motor vehicle in a special events parking permit area during the designated hours unless the vehicle is equipped with a valid special event permit or valid special event visitor’s pass.

(b) Violate any regulations pursuant to section 20-255 relating to the issuance and use of parking permits.
(Ord. No. 9196, § 1, 1-25-99)

Sec. 20-258. Additional permit parking programs; fees; city manager may establish additional permit parking programs and an annual parking permit fee.

(a) In addition to other permit parking programs authorized in this article, the city manager may establish, subject to the advisory recommendation of the ParkWise commission and the ParkWise program manager, additional permit parking programs as may be necessary and desirable to control traffic in high demand areas within the area described in section 10A-146 as the city center. Pursuant to this section a “high demand area” is defined as one where over

seventy-five (75) percent of the legal curb parking spaces are occupied on a recurring basis.

(b) Subject to the advisory recommendation of the ParkWise commission and ParkWise program manager, the city manager may establish an annual fee for such additional permit parking programs to reduce parking in high demand areas and to promote alternate modes of transportation.

(c) Three (3) copies of the designations of programs and fees established under this section by the director of transportation shall be listed within the administrative guidelines on file with the city clerk.

(d) Mayor and council may, at their discretion, change, modify or eliminate fees and/or permit parking programs established by the director of transportation.

(e) Vehicles parked within a designated parking permit area are subject to all provisions of section 20-255 except that applicants are not required to reside on a property immediately adjacent to the designated permit parking area in order to obtain a valid parking permit.
(Ord. No. 9196, § 1, 1-25-99; Ord. No. 10418, § 3, 6-12-07; Ord. No. 10918, § 4, 8-9-11)

Sec. 20-259. Expired registration.

It shall be unlawful to park a vehicle on any city street that does not conspicuously bear proof of a current registration. A citation charging violation of this section may be dismissed if proof of current registration is submitted to the City Court.
(Ord. No. 9196, § 1, 1-25-99; Ord. No. 9434, § 4, 8-7-00)

Sec. 20-260. Stopping, standing, parking prohibited between the curb and sidewalk or in an unimproved pedestrian area impeding continuous pedestrian use.

It shall be unlawful to stop, stand or park a vehicle, whether posted or not, in that area between the curb and a sidewalk or in an unimproved pedestrian area such that it impedes continuous pedestrian use. Impeding continuous pedestrian use is determined when the stopping, standing, or parking of a vehicle leaves less than a four (4) foot wide unimproved pedestrian area. Provided, unless the area is posted with “no-parking” signs, it shall not be unlawful to stop,

stand, or park a vehicle in an unimproved pedestrian area adjacent to roadways less than or equal to twenty-six (26) feet wide.

(Ord. No. 9196, § 1, 1-25-99; Ord. No. 9434, § 5, 8-7-00; Ord. No. 11063, § 2, 3-27-13)

Sec. 20-261. Unattended and inoperable vehicles prohibited.

(a) It shall be unlawful to park, or leave unattended, on any street or roadway or right-of-way thereof, any vehicle for a period in excess of twenty four (24) hours.

(b) Any operable, currently registered, non-commercial, passenger vehicle registered to a resident of a property immediately adjacent to the parked vehicle shall be exempt from section 20-261(a) provided the vehicle is not in violation of any other section of this code.

(c) It shall be unlawful to park or leave unattended, on any street or roadway or right-of-way thereof, any vehicle exempt from section 20-261(a) as described in section 20-261(b) for a period in excess of seven (7) calendar days.

(Ord. No. 9196, § 1, 1-25-99; Ord. No. 10418, § 3, 6-12-07)

Sec. 20-262. Truck parking on streets not designated as truck routes prohibited.

(a) It is unlawful to park any vehicle having a total gross vehicle weight rating in excess of twenty thousand (20,000) pounds, including, but not limited to, trucks, truck tractors, road tractors, trailers, semi-trailers, vehicle transporters, or any combination of such vehicles:

- (1) On a street not designated as a truck route under article I section 20-15 of this chapter; or
- (2) On a street posted pursuant to section 20-15.1(b) with a sign or signs limiting the gross weight of vehicles permitted on the street; or
- (3) Within a residence district.

(b) Notwithstanding the prohibition in section 20-272(a) above, a restricted vehicle may park, except as otherwise prohibited by this article:

- (1) On any street within a business district, unless the street is posted pursuant to section 20-15.1(b) with a sign or signs limiting the gross weight of vehicles on the street; or
- (2) On any street to perform the following activities, except that, upon completion of such activity, the vehicle must return to the nearest designated truck route:
 - (i) Deliver, pickup, load, or unload merchandise, materials, or equipment, including furniture and other household goods; or
 - (ii) Provide construction, repair, or similar services to a property.

(Ord. No. 9196, § 1, 1-25-99; Ord. No. 9492, § 3, 11-27-00)

Note: Formerly § 20-272.

Sec. 20-263. Recreational vehicles; commercial vehicles.

It shall be unlawful to park any recreational vehicle, or any commercial vehicle, on the same block of any street or roadway or right-of-way thereof for any portion of any two (2) consecutive calendar days.

(Ord. No. 10418, § 3, 6-12-07)

Secs. 20-264 – 20-270. Reserved.

DIVISION 6. SAFETY ISSUES

Sec. 20-271. Penalty.

Unless otherwise specifically provided, the penalty for violating any provision of article VII, division 6, which regulates the time, place, or method of parking a vehicle shall be a mandatory fine of one hundred fifty dollars (\$150.00), no part of which may be suspended or waived by the court. This fine includes any assessments imposed under state law.

(Ord. No. 9196, § 1, 1-25-99; Ord. No. 9492, § 3, 11-27-00; Ord. No. 9859, § 4, 6-23-03)

Sec. 20-272. Reserved.

Editor’s note – Ord. No. 9492, § 3, adopted Nov. 27, 2000, renumbered the provisions of former § 20-272 as current § 20-262. The user is directed to § 20-262 for provisions concerning truck parking on streets not designated as truck routes prohibited. See the Code Comparative Table.

Sec. 20-273. Parking in alleys.

It is unlawful to park a vehicle within an alley, whether posted or not, except for the loading or unloading of merchandise and materials, and then not unless such loading or unloading can be accomplished without blocking the alley to the free movement of vehicular traffic. Notwithstanding the foregoing provision, the director of transportation may authorize limited alley blockage for periods not to exceed twenty (20) minutes at locations where such blockage is necessary for the immediate loading or unloading of persons, merchandise, or materials, provided that vehicles shall remain attended at all times and shall be immediately moved if necessary to accommodate the passage of emergency or city service vehicles. (Ord. No. 9196, § 1, 1-25-99; Ord. No. 9424, § 1, 7-10-00; Ord. No. 9434, § 6, 8-7-00)

Sec. 20-274. Hazardous areas adjacent to schools.

The director of transportation is authorized to erect signs indicating no parking upon that side of any street adjacent to any school property where and when such parking would, in his opinion, interfere with traffic or create a hazardous situation. When official signs are erected indicating no parking upon such side of a street adjacent to any school property, it is unlawful to stop, stand, or park a vehicle in any such designated place. (Ord. No. 9196, § 1, 1-25-99)

Sec. 20-275. Standing or parking outside of business or residence district.

Upon any highway outside of a business or residence district, it is unlawful to stand or park any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stand or park the vehicle off that part of the highway, but in every event an unobstructed width of the highway opposite the vehicle shall be left for the free passage of other vehicles; and a clear view of the standing or parked vehicle shall be available from a distance of two hundred (200) feet in each direction

upon the highway. This section shall not apply if the vehicle is disabled while on the paved or main-traveled part of a highway and is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position. (Ord. No. 9196, § 1, 1-25-99)

Sec. 20-276. Buses stopping on crosswalks, within intersections prohibited.

It shall be unlawful for any bus to stop within an intersection or on a crosswalk for the purpose of receiving or discharging passengers. (Ord. No. 9196, § 1, 1-25-99)

Sec. 20-277. Stopping, standing or parking prohibited in specified places.

Except for public buses, which may stop in a no-parking zone marked or sign posted as a bus loading zone, or authorized commercial vehicles or government-plated trucks as defined in section 20-249 in freight curb loading zones, or disabled or handicapped vehicles in disabled zones, or passengers or their effects in passenger curb loading zones, it is unlawful to stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or to comply with law or directions of a police officer or traffic-control device, in any of the following places:

- (1) On a sidewalk.
 - (2) In front of a public or private driveway.
 - (3) On a crosswalk, whether marked or unmarked.
 - (4) Within twenty (20) feet of a crosswalk at the departing side of an intersection whether marked or unmarked.
 - (5) In red zones.
 - (6) Where “no-parking” signs are specifically posted.
 - (7) Within five (5) feet of a driveway.
 - (8) Within ten (10) feet of an alleyway.
- (Ord. No. 9196, § 1, 1-25-99; Ord. No. 11063, § 3, 3-27-13)

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 all employee segment normal cost amounts 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). “Employee segment normal cost” means the annual amount necessary to fund the benefits accrued under the system in a particular year based on member service and compensation, by each employee segments eligible for membership in the system for which the system actuary shall perform employee segment normal cost calculations: (i) members hired by the city prior to July 1, 2006, (ii) tier I members hired by the city on or after July 1, 2006, and (iii) tier II members.

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

Sec. 22-30(u). “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(v). “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(w). “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(x). “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(y). “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(z). “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(aa) “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(bb). “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(cc). “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(dd). “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(ee). "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(ff). "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(gg). "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(hh). "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(ii). "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(jj). "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(kk). "Trust fund" means the custodial or trust account(s) maintained under the system as set forth in section 22-31.

Sec. 22-30(ll). "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; Ord. No. 11062, §§ 1, 2, 3-27-13, eff. 7-1-13)

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 the applicable percentage of the Employee Segment Normal Cost: For purposes of this Section 22-34(b), the applicable

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percentage shall equal the percentage determined by the City on an annual basis prior to the beginning of each fiscal year, and which shall equal no less than fifty (50) percent and no more than one hundred (100) percent. 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 fiscal year adjustment (increase or decrease) equal to no more than two and one-half (2 1/2) percent of member compensation. The finance director shall deduct the applicable member contributions from each member's compensation and credit it to the member's accumulated contributions account.

Sec. 22-34(c). Contribution rates for rehired members. If a member separates from employment with the city and is later re-hired, the rate of mandatory member contributions applicable to the rehired member shall be determined in accordance with this section. Any member who was originally hired by the city prior to July 1, 2006, who was a vested member at the time of separation from employment with the city and who does not request a refund of member contributions in accordance with section 22-41 prior to his date of reemployment with the city shall make mandatory member contributions to the system in accordance with section 22-34(a) above. All other rehired members shall make mandatory member contributions in accordance with section 22-34(b) above.

Sec. 22-34(d). Employer pick-up/member contributions. All member contributions to the system are mandatory and are picked up by the city in accordance with Code Section 414(h). As a result of the city's pick-up arrangement, the member contributions are contributed to the system on a pre-tax basis and shall not be included in the member's gross income until the member requests a refund of contributions or receives retirement benefit payments. All member contributions are deposited into the individual accumulated contributions account maintained by the system administrator on behalf of each contributing member.

Sec. 22-34(e). Qualified military service. A member who leaves employment for qualified military service and is timely reemployed by the city and meets all other applicable requirements for benefits following qualified military service including, without limitation, the requirements set forth in the city's Administrative

Directive 2.01-7G regarding military leave, as amended, shall be permitted (but not required) to make up missed member contributions to the system. Any reemployed member who wishes to make up missed member contributions shall contribute all or a portion of the member contributions that would have been made by the member but for the qualified military service, calculated at the compensation rate in effect for the member immediately preceding the commencement of the qualified military service and the member contribution rate in effect during the qualified military service, and without interest or any other adjustment. The missed member contributions shall be contributed to the system during a period that begins on the date of reemployment and ends on the earliest of (1) the date that is five (5) years from the date of reemployment, (2) the date that marks the end of a period which is three times the length of the member's most recent period of qualified military service, or (3) the member's termination date. Any and all member contributions made up pursuant to this section shall be treated as regular member contributions made in accordance with section 22-34(d). Following the contribution of missed member contributions to the system, the system administrator shall take all steps necessary to increase the member's accrued benefit to include the portion of the member's qualified military service covered by the missed member contributions.

Sec. 22-34(f). Accrued vacation cash out. All hours of accumulated vacation earned by a tier I member and cashed out by the city as of the earlier of the member's termination date or election to enter the end of service program shall be included in a member's compensation for member contribution purposes, provided that member contributions are made in accordance with this section. The member contributions applicable to accumulated vacation shall be calculated using the tier I member's compensation and member contribution rate as in effect immediately preceding the tier I member's termination date. The calculation and collection of member contributions under this section shall trigger the city's obligation to make corresponding employer contributions under section 22-35(a) for the accumulated vacation hours.

Sec. 22-34(g). Non-forfeiture and refund of contributions. It is the right of each member to request a refund of the member's accumulated contributions, plus interest, upon separation from city service and the right of each beneficiary to be paid the member's

accumulated contributions, plus interest, upon the member's death before retirement or unused contributions, plus interest, upon the member's death after retirement, whichever is applicable. All refunds, and the related forfeiture of credited service, shall be administered in accordance with section 22-41. (Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09; Ord. No. 10915, § 3, 6-21-11, eff. 7-1-11; Ord. No. 11062, § 3, 3-27-13, eff. 7-1-13)

Sec. 22-35. City contributions.

Sec. 22-35(a). Contribution by the city. At the end of each payroll period, the finance director shall cause the city to contribute to the trust fund an amount equal to the employer contribution for the particular payroll period, plus any and all member contributions picked up by the city in accordance with section 22-34(d) and section 22-36(g)(2).

Sec. 22-35(b). Certification of rates and charges. The board shall certify to the city manager, on a fiscal year basis, the annual required contribution, the member contribution rate and the employer contribution for the system.

Sec. 22-35(c). City's funding requirement for system. The city council shall appropriate no less than one hundred (100) percent of the employer contribution for a particular fiscal year.

Sec. 22-35(d). Determination and deposit of employer contributions. The finance director at the end of each pay period shall apply the appropriate employer contribution and member contribution rates to the total compensation of members for such period and shall transfer this amount to the trust fund. (Ord. No. 10657, § 2, 4-28-09, eff. 7-1-09)

Sec. 22-36. Accumulation of credited service.

Sec. 22-36(a). Credited service generally. A member will receive credited service for purposes of determining the benefits to which the member or the member's beneficiary(ies) will be entitled. Credited service is the total of the member's accrued service and additional service. Accrued service shall be used to determine whether a member is vested, as well as to determine the member's accrued benefit. Additional service shall be considered for benefit accrual purposes only.

Sec. 22-36(b). Accrued service for city employment.

- (1) *Employment periods.* A member shall earn 1/2080 of one (1) year of accrued service credit for each hour of regular time compensation, including authorized periods of absence for which the member receives compensation. A member who is compensated for two thousand eighty (2,080) or more hours of regular time during twelve (12) consecutive calendar months shall receive one (1) year of accrued service. 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.
- (2) *Periods of leave.* With regard to tier I members, all service and periods of leave with pay, accrued and unused vacation and sick leave at the date of retirement, workers compensation and qualified military service shall be used in calculating a member's total accrued service. The accrued service of tier II members shall include all service and periods of leave with pay, workers compensation and qualified military service, but shall exclude all accrued and unused vacation and sick leave at the date of retirement. Special rules regarding qualified military service are set forth in subparagraph three (3) below. Notwithstanding the foregoing, accumulated vacation earned by a tier I member and cashed out by the city as of the member's termination date shall be treated as accrued service only if the member makes member contributions on the value of the leave that is cashed out by the city as set forth in section 22-34(f).
- (3) *Military leave during active employment.* An active city employee who leaves employment to complete qualified military service, makes a timely return to the city following an honorable discharge (as defined below), and who makes up missed member contributions in accordance with section 22-43(e) may receive accrued service for periods of qualified military service. Accrued service credited to a member who satisfies the

Chapter 23

LAND USE CODE*

***Editor's note** – Ordinance No. 8509 adopted the Land Use Code which supercedes all prior provisions of Chapter 23, Tucson Zoning Code, as of July 1, 1995. Three copies of the Land Use Code shall be filed with the city clerk's office and maintained as public records of the City of Tucson. The Land Use Code shall be published separately from the Tucson Code.

Pursuant to Section 2 of Ordinance No. 11025, adopted October 9, 2012, the Land Use Code is repealed effective January 1, 2016. Section 2 of Ordinance No. 11025 provides: "The Land Use Code, Chapter 23 of the Tucson Code as adopted and amended prior to October 9, 2012 is repealed effective January 1, 2016 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of the Land Use Code, Chapter 23 based upon acts occurring prior to the repeal of any such provision."

Section 6 of Ordinance No. 11025 provides: "Any owner of record, as of October 9, 2012 wishing to develop real property which would be governed by the provisions of this ordinance, where such development occurs between the effective date of the UDC, and the date of repeal of the LUC, January 1, 2016 shall have the option of electing which code to apply to the full development. Once an election is made, the code chosen shall be the only code applicable to the subject development for all development and applications therefore from January 2, 2013 until January 1, 2016 except as provided by Section 9 herein."

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Chapter 23A

DEVELOPMENT COMPLIANCE CODE*

- Art. I. General Provisions, §§ 23A-1 – 23A-30**
 - Div. 1. Introduction, §§ 23A-1 – 23A-20
 - Div. 2. Mapping, §§ 23A-21 – 23A-30
- Art. II. Review Procedures, §§ 23A-31 – 23A-70**
 - Div. 1. General Zoning Review Procedure, §§ 23A-31 – 23A-39
 - Div. 2. Special Zoning Review – Limited Notice Procedure, §§ 23A-40 – 23A-49
 - Div. 3. Special Zoning Review – Full Notice Procedure, §§ 23A-50 – 23A-59
 - Div. 4. Appeal Procedures, §§ 23A-60 – 23A-70
- Art. III. Impact Fees, §§ 23A-71 – 23A-100**
 - Div. 1. Applicability and Intent, §§ 23A-71 – 23A-80
 - Div. 2. Fee Calculation, §§ 23A-81 – 23A-90
 - Div. 3. General Provisions, §§ 23A-91 – 23A-100
- Art. IV. Definitions, §§ 23A-101 – 23A-136**
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- Sec. 23A-2. Purpose.
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***Editor’s note** – Ordinance No. 9967, § 7, adopted May 17, 2004, effective July 1, 2004, amended the title of said chapter to read as set out. Formerly said title pertained to Development Compliance Reviews.

Section 3 of Ordinance No. 11025, adopted October 9, 2012, provides: “Article 1, General Provisions, and Article II, Review Procedures, of Chapter 23A are hereby repealed effective January 1, 2016 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of Article I or Article II, Chapter 23A based upon acts occurring prior to the repeal of any such provision.”

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- Sec. 23A-32.1. NPZ design review procedure.
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- Sec. 23A-33.3. Land splits.
- Sec. 23A-34. Development plan review.
- Sec. 23A-35. Flexible lot development (FLD) review.
- Secs. 23A-36 – 23A-39. Reserved.

Division 2. Special Zoning Review – Limited Notice Procedure

- Sec. 23A-40. Limited notice procedure.
- Secs. 23A-41 – 23A-49. Reserved.

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- Secs. 23A-55 – 23A-59. Reserved.

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- Sec. 23A-60. Appeal procedures.
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- Secs. 23A-65 – 23A-70. Reserved.

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DEVELOPMENT COMPLIANCE CODE

- Sec. 23A-85. Independent fee calculation.
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- Secs. 23A-87 – 23A-90. Reserved.

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- Sec. 23A-131. Definitions – U (Reserved).
- Sec. 23A-132. Definitions – V.
- Sec. 23A-133. Definitions – W (Reserved).
- Sec. 23A-134. Definitions – X (Reserved).
- Sec. 23A-135. Definitions – Y (Reserved).
- Sec. 23A-136. Definitions – Z (Reserved).

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ARTICLE I. GENERAL PROVISIONS***DIVISION 1. INTRODUCTION****Sec. 23A-1. Title.**

This chapter is entitled “Development Compliance Code.”
(Ord. No. 9392, § 2(1.1.1), 5-22-00; Ord. No. 9967, § 7, 5-17-04)

Sec. 23A-2. Purpose.

Chapter 23A is established to identify the processes for the review and approval of proposed development for compliance with the technical and objective requirements of the Land Use Code (LUC), Chapter 23 of the Tucson Code and to provide for the calculation, assessment and collection of impact fees.
(Ord. No. 9392, § 2(1.1.2), 5-22-00; Ord. No. 10053, § 1, 9-27-04)

Sec. 23A-3. Scope.

The provisions of Chapter 23A apply to all proposed development within the corporate limits of the city and shall establish the process for certification of zoning compliance.
(Ord. No. 9392, § 2(1.1.3), 5-22-00)

Sec. 23A-4. Certification of zoning compliance.

The certification of zoning compliance as provided in Chapter 23A shall consist of the certification that proposed development and construction are in conformance with the nondiscretionary, technical, and objective requirements

***Editor’s note** – Section 3 of Ordinance No. 11025, adopted October 9, 2012, provides: “Article 1, General Provisions, and Article II, Review Procedures, of Chapter 23A are hereby repealed effective January 1, 2016 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of Article I or Article II, Chapter 23A based upon acts occurring prior to the repeal of any such provision.”

of the Land Use Code (LUC), Chapter 23 of the Tucson Code, prior to final development approval.
(Ord. No. 9392, § 2(1.1.4), 5-22-00)

Sec. 23A-5. Applicability.

The planning and development services department (PDSO) is responsible for assuring that no land is used or occupied; no site improvement, modification, or construction is started; no existing use is implemented, expanded, or changed; no structure is expanded, reconstructed, changed, or otherwise altered; and no land is divided into multiple parcels until the certification of zoning compliance has been provided in accordance with this chapter. No city agency may issue a permit for excavation, grubbing, grading, paving, demolition, or construction of any sort before PDSO has certified such compliance with the Land Use Code (LUC).
(Ord. No. 9392, § 2(1.1.5), 5-22-00; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Sec. 23A-6. Interpretation.

The planning and development services department (PDSO) director is responsible for issuing all final decisions in the content and application of this chapter, except as may be expressly provided in this chapter. Any decision or interpretation on the application and content of the Land Use Code (LUC), Chapter 23 of the Tucson Code, shall be by the zoning administrator as provided in section 1.2.1 of the LUC.
(Ord. No. 9392, § 2(1.1.6), 5-22-00; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Editor’s note – All graphics included in Chapter 23A are for illustrative purposes and do not have legal status.

Sec. 23A-7. Appeals.

The decision of the planning and development services department (PDSO) director on the content and application of this chapter shall be final and nonappealable unless specifically provided herein.
(Ord. No. 9392, § 2(1.1.7), 5-22-00; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Sec. 23A-8. Violation.

Any improvements that are constructed without zoning compliance or any improvements under construction that are not in compliance with plans

approved for zoning compliance shall be considered a violation of this chapter. The planning and development services department (PDSD) shall enforce compliance with this chapter by suspending construction or through other available means until compliance is achieved.
(Ord. No. 9392, § 2(1.1.8), 5-22-00; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Sec. 23A-9. Enumeration.

The Tucson Code establishes an outline of organization in descending order of chapter, article, division, section, subsection, paragraph, sentence, clause, and words. Chapter 23A is arranged in the same organizational format with minor modification. Chapter 23A, the assigned chapter within the Tucson Code, is implied but not used when referencing articles, divisions, sections, or subsections within this chapter.
(Ord. No. 9392, § 2(1.1.9), 5-22-00)

Sec. 23A-10. Hierarchy.

The hierarchy used in Chapter 23A is a combination of numerical digits separated by a period to denote the descending order of article, division, section, and so on. For example, Sec. 3.0.0 references Article III; Sec. 3.3.0 references Article III, Division 3; Sec. 3.3.5 references Article III, Division 3, Section 5; and Sec. 3.3.5.5.A. references Article III, Division 3, Section 5, subsection 5, paragraph A.
(Ord. No. 9392, § 2(1.1.9.1), 5-22-00)

Editor’s note – See the original section numbers retained in the history notes.

Secs. 23A-11 – 23A-20. Reserved.

DIVISION 2. MAPPING

Sec. 23A-21. Title.

As provided by Chapter 23 of the Tucson Code, Land Use Code, section 1.3.1, the set of maps depicting land use zoning boundaries within the City of Tucson is entitled “City of Tucson Zoning Maps.”
(Ord. No. 9392, § 2(1.2.1), 5-22-00)

Sec. 23A-22. Purpose, applicability, and interpretation.

The purpose, applicability, and interpretation of the City of Tucson Zoning Maps are as provided by Chapter 23 of the Tucson Code, Land Use Code (LUC), Article I, Division 3.
(Ord. No. 9392, § 2(1.2.2), 5-22-00)

Secs. 23A-23 – 23A-30. Reserved.

ARTICLE II. REVIEW PROCEDURES*

DIVISION 1. GENERAL ZONING REVIEW PROCEDURE

Sec. 23A-31. Zoning compliance review.

Review to determine whether any application conforms to zoning regulations is conducted in accordance with this section. Interpretations of zoning regulations and certifications of approval of applications in compliance with all zoning regulations may be appealed to the board of adjustment.

For certain applications as specified in the LUC, there are also special zoning review requirements which may involve either a limited notice procedure in accordance with Division 2 of this chapter or a full notice procedure in accordance with Division 3 of this

***Editor’s note** – Ordinance No. 9967, § 8, adopted May 17, 2004, repealed the former Art. II, §§ 23A-31 – 23A-33, 23A-41 – 23A-49, 23A-61, 23A-62. Section 9 of Ordinance No. 9967 enacted a new Art. II, §§ 23A-31 – 23A-35, 23A-40, 23A-50 – 23A-54, 23A-60 – 23A-63, as set out herein. The former Art. II pertained to similar subject matter and derived from Ord. No. 9392, § 2 (2.1.1) – (2.1.3), (2.2.1) – (2.2.9), (2.3.1), (2.3.2), adopted May 22, 2000.

Section 3 of Ordinance No. 11025, adopted October 9, 2012, provides: “Article 1, General Provisions, and Article II, Review Procedures, of Chapter 23A are hereby repealed effective January 1, 2016 except that the same is continued in full force and effect as necessary for the interpretation or application of other ordinances, resolutions, agreements or other legal documents or as necessary to the final determination and disposition of, or the prosecution or litigation of any claim or complaint that has been made or may be made in the future alleging a violation of any prior provision of Article I or Article II, Chapter 23A based upon acts occurring prior to the repeal of any such provision.”

Chapter. Limited notice procedures may be appealed to the board of adjustment. Full notice procedures may be subject to an appeal to either the board of adjustment or the mayor and council in accordance with Division 4 of this chapter.

For proposed development in conformance with the property's existing zoning regulations, whether it is new construction, expansion of existing construction, new use, change in use, or expansion of an existing use, review for conformance with the provisions of the Land Use Code (LUC), Chapter 23 of the Tucson Code, this chapter and applicable development standards will be by planning and development services department (PDS). The applications requiring zoning compliance review include, but are not limited to, temporary uses, business licenses, tenant improvement, home occupations, site plan review, new construction, expansion of existing premises, and certain electrical reconnections.

- (1) *Application.* Applications shall conform to the requirements set forth in the LUC,

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ARTICLE IV. DEFINITIONS***DIVISION 1. GENERAL PROVISIONS†****Sec. 23A-101. Purpose.**

The purpose of this article is to promote consistency and precision in the interpretation of this chapter.

(Ord. No. 9392, § 2(3.1.1), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

Sec. 23A-102. General rules of application.

(a) *Meaning and construction.* The meaning and construction of words and phrases as set forth apply throughout the chapter, except where the context of such words or phrases clearly indicates a different meaning or construction.

(b) *Land Use Code (LUC).* Where the word or term is applicable to the Land Use Code (LUC), the definition in the LUC applies.

(Ord. No. 9392, § 2(3.1.2), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

Sec. 23A-103. General rules for construction of language.

The following general rules of construction apply to the textual provisions of the chapter.

- (1) *Headings.* Section and subsection headings do not govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision of the chapter.
- (2) *Illustration.* In case of any difference of meaning or implication between the text of any provision and any illustration, the text prevails.

***Editor's note** – Formerly Art. III. See editor's note at Art. III.

†**Editor's note** – Section 3 of Ord. No. 10053 renumbered Art. IV, Div. 1, §§ 23A-71 – 23A-73 as Art. IV, Div. 1, §§ 23A-101 – 23A-103, respectively.

(3) *Tenses and numbers.* Words used in the present tense include the future, and words used in the singular include the plural and the plural the singular, unless the context clearly indicates contrary.

(4) *Conjunctions.* Unless the context clearly indicates contrary, the following conjunctions will be interpreted as follows:

- a. “And” indicates that all connected items or provisions apply.
- b. “Or” indicates that the connected items or provisions may apply individually or in any combination.
- c. “Either . . . or” indicates that the connected items or provisions apply individually but not in combination.

(Ord. No. 9392, § 2(3.1.3), 5-22-00; Ord. No. 10053, § 3, 9-27-04)

Secs. 23A-104 – 23A-110. Reserved.**DIVISION 2. LISTING OF WORDS AND TERMS‡****Sec. 23A-111. Definitions – A.**

Advisory board. The historic district advisory board established pursuant to section 5.1.10 of the LUC.

Applicant. The applicant for a building permit for which an impact fee is due pursuant to the provisions of this article.

Arterial road system. Arterial roads identified on the city's major street and routes plan that are the responsibility of the City of Tucson or which are designated in accordance with section 23A-84(14).

‡**Editor's note** – Section 4 of Ord. No. 10053, renumbered Art. IV, Div. 2, §§ 23A-81 – 23A-106 as Art. IV, Div. 2, §§ 23A-111 – 23A-136.

Arterial road (system) improvements. Improvements that expand the capacity of the arterial road system, including but not limited to construction of new roads or the widening of existing roads, roadway pavement, curbs and curb cuts, bridges, sidewalks, pedestrian facilities, trails, drainage structures, medians, street lighting, landscaping and irrigation, one (1) percent public art, intersection improvements, acceleration and deceleration lanes, turn lanes, parking lanes, traffic signals and other similar improvements constructed in conjunction with an arterial road capacity improvement. Ancillary components of a capacity-expanding road improvement shall not be considered system improvements when not an integral part of a capacity-expanding improvement.

(Ord. No. 9392, § 2(3.2.1), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 9967, § 10, 5-17-04)

Sec. 23A-112. Definitions – B (Reserved).

(Ord. No. 9392, § 2(3.2.2), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-113. Definitions – C.

CDRC. Acronym for community design review committee.

Community design review committee. The community design review committee (CDRC) is established as an advisory body for the review of land development proposals within the city. Establishment, composition, and function of the CDRC are provided in Development Standard 1-03.0.

Conformance. To be in agreement with; to comply with.

Credit. There are three (3) types of credits: public revenue credits, public funding credits, and site-specific credits as defined in section 23A-82.

(Ord. No. 9392, § 2(3.2.3), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10372, § 4, 2-6-07)

Sec. 23A-114. Definitions – D.

Director. The director of the planning and development services department.

(Ord. No. 9392, § 2(3.2.4), 5-22-00; Ord. No. 10053, § 4, 9-27-04; Ord. No. 9967, § 10, 5-17-04; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Sec. 23A-115. Definitions – E (Reserved).

(Ord. No. 9392, § 2(3.2.5), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-116. Definitions – F (Reserved).

(Ord. No. 9392, § 2(3.2.6), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-117. Definitions – G (Reserved).

(Ord. No. 9392, § 2(3.2.7), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-118. Definitions – H (Reserved).

(Ord. No. 9392, § 2(3.2.8), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-119. Definitions – I.

Impact fee administrator. The planning and development services department director or designee.

Impact fee or fees. The road, park, police, fire and public facilities impact fees collectively unless a specific impact fee is described.

Impact fee study. The Road and Park Impact Fee Study prepared for the City of Tucson by Duncan Associates in June 2004, the City of Tucson Impact Fee Study: Police, Fire, Public Facilities prepared by the planning and development services department dated February, 2007, or a subsequent similar report.

Impact-generating development: Any land development designed or intended to permit a use of the land that will increase the number of service units. (Ord. No. 9392, § 2(3.2.9), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10442, § 3, 8-6-07; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09)

Sec. 23A-120. Definitions – J (Reserved).

(Ord. No. 9392, § 2(3.2.10), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-121. Definitions – K (Reserved).

(Ord. No. 9392, § 2(3.2.11), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-122. Definitions – L (Reserved).

(Ord. No. 9392, § 2(3.2.12), 5-22-00; Ord. No. 10053, § 4, 9-27-04; Ord. No. 11025, § 4, 10-9-12)

Sec. 23A-123. Definitions – M (Reserved).

(Ord. No. 9392, § 2(3.2.13), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-124. Definitions – N (Reserved).

(Ord. No. 9392, § 2(3.2.14), 5-22-00; Ord. No. 10053, § 4, 9-27-04; Ord. No. 9967, § 10, 5-17-04; Ord. No. 11025, § 4, 10-9-12)

Sec. 23A-125. Definitions – O (Reserved).

(Ord. No. 9392, § 2(3.2.15), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10372, § 4, 2-6-07)

Sec. 23A-126. Definitions – P.

PDSD. Planning and development services department.

Public funding credit. Public funding credits are credits for funds directly appropriated by local, state and federal governments to pay for all or a portion of a development in order to satisfy a public purpose or the funding of construction of eligible improvements with money from municipal improvement districts, community facilities districts or similar special taxing district with governmental authority. Public funding credits do not include indirect public funding through loans, loan guarantees, tax credits or similar indirect financing. Public funding credits are determined by multiplying the percentage of public money provided for the construction of the project by the amount of the impact fee in accordance with section 23A-82.

Public revenue credits. Public revenue credits are credits for funds from local, state and federal taxes and other public revenues which are used in the construction of the public improvements that are the subject of the impact fee. Public revenue credits are subtracted before the impact fee is determined in accordance with section 23A-82.

(Ord. No. 9392, § 2(3.2.16), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 9967, § 10, 5-17-04; Ord. No. 10655, § 4, 4-21-09, eff. 7-1-09; Ord. No. 11025, § 4, 10-9-12)

Sec. 23A-127. Definitions – Q (Reserved).

(Ord. No. 9392, § 2(3.2.17), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-128. Definitions – R.

Regional park. A park that has at least fifteen (15) acres and provides facilities such a pool, soccer fields, baseball fields, basketball court, recreation center, concert stage or other such facilities for regional recreational uses.

Regional park system. Park land, facilities and improvements to city-owned land used for active and passive recreational purposes and associated recreational facilities, and recreational facilities and improvements made or installed by the city in regional parks and available for public use.

Regional park (system) improvements. Capital improvements that result in a net expansion of the park land or recreational facilities in regional parks that are available to the public. Remodeling, replacement or maintenance of existing equipment or facilities does not constitute a regional park system improvement. (Ord. No. 9392, § 2(3.2.18), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04)

Sec. 23A-129. Definitions – S.

Service units. Vehicle-miles of travel and equivalent dwelling units.

Site-specific credits. Credits are given to developers for construction of capacity improvements that are included in the calculation of the impact fees.

Sq. ft. Same as Square Foot.

Square foot. As used for the calculation of impact fees is the same as the square footage used for determination of the issuance of building permits.

(Ord. No. 9392, § 2(3.2.19), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04; Ord. No. 10256, § 4, 2-28-06; Ord. No. 10372, § 4, 2-6-07)

Editor's note – The definition of square foot shall become effective May 30, 2006.

Sec. 23A-130. Definitions – T (Reserved).

(Ord. No. 9392, § 2(3.2.20), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-131. Definitions – U (Reserved).

(Ord. No. 9392, § 2(3.2.21), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-132. Definitions – V.

Vehicle-miles of capacity (VMC). The product of the maximum number of vehicles that can be accommodated on a roadway during an hour and the length of the roadway in miles.

Vehicle-miles of travel (VMT). The product of the number of vehicles traveling during the afternoon peak hour of a week day and the distance in miles that those vehicles travel.

(Ord. No. 9392, § 2(3.2.22), 5-22-00; Ord. No. 10053, §§ 4, 6, 9-27-04)

Sec. 23A-133. Definitions – W (Reserved).

(Ord. No. 9392, § 2(3.2.23), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-134. Definitions – X (Reserved).

(Ord. No. 9392, § 2(3.2.24), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-135. Definitions – Y (Reserved).

(Ord. No. 9392, § 2(3.2.25), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Sec. 23A-136. Definitions – Z (Reserved).

(Ord. No. 9392, § 2(3.2.26), 5-22-00; Ord. No. 10053, § 4, 9-27-04)

Chapter 23B

UNIFIED DEVELOPMENT CODE*

***Editor's note** – Ordinance No. 11025, adopted October 9, 2012, enacted the Unified Development Code. The Unified Development Code is effective January 2, 2013. Three copies of the Land Use Code shall be filed with the city clerk's office and maintained as public records of the City of Tucson. The Unified Development Code shall be published separately from the Tucson Code.

Section 6 of Ordinance No. 11025 provides: "Any owner of record, as of October 9, 2012 wishing to develop real property which would be governed by the provisions of this ordinance, where such development occurs between the effective date of the UDC, and the date of repeal of the LUC, January 1, 2016 shall have the option of electing which code to apply to the full development. Once an election is made, the code chosen shall be the only code applicable to the subject development for all development and applications therefore from January 2, 2013 until January 1, 2016 except as provided by Section 9 herein."

TUCSON CODE

<i>Meter Size (inches)</i>	<i>Charge</i>
5/8.	\$200.00
3/4.	300.00
1.	500.00
1 1/2.	1,000.00
2.	1,600.00
3.	3,200.00
4.	5,500.00
6.	11,250.00
8.	17,000.00
10.	26,000.00
12.	43,000.00

Charges for replacement of an existing meter with a meter of larger size shall be computed based on the incremental difference between the CAP water resource fee for the respective meters at the time of filing the application for meter change-out. No refunds will be credited for replacement of an existing meter with a meter of smaller size.

(c) The director may impose area-specific water development fees to recover the capital costs associated with the design and construction of a water supply system for specific water service areas. The Peppertree Ranch and Santa Rita Bel Air fees recover certain infrastructure costs within the specific areas. The fees have been calculated by allocating these costs to the number of meters (based on equivalent meter sizes) planned for the specific areas.

(1) *Peppertree Ranch water service area.* The boundaries of the Peppertree Ranch water service area are hereby established as shown on a map entitled “Peppertree Ranch Water Service Area”, copies of which are on file in the office of the city clerk and Tucson Water. Each new water connection shall pay a Peppertree Ranch water development fee in accordance with the following table:

<i>Meter Size (inches)</i>	<i>Peppertree Ranch Water Development Fee</i>
5/8.	\$188.00
1.	470.00
1 1/2.	940.00
2.	1,504.00
3.	3,290.00
4.	4,700.00
6.	9,400.00

8.	15,040.00
10.	21,620.00
12.	32,900.00

(2) *Santa Rita Bel Air Isolated System.* Each new connection to the Santa Rita Bel Air Isolated System shall pay a Santa Rita Bel Air isolated water system fee in accordance with the following table:

<i>Meter Size (inches)</i>	<i>Santa Rita Bel Air Isolated Water System Fee</i>
5/8.	\$1,814
1.	4,535
1 1/2.	9,070
2.	14,512
3.	29,024
4.	49,885
6.	102,128
8.	154,190
10.	235,820
12.	390,010

(3) *Diamond Bell Isolated System.* Each new connection to the Diamond Bell Isolated System shall pay a Diamond Bell isolated water system fee in accordance with the following table:

<i>Meter Size (inches)</i>	<i>Diamond Bell Isolated Water System Fee</i>
5/8.	\$2,778
1.	6,945
1 1/2.	13,890
2.	22,224
3.	44,448
4.	76,395

(d) The director may impose area-specific water development fees to recover the capital costs associated with the design and a construction of a water supply system for specific water service areas. The Peppertree Ranch and Santa Rita Bel Air fees recover certain infrastructure costs within the specific areas. The fees have been calculated by allocating these costs to the number of meters (based on equivalent meter sizes) planned for the specific areas.

(Ord. No. 4980, § 1, 5-29-79; Ord. No. 5268, § 1, 12-8-80; Ord. No. 5424, § 1, 8-3-81; Ord. No. 5425, § 1, 8-3-81; Ord. No. 5426, § 1, 8-3-81; Ord. No. 5786, §§ 1 – 4, 6-13-83; Ord. No. 6025, §§ 1 – 4, 6-11-84;

Ord. No. 6249, §§ 1 – 5, 6-3-85; Ord. No. 9136, § 1, 10-5-98; Ord. No. 9842, § 1, 5-12-03; Ord. No. 9935, § 1, 2-9-04; Ord. No. 10202, § 1, 9-27-05; Ord. No. 10385, § 1, 4-4-07, eff. 7-9-07; Ord. No. 10386, § 1, 4-4-07; Ord. No. 10643, § 1, 3-24-09, eff. 7-6-09; Ord. No. 10644, § 1, 3-24-09, eff. 7-6-09; Ord. No. 10958, § 1, 1-24-12, eff. 7-2-12; Ord. No. 10959, § 1, 1-24-12, eff. 7-2-12)

Editor’s note – It should be noted that Ord. No. 10958, § 5, states that the fee changes approved by this ordinance (§ 27-36(b)) shall take effect on July 2, 2012, and shall apply to all meter readings accepted after July 2, 2012. Additionally, Ord. No. 10959, § 5, states that the fee changes approved by this ordinance (§ 27-36(a)) shall take effect on July 2, 2012, and shall apply to all meter applications accepted after July 2, 2012.

Sec. 27-37. Agreements for construction of water facilities authorized.

The director may permit the construction of water facilities to provide water service in areas where no water service is available. Construction may be accomplished by (1) the applicant’s contractor (private contract) or (2) city contract or city force account.

- (1) The director is authorized to permit construction of water facilities by private contract upon written application. Agreements for construction of water facilities shall provide that all costs are at the sole expense of the applicant except as noted therein.
 - a. The facilities will be constructed, at the sole expense and cost of the applicant, within streets, avenues, alleys and rights-of-way pursuant to grants of easements.
 - b. Plans for construction will be provided by the applicant, certified by a registered professional engineer, and reviewed and accepted by the director or his designee.
 - c. With each application for the construction of water facilities authorized by this section, the applicant shall execute and deliver to the director, an agreement for the construction thereof by private contract. If the agreement conforms with the provisions

of this chapter, the director will authorize construction of the applicant’s water facilities.

- d. The construction of water facilities so authorized will be inspected and tested for water quality and water pressure by the director or his designee, and will comply in every respect with the material and installation standard of the department.
- e. The applicant will be assessed fees for plan review, inspection, and system isolation (for connection of constructed water facilities to the existing system). Water system research required by an applicant prior to the submission of any plan will be charged at the Master Plan rate (first submittal, first sheet) indicated below. The Master Plan fee(s) will also be applicable when the Master Plan itself is submitted for review and approved by water staff. Plan review fees will be collected upon plan submittal or re-submittal, in accordance with the following schedule:

<i>Review Service</i>	<i>Fee</i>
<i>Master Plan Only:</i>	
First Submittal	First Sheet \$415.00
	Each Subsequent Sheet 70.00
Each Re-submittal of Plan	156.00
<i>Design Review Only:</i>	
First Submittal	First Sheet 415.00
	Each Subsequent Sheet 139.00
First Re-submittal of Design:	First Sheet 156.00
	Each Subsequent Sheet 70.00
Each Subsequent Re-submittal of Design	156.00
Plan Revision	139.00

f. Construction inspection fees will be collected prior to the director's authorization of construction of applicant's water facility (section 27-37(1)). Fees will be calculated as follows:

In addition, the applicant shall pay a protected main service fee of seventy-five dollars (\$75.00), such fee recovering the costs of administering the protected main program.

Pipeline inspection:

Projects of 200 linear feet or less..... \$371.00

Projects greater than 200 linear feet,
per linear foot. \$7.00

Other facility inspection (non-pipeline),
per facility..... \$78.00
per hour

System isolation fee, per pipeline project
or facility..... \$303.00

(2) The director is authorized to elect to charge the applicant an appropriate fee and design and construct, by city contract or by city force account, applicant pipeline extensions or other water facilities. An applicant will be assessed a fee of three thousand eight hundred twenty dollars (\$3,820.00) if Tucson Water provides the design and construction documents for the electrical and control portions of applicant-required facilities. If the extension or facility is to be designed and constructed by force account, the applicant will be charged the estimated design and construction costs of such extensions or facilities as determined by the director or his designee; or if the extension or facility is to be designed and constructed by city contract, the cost to the applicant shall be based on the costs referenced in current contracts. Current contracts shall be available in the customer reception area of the water utility's new development unit and may be reviewed by an applicant for any type of water service. In addition to the design or construction cost, the applicant shall pay the fees indicated in 27-37(1)(f) and if applicable, the fees indicated in 27-37(1)(e).

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Chapter 28

TUCSON PROCUREMENT CODE*

- Art. I. In General, §§ 28-1 – 28-10
- Art. II. Procurement Director Authority, §§ 28-11 – 28-14
- Art. III. Source Selection and Contract Formation, §§ 28-15 – 28-40
- Art. IV. Specifications, §§ 28-41 – 28-46
- Art. V. Procurement of Professional Design Services and Capital Improvements, §§ 28-47 – 28-57
- Art. VI. Contract Terms and Conditions, §§ 28-58 – 28-61
- Art. VII. Cost Principles, §§ 28-62 – 28-65
- Art. VIII. Materials Management, §§ 28-66 – 28-74
- Art. IX. Legal and Contractual Remedies, §§ 28-75 – 28-125
- Art. X. Cooperative Purchasing, §§ 28-126 – 28-131
- Art. XI. Reserved, §§ 28-132 – 28-136
- Art. XII. Affirmative Action by City Contractors, §§ 28-137 – 28-146
- Art. XIII. Small Business Enterprise Program, §§ 28-147 – 28-151.5
- Art. XIV. Living Wage, §§ 28-152 – 28-159

Article I. General Provisions

- Sec. 28-1. Applicability.
- Sec. 28-2. Definitions.
- Sec. 28-3. Supplementary general principles of law applicable.
- Sec. 28-4. Requirement of good faith.
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- Sec. 28-12. Written determinations.
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- Sec. 28-15. Definitions.
- Sec. 28-16. Methods of source selection.
- Sec. 28-17. Competitive sealed bidding.
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- Sec. 28-21. Sole source procurement.
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- Sec. 28-25. Cancellation of solicitations.
- Sec. 28-26. Rejection of individual bids, proposals, quotations or statements of qualifications.
- Sec. 28-27. Responsibility of bidders, offerors and respondents.
- Sec. 28-28. Bid and contract security, material or service contracts.

***Editor's note** – Ord. No. 9913, § 1, adopted Nov. 17, 2003, amended chapter 28 in its entirety to read as herein set out. Former chapter 28, §§ 28-1 – 28-5, 28-11, 28-12, 28-15 – 28-37, 28-41 – 28-45, 28-47 – 28-56, 28-58, 28-62, 28-63, 28-66 – 28-71, 28-75 – 28-118, 28-126 – 28-129, 28-132 – 28-134, 28-137 – 28-144, 28-145 – 28-151, 28-152 – 28-160, pertained to similar subject matter and derived from Ord. No. 7973, § 4, adopted Jan. 25, 1993. See the Code Comparative Table.

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- Sec. 28-29. Types of contracts.
- Sec. 28-30. Approval of accounting system.
- Sec. 28-31. Multi-year contracts.
- Sec. 28-32. Right to inspect.
- Sec. 28-33. Right to audit records.
- Sec. 28-34. Reporting of anticompetitive practices.
- Sec. 28-35. Prospective vendors lists.
- Sec. 28-36. Contract form and execution.
- Sec. 28-37. Assignment of rights and duties.
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Article X. Cooperative Purchasing

- Sec. 28-126. Definitions.
- Sec. 28-127. Applicability.
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Article XII. Affirmative Action by City Contractors

- Sec. 28-137. Definitions.
- Sec. 28-138. Provision against discrimination required in all city contracts.
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Article XIII. Small Business Enterprise Program

- Sec. 28-147. Definitions.
- Sec. 28-148. Administrative provisions.
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- Sec. 28-151. Establishment of SBE program goals for professional design services.
- Sec. 28-151.1. SBE plans for eligible design projects.
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Article XIV. Living Wage

- Sec. 28-152. Conditions for use.
- Sec. 28-153. Eligible contract.
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- Sec. 28-155. Eligible employee.
- Sec. 28-156. Reserved.
- Sec. 28-157. Wages.
- Sec. 28-158. Compliance.
- Sec. 28-159. Records.

Sec. 28-35(2). Persons desiring to be included on the prospective vendors list may notify the director or may register with the department electronically. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the city.

Sec. 28-35(3). It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-36. Contract form and execution.

All contracts entered into under this chapter shall be executed in the name of the city by the director and approved as to form by the city attorney. Such contracts are not required to be countersigned by the city clerk.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-37. Assignment of rights and duties.

The rights and duties of a city contract are not transferable or otherwise assignable without the written consent of the director.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-38. Efficient resource procurement and utilization.

All printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper, and duplexed.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-39. Local preference.

In the competitive sealed bidding process and competitive sealed proposal processes utilized for general goods and services set forth herein, sections 28-17 and 28-18, respectively, but excluding competitive sealed bidding and competitive sealed proposal processes for those goods and services related to capital construction and professional design services associated therewith, the evaluation of price or fee shall include application of a preference as follows:

(a) The contract officer may apply up to a five percent (5%) competitive price preference to bids or proposals received from a responsible bidder, offeror or respondent with a cumulative total of one million

dollars (\$1,000,000) or less, and whose principal place of business of their enterprise is physically located within the Tucson Metropolitan Statistical Area (TMSA);

(b) The contract officer may apply up to a three percent (3%) competitive price preference to bids or proposals received from the responsible bidder, offeror or respondent with a cumulative total of one million dollars (\$1,000,000) or less, and whose principal place of business of their enterprise is physically located outside of the TMSA but within the State of Arizona.

(c) A responsible bidder, offeror or respondent availing itself of preference eligibility must submit, at the time of bid or proposal submission, a signed affidavit confirming claimed eligibility. An otherwise eligible bidder, offeror or respondent not submitting the required affidavit at time of bid or proposal submission shall have surrendered its right to pursue a preference.
(Ord. 10992, § 1, 6-12-12, eff. 7-1-12)

Editor's note – Section 2 of Ord. No. 10992 provides: "Not later than December 31, 2014, the Director of Procurement shall report to the Mayor and Council on the efficacy of this ordinance and, unless the Mayor and Council undertake measures to continue the requirements of the ordinance, including any revisions thereto, the provisions of Section 1 shall automatically be repealed and all requirements related thereto shall cease and discontinue on January 31, 2015."

Section 3 of Ord. No. 10992 provides: "The provisions of this ordinance apply to any solicitation for goods and services not related to capital construction projects and the associated professional design services thereto that is given public notice pursuant to sections 28-17 and 28-18 on or after July 1, 2012."

Sec. 28-40. Reserved.

ARTICLE IV. SPECIFICATIONS*

Sec. 28-41. Definition.

As used in this article, "specification" is used interchangeably with "scope", "scope of services", or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.
(Ord. No. 10404, § 1, 5-15-07)

***Editor's note** – See editor's note at Art. I.

Sec. 28-42. Maximum practicable competition.

Sec. 28-42(1). All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city’s needs and shall not be unduly restrictive.

Sec. 28-42(2). To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the city’s requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 28-42(3). Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using agency requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material’s performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of restrictive specifications.

Sec. 28-42(4). To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-43. Specifications prepared by other than city personnel.

The requirements of this chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by city personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-44. Brand name or equal specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-45. Brand name specification.

A brand name specification may be used to identify the sole acceptable item that meets the city’s needs. The using agency requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the director of the basis for the brand name shall be maintained as public record. Past success in the material’s performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-46. Reserved.

ARTICLE V. PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CAPITAL IMPROVEMENTS*

Sec. 28-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-47(1). “*Capital improvement*” means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 28-47(2). “*Construction*” means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing public infrastructures or facilities, including structures, buildings or real property.

Sec. 28-47(3). “*Construction-manager-at-risk*” means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.

***Editor’s note** – See editor’s note at Art. I.

ARTICLE XII. AFFIRMATIVE ACTION BY CITY CONTRACTORS

Sec. 28-137. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-137(1). Affirmative action program means a written plan, which is designed to promote employment of minorities and females as specified by applicable federal, state, and local laws.

Sec. 28-137(2). Disability means an individual person who has, has a history of, or is regarded as having a physical or mental impairment, which substantially limits one (1) or more major life activities.

Sec. 28-137(3). Minority means a person of the following ethnic groups: Hispanic, Black, Asian and Native American in accordance with Federal Regulations section 124.
(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-138. Provision against discrimination required in all city contracts.

All contracts exceeding the amount provided by section 28-20 (small purchases) may provide that the contractor will abide by the following provisions:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status.

(c) The contractor will furnish all information and reports required by the city and will permit access to books, records, and accounts by the city for purposes of investigation to ascertain compliance with this section.

(d) In the event of the contractor's non-compliance with the nondiscrimination clauses of his contract, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be debarred in accordance with section 28-100.
(Ord. No. 9913, § 1, 11-17-03; Ord. No. 11057, § 3, 3-27-13)

Sec. 28-139. Reporting requirements.

Sec. 28-139(1). All contractors shall upon request submit annually the following reports to the city's equal opportunity office.

- (a) A copy of the City of Tucson Employment Utilization Report.
- (b) A completed City of Tucson Affirmative Action Questionnaire.
- (c) An affirmative action plan, if applicable.

Sec. 28-139(2). A contractor, upon request, must have the above listed items (a), (b), and (c) on file prior to the contract. The affirmative action plan, affirmative action questionnaire and employment utilization report, once approved by the city will be placed on file for a period of one (1) year; therefore these affirmative action documents need not be submitted for each separate contract. A person may renew each affirmative action document prior to the expiration of the year's time by submitting new documents or revisions. Submittal of any approved revisions will automatically reactivate the affirmative action documents for another year. If a person wishes the previously approved documents to remain unchanged, the contractor must

inform the affirmative action officer of this fact and request in writing that the documents be reactivated for another year.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-140. Duties and requirements of contractors on city contracts; responsibility for implementation.

Sec. 28-140(1). A contractor may not be eligible for an award of the city construction contract unless it has complied with the reporting requirements of this article.

Sec. 28-140(2). The hiring goals, if applicable, established by the division for each contract shall reflect the minority applicant pool available within Pima County for the specific services provided for under the contract.

Sec. 28-140(3). Goals and timetables: An affirmative action plan may set forth, as a minimum, a hiring and promotion plan for minorities and women in percentages which reflect the minority applicant pool available within Pima County for the specific services provided for under each contract. Minorities, for the purpose of this subsection, shall be those groups defined in sections 28-137(2) and (3) and women. Firms which demonstrate good-faith efforts to reach the stated percentage goals will be deemed to be in compliance with the city's affirmative action objectives, even though the firm has not met the staffing utilization goals on a particular contract. Notwithstanding the fact that a contractor has complied with the goal of women and/or minority utilization set forth above, the contractor may be required to continue to make a good-faith effort to hire, when the opportunity arises, women and minorities of those races and in those trades that are substantially under-represented in the contractor's work force.

Sec. 28-140(4). The city's equal opportunity office shall be responsible for administering the provisions of this article. This office may establish standards to be met by contractors in order to be eligible for award of contracts. Contractors may be requested to execute such further forms and submit documentation at such time and as may be required by the division. In monitoring the employment policies and practices of firms doing business with the city, the division is authorized to conduct "no notice", on-site employee interviews and compliance reviews.

Sec. 28-140(5). All employees who are not specifically provided for in subsection (3) of this section shall be covered by this article but shall not be subject to the percentage goals and timetables established in subsection (3).

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-141. Inability or failure to comply with affirmative action obligations.

A contractor who encounters problems in complying with its affirmative action obligations may document its good-faith efforts to comply with those requirements in the manner prescribed by the division. The equal opportunity office shall consider the validity of the good-faith efforts on the part of the contractor and may impose such sanctions as are provided in section 28-144 of this article, based upon consideration of the facts in each specific case. Labor unions are required to make good-faith efforts to cooperate with the contractors in fulfilling the staffing utilization goals set forth in this article.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-142. Administrative responsibility.

The equal opportunity office shall be responsible for administering the provisions of this article by formulating specific affirmative action procedures which further the policy of the city as set forth herein.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-143. Exemptions.

Sec. 28-143(1). Federally funded contracts shall be exempt from the provisions of this article.

Sec. 28-143(2). A contract otherwise subject to the provisions of this article may be exempt by the equal opportunity office director from compliance with its provisions in the case of an emergency or when special circumstances exist which, in the interest of the city, compel such exemption.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-144. Sanctions.

Any contractor who knowingly submits a false statement under this article, or any contractor who fails to comply with the provisions of the affirmative action plan submitted, or with any other requirements of this article, may be subject to those sanctions allowed by

law, including but not limited to cancellation, termination, suspension of the contract or debarment in accordance with section 28-97.
(Ord. No. 9913, § 1, 11-17-03)

Secs. 28-145, 28-146. Reserved.

ARTICLE XIII. SMALL BUSINESS ENTERPRISE PROGRAM*

Sec. 28-147. Definitions.

This article incorporates all definitions and terms defined in chapter 28 of the Tucson Code. The application of definitions specifically included herein is limited to contracts initiated under the Small Business Enterprise (SBE) program. The following terms shall have the following meanings for article XIII:

- (1) *Certified small business enterprise (SBE)* shall mean a local small business that is an independent and continuing enterprise for profit performing a commercially useful function, that has completed the application process for certification, has met the requirements set forth in 49 CFR part 26, and holds a current City of Tucson business license.
- (2) *City* shall mean City of Tucson.
- (3) *Commercially useful function* shall mean the performance of real and actual services in the discharge of any contractual endeavor. An SBE contractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. In determining whether an

SBE is performing a commercially useful function, factors including, but not limited to, the following will be considered:

- (a) If a Certified SBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force.
 - (b) The type of prime contract;
 - (c) Whether the business has the skill and expertise to perform work for which it is being/has been certified;
 - (d) Whether the business actually performs, manages and supervises the work for which it is being or has been certified;
 - (e) Whether the business purchases goods and/or services from a non-SBE owned business enterprise and resells goods to the city, city contractor, or other person doing business with the city for the purpose of allowing these goods to be counted towards the fulfillment of SBE utilization goals; and
 - (f) Standard industry practices.
- (4) *Construction project* shall mean a contract that has been awarded using the design-bid-build project delivery method as prescribed in Title 34 of the Arizona Revised Statutes.
 - (5) *Construction services project* shall mean a contract that has been awarded using one of the following alternative project delivery methods as prescribed in Title 34 of the Arizona Revised Statutes:
 - (a) Construction-manager-at-risk;
 - (b) Design-build; or
 - (c) Job-order-contracting.
 - (6) *Contractor* shall mean any person or entity that has a contract with the city.

***Editor's note** – Ord. No. 10993, § 1, adopted June 12, 2012 and effective July 1, 2012, amended Art. XIII in its entirety as set out herein. Former Art. XIII pertained to the small, minority and women-owned business enterprise program and derived from Ord. No. 10634, § 1, adopted Feb. 10, 2009, as amended by Ord. No. 10703, § 1, adopted August 5, 2009.

- (7) *Controlled* shall mean the SBE owner(s) possess the legal authority to manage business assets, goodwill and daily operations of the business and actively and continuously exercise managerial authority in determining the policies and in directing the operations of the business.
- (8) *Director* shall mean the director of the city's office of equal opportunity programs.
- (9) *Disadvantaged business enterprise (DBE)* shall mean a for-profit business concern that is at least fifty-one (51) percent owned by one or more individuals who are both socially and economically disadvantaged consistent with 49 CFR part 26.
- (10) *Eligible contract for general procurement* shall mean any contract for goods, materials, or services. This term does not include sole source contracts, special procurements, petty cash purchases, small purchases, emergency purchases, contracts with nonprofit agencies, or contracts for non-competitive purchases, as provided under provisions of the Tucson Procurement Code.
- (11) *Eligible contract for professional design services* shall mean any contract for professional design services. This term does not include sole source contracts, special procurements, small purchases, emergency purchases, or contracts for non-competitive purchases, as provided under provisions of the Tucson Procurement Code.
- (12) *Eligible construction or construction services project* shall mean any construction or construction services project, unless otherwise precluded by law, provided the estimate for construction meets or exceeds the formal solicitation threshold established by the Tucson Procurement Code. This term does not include any construction project in which the estimated value is below the formal solicitation threshold, projects which require a DBE goal pursuant to federal law, contracts awarded under Tucson Code sections 28-21 (sole source procurement), 28-22 (emergency procurement), or 28-23 (special procurement).
- (13) *Formal solicitation threshold* shall mean the dollar amount as specified in Tucson Code section 28-20(1).
- (14) *Joint venture* shall mean an association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the joint venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the joint venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the joint venture, may be counted towards relevant SBE participation goals.
- (15) *Local* shall mean that the principal place of business of the enterprise is physically located within the Tucson/Pima County metropolitan area.
- (16) *OEOP* shall mean city office of equal opportunity programs.
- (17) *Office* shall mean a fixed established place where work of a clerical, administrative, professional or production nature is carried on and directly related to the business being certified. A temporary location, movable property, or location established to oversee a project does not qualify as an office.
- (18) *Owned*, for purposes of determining whether an enterprise is owned by an SBE, shall mean that the small business owner(s) meet the ownership requirements in accordance with 49 CFR part 26:
- (a) Possesses interest in the business, along with the incidents of ownership;

- (b) Contributed capital, equipment, and expertise to the business;
 - (c) Acquired the interest with his or her own financial resources or has put his or her own financial resources at risk in the operation of the enterprise; and
 - (d) Enjoys the customary incidents of ownership and shall have a risk in profits commensurate with the ownership interest, as demonstrated by an examination of the substance, rather than the form, of ownership arrangements.
- (19) *Professional design services contract* shall mean a contract that has been awarded for architect services, engineer services, landscape architect services, surveyor services, or assayer services in accordance with Title 34 of the Arizona Revised Statutes.
- (20) *Responsive bidder* shall mean a person or entity submitting a bid conforming in all material respects to an invitation for bids.
- (21) *Responsible bidder, offeror, or respondent* shall mean a person or entity that has the capability to perform the contract requirements and the integrity and reliability to assure good faith performance.
- (22) *Solicitation* shall mean an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, an invitation for reverse auction bids, or any other invitation or request by which the city invites a person to participate in a procurement.
- (23) *Small business enterprise (SBE)* shall mean a business that meets the North American Industry Classification System (NAIC) size standard adopted by the city for purposes of qualifying for SBE certification.
- (24) *Subcontractor and subconsultant* shall mean a person or entity that contract to perform work or render service to a contractor as

defined by this section or to another subcontractor as part of a contract with the city.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-148. Administrative provisions.

Sec. 28-148(1). Duties of the director of the OEOP. The director shall implement and monitor the small business enterprise program. The director shall be the chief administrative officer for the program and consistent with all provisions of this Code shall have the following duties and authority:

- (1) The administration and enforcement of this article.
- (2) Coordination of the development of administrative procedures and policies with the applicable department(s) to effectuate this article.
- (3) Coordination of outreach efforts, including increased working relationships with local community organizations to identify and increase the availability of SBE firms.

Sec. 28-148(2). Records retention requirements.

- (1) The director shall, ensure that data and records are maintained in order to conduct on-going analysis and evaluation of the SBE program and its objectives and may make recommendations to the city manager and mayor and council regarding additional efforts necessary to ensure SBE participation.
- (2) All city departments shall maintain and retain complete and accurate records relating to any professional design, construction, or construction services procurements.
- (3) The director of the procurement department shall maintain records of source selections, and record of the inclusion of SBEs for procurements below the formal solicitation threshold.

Sec. 28-148(3). Administrative provisions for certification. The director shall be responsible for the certification and verification of program eligibility.

DBE and SBE criteria and definitions shall be applied in accordance with 49 CFR part 26 to establish eligibility for certification of local firms as a SBE. Only local firms shall qualify for certification as a SBE. Firms outside of the Tucson/Pima metropolitan area meeting the eligibility criteria for DBE certification will qualify only as a DBE and are not eligible to participate in the local SBE program. The director shall:

- (1) Maintain a listing of certified SBEs segmented into specified trades or lines of business to be maintained as public record; and
- (2) Participate and effectuate reciprocity of DBE certification through the AZUCP.

Sec. 28-148(4). Standards for SBE certification. The director shall certify and monitor contractors, subcontractors, professional services consultants, professional services subcontractors, vendors, and suppliers as a bona fide SBE for participation in the SBE program based on the certification criteria and definitions as set forth in 49 CFR part 26, including, but not limited to, the following standards:

- (1) A SBE shall be an independent business enterprise, continuing in operation for profit, performing a commercially useful function. The ownership and control shall be real and substantial and be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
- (2) A certified SBE shall have a valid City of Tucson business license.
- (3) A certified SBE shall be a local enterprise as defined by this article and an active participant within the Tucson/Pima County metropolitan area.
- (4) The SBE applicant(s) must not exceed the personal net worth standard as defined in 49 CFR part 26.
- (5) The SBE applicant is responsible for cooperating with the director and providing

all necessary documentation in support of all eligibility as set forth in 49 CFR part 26 and this article. A complete certification application is required along with supportive documents including, but not limited to, three (3) years of income tax records (personal and business), bank signature card, a current personal net worth statement, and various other documents confirming ownership, management, and control of the SBE applicant firm. Additionally, an on-site audit is required at the firm's place of business.

Sec. 28-148(5). Certification investigations. In accordance with 49 CFR part 26, the director may investigate SBE ownership, contract transactions, and other relevant arrangements beyond formal documentation at initial certification, during certification, during the annual update, or based on a complaint to the OEOP. To the extent reasonably necessary to ensure compliance, such investigations may include, but are not limited to, the following:

- (1) Personal interviews with persons having knowledge or relevant information relating to an SBE's eligibility, certification, or decertification.
- (2) Personal interviews with bidders, contractors, vendors, and/or suppliers involved in a contractual relationship with the SBE.
- (3) Reviewing records pertaining to certification.
- (4) Conducting random on-site visits, audits, and/or relevant inquiries.

Sec. 28-148(6). Certification period. In accordance with 49 CFR part 26, the director shall grant certification to an approved SBE for a period of not less than three (3) years with the requirement for an annual update affirming there have been no changes in the firm's circumstances affecting its ability to meet size, ownership, or control requirements or material changes in the information provided in its application form. If an SBE is denied certification on the basis of the information submitted, the entity may not reapply for a period of one (1) year from the date of the notice of denial provided that such firm shall have the right to appeal such denial to the director in accordance with the process specified in section 28-148(9).

Sec. 28-148(7). Continuing certification. All certified SBEs must re-submit disclosure affidavits and any other required documents to the director annually.

Sec. 28-148(8). Decertification. The director may decertify a business enterprise because of, but not limited to, the following, in accordance with 49 CFR part 26 where applicable, or demonstrates continued poor performance on contracts as determined by City of Tucson staff:

- (1) A change in ownership and/or control.
- (2) A change in management structuring.
- (3) Exceeding small business administration size limits by industry designation.
- (4) Exceeding program standard for owner(s) personal net worth.
- (5) Fails to comply with annual reporting requirements.
- (6) Fails to fulfill the requirements of 28-148(4).
- (7) Fails to cooperate as directed in 28-148(5).
- (8) Continued poor performance ratings.

Sec. 28-148(9). Protest procedures for SBE certification and decertification decisions.

- (1) *SBE certification/decertification decisions.* All decisions regarding certifications and decertifications made by the director shall be made in writing and shall include the reasons for the decision. The notice shall be sent to the affected party and the affected party shall have the right to seek administrative review as provided herein.
 - (a) An aggrieved party may submit protest in writing to the director within ten (10) days from the date of notice of the adverse decision. The protest must include the legal and factual basis for the protest along with any supporting documents.

- (b) Within fifteen (15) days of receipt of the protest, the director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.

- (2) *Appeal of director's certification and decertification decisions.* If the protest is denied, the aggrieved party may request an appeal review through the director. The request must be in writing and received by the director within seven (7) days of the aggrieved party's receipt of the decision notice from the director. The aggrieved party shall set forth the legal and factual basis for the appeal of the decision. The director shall retain an independent hearing officer who will have knowledge of the certification standards/criteria as set forth in 49 CFR part 26, construction and procurement law and the Tucson Procurement Code, including the small business enterprise program.

- (a) Within seven (7) days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to the review officer.

- (b) The review officer shall make a decision based solely on the administrative record.

- (c) The review officer shall make a written decision on the appeal, as soon as practical, which decision shall affirm, alter, or reverse the decision by the director.

- (d) The review officer's decision will be forwarded to the director for a final decision regarding certification or decertification.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-149. Establishment of SBE Program Goals for Construction and Construction Services Projects.

Sec. 28-149(1). Eligible projects for subcontractor SBE participation goals.

- (1) All eligible projects shall be reviewed by the director for determination of subcontracting opportunities for SBE participation. Where there is sufficient availability of SBEs, the director may establish individual project participation goals.
- (2) Specific participation SBE goals are to be established on eligible projects that exceed the formal solicitation threshold and according to the criteria established by the director including, but not be limited to, the following:
 - (a) The present availability of certified SBEs ready, willing, and able to provide labor and/or material on a particular project in the profession or industry/trade classifications relevant to the project.
 - (b) The ability of certified SBE firms to readily expand their capacity to meet additional demand.
 - (c) The level of participation by such firms in past projects awarded by the city.
 - (d) The design scope of work, plans, and project specifications.
- (3) SBE goals for a construction contract must be clearly published as part of the contract specifications in the SBE specifications issued with each invitation for bid (IFB).
- (4) Specific SBE requirements or procedures for construction services shall be issued in the request for qualifications (RFQ).
- (5) SBE goals shall apply to the initial contract award for construction contracts and to the individual project or phase awards for construction services.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-150. SBE Plans for Eligible Projects.

Sec. 28-150(1). Contractor's SBE plan for construction projects. Notwithstanding its compliance with any other requirement of the Tucson Procurement Code, no bidder shall be awarded a contract for an eligible project, unless the director has approved the SBE plan or granted a waiver on the project. Such SBE plan shall be designed to meet the applicable project goals which shall be incorporated into the contract. Each bidder shall submit a completed and signed SBE plan or fully documented waiver request with the bid submission.

Sec. 28-150(2). Contractor's SBE plan for construction services projects. Notwithstanding its compliance with any other requirement of the Tucson Procurement Code, respondents shall receive director approval of the SBE plan or be granted a waiver on the project in accordance with the requirements set forth in the solicitation. Such SBE plan shall be designed to meet the applicable project goals, which shall be incorporated into the contract.

Sec. 28-150(3). Contractors for eligible projects. Contractors for eligible projects may meet the SBE project goals through the following methods:

- (1) *Prime contractor participation.*
 - (a) Certified SBE prime contractors may use their own participation towards fulfillment of the project's subcontracting goals.
- (2) *Subcontractor participation.*
 - (a) When a contractor utilizes one or more certified SBE subcontractors to satisfy its SBE participation commitment, the contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.
 - (b) If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If a SBE subcontractor subcontracts a

significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it should be presumed that the SBE is not performing a commercially useful function

- (3) *Supplier participation.* Contractors for construction or construction services may contract with one or more certified SBE suppliers provided that the supplier is a regular dealer of the materials supplied to obtain credits toward SBE goals. The value of the commercially useful function to be performed by such SBEs and credited toward satisfaction of the applicable SBE goals is as follows:

- (a) If a certified SBE supplier manufactures the goods supplied, one hundred (100) percent of the contract amount is credited towards the applicable SBE participation goal.
- (b) If a certified SBE supplier is a wholesaler warehousing the goods supplied or a manufacturer's representative, then the total contract amount is credited toward the established SBE goal; however, only twenty-five (25) percent of the total SBE project goal may be met in this manner.
- (c) If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, the twenty-five (25) percent limit for suppliers may be increased, or a combination of these two (2) methods may be utilized.

Sec. 28-150(4). Submission of SBE plan for construction projects.

- (1) The city shall publish its SBE subcontracting goals in the solicitation and the specifications. All bidders shall submit the SBE participation plan or request for good faith waiver with the bid unless otherwise specified.

- (2) The completed and signed SBE plan for the project must include a list of names of the certified SBE prime contractor, SBE subcontractors and/or suppliers to be used in the project, the type of work or service each business will perform, and the dollar amount of a certified SBE prime contractor and/or each certified SBE's subcontract and/or suppliers of the total project.
- (3) The bidder shall certify that the SBE plan has met the established SBE project participation goals, or notwithstanding good faith efforts to meet the goals, the bidder has been unable to do so and therefore is entitled to a good faith effort waiver in part or in full. If the bidder's certification, the SBE plan or, if applicable, a fully documented good faith effort waiver (partial or full) is not submitted with the bid for any reason, the bid shall be deemed non-responsive by the procurement director.

Sec. 28-150(5). Submission of SBE plan for construction services projects.

- (1) The solicitation shall contain SBE requirements. All respondents shall comply with the SBE requirements as set forth in the solicitation.
- (2) The contractor shall submit an SBE participation plan or request for good faith waiver for each project awarded under the job order contracts, that are over the formal solicitation threshold and has a goal established by the director unless exempted by Tucson Code section 28-21 or 28-22.
- (3) The contractor shall submit an SBE participation plan or request for good faith waiver for all construction manager at risk contracts and design build contracts, in accordance with the solicitation, prior to award or prior to establishing a guaranteed maximum price (GMP), if applicable.
- (4) The completed and signed SBE plan for the project shall include a list of names of the certified SBE prime contractor, SBE subcontractors and/or suppliers to be used in the eligible project, the type of work or

service each business will perform, and the dollar amount of a certified SBE prime contractor, and/or each certified SBE's subcontract and/or suppliers of the total project.

- (5) The contractors shall certify that the SBE plan has met the established SBE project participation goals or, notwithstanding good faith efforts to meet the goals, the contractor has been unable to do so and therefore is entitled to a good faith effort waiver in part or in full.

Sec. 28-150(6). Review of SBE plans for construction projects.

- (1) The director shall review and evaluate the apparent low bidder's SBE goals plan and determine whether the bidder met the project goals for the contract and approve or reject such plan. The director may clarify information relative to the SBE plan with the bidder and/or any listed subcontractors.
- (2) The director may reject the plan and determine that the bid is non-responsive where the bidder:
 - (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work, and value of work as a percent of the total bid sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value and/or percentage of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals.
- (3) The director's determination shall be in writing and state the basis for such decision.
- (4) The director's determination shall be subject to the remedy provisions of Tucson Code section 28-153(2).

- (5) Replacement of an SBE.

- (a) Notwithstanding the requirements of section 28-48(2) of the Tucson Procurement Code, the Director shall review and approve the replacement of an SBE from a construction project.
- (b) Removal of an SBE does not relieve the contractor of responsibility for meeting the SBE project goal.
- (c) The Contractor shall immediately take adequate good faith efforts to obtain another certified SBE to perform equal or greater dollar value of the work.

Sec. 28-150(7). Review of SBE plans for construction services projects.

- (1) The director shall review and evaluate SBE plans and determine whether the contractor met the project goals, and approve or reject such plan. The director may clarify information relative to the SBE plan with the respondent and/or any listed subcontractors.
- (2) For job order contracts, the director may determine that the plan is not acceptable where the contractor:
 - (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work, and value of work as a percent of the total bid sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the Director may pursue remedies up to and including termination of the contract.
- (3) For all construction manager-at-risk contracts and design build contracts, the director may

determine that the plan is not acceptable where the respondent:

- (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work and value of work of the total bid sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the director may:
 - (i) If the contract has not been awarded, formally cease negotiations with the firm and enter into negotiations with the next ranked firm or reject all submittals; or
 - (ii) If the contract has been awarded, formally terminate the contract for failure to comply with the SBE provisions.
- (4) The director's determination shall be in writing and state the basis for such decision.
- (5) The director's determination shall be subject to the remedy provisions of section 28-153(2).

Sec. 28-150(8). Maintenance of records and reports by construction contractors. Unless otherwise specified in the solicitation, contractors awarded eligible contracts shall submit a participation report which summarizes the number and dollar amount of all subcontract awards during the contract term and submit the report to the director no later than one (1) month after the contract has been awarded and with the final payment request. In addition to the statutory requirement for retention, failure to submit the one (1) month participation report of all proposed subcontractors will result in the city withholding an additional ten (10) percent of all future payments on the

eligible contract until it is determined that the contractor is in compliance. Failure to submit the participation report at the time of request for final payment shall result in withholding final payment from the contractor until it is determined that the contractor is in compliance. For job order contracts, the contractor shall submit subcontractor utilization reports to the director at the completion of each individual project. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151. Establishment of SBE Program Goals for Professional Design Services.

Sec. 28-151(1). Eligible projects for professional design services SBE participation goals.

- (1) All eligible projects shall be reviewed by the director for determination of professional design services SBE participation. Where there is sufficient availability of SBEs, the director may establish individual project participation goals.
- (2) Specific participation SBE goals are to be established on eligible projects that exceed the formal solicitation threshold and according to the criteria established by the director including, but not be limited to, the following:
 - (a) The present availability of certified SBEs ready, willing, and able to provide design services in the profession or industry/trade classifications relevant to the project.
 - (b) The ability of certified SBE firms to readily expand their capacity to meet additional demand.
 - (c) The level of participation by such firms in past projects awarded by the city.
 - (d) The design scope of work, plans, and project specifications.
- (3) SBE program requirements for a design contract must be clearly identified in the request for qualifications (RFQ) issued for each applicable project.

- (4) SBE program requirements shall apply to the initial contract award for design contracts and to the individual project or phase awards for design services.

Sec. 28-151(2). Professional design services small purchase reserve. Insofar as practical and where a sufficient number of certified SBE firms exist to comply with the small purchase requirements set forth in section 28-20(2), the director of procurement may reserve competition for small purchases for professional design services to certified SBEs. Where insufficient certified SBEs exist, non-SBEs may be included in the quoting process for small purchases. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151.1. SBE Plans for Eligible Design Projects.

Sec. 28-151.1(1). Prime consultant’s SBE plan for design services projects. Notwithstanding its compliance with any other requirement of the Tucson Procurement Code, respondents shall receive director approval of the SBE plan or be granted a waiver on the project in accordance with the requirements set forth in the solicitation. Such SBE plan shall be designed to meet the applicable project goals, which shall be incorporated into the resulting contract.

Sec. 28-151.1(2). Consultants for eligible projects. Consultants for eligible projects may meet the SBE project goals through the following methods:

- (1) *Prime consultant participation.*
 - (a) Certified SBE prime consultants may use their own participation towards fulfillment of the project’s SBE goals.
- (2) *Subconsultant participation.*
 - (a) When a prime consultant utilizes one or more certified SBE subconsultants to satisfy its SBE participation commitment, the prime consultant may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

- (b) If a certified SBE subconsultant enters into second tier subcontracts consistent with the standard industry practices, such SBE subconsultant is performing a commercially useful function. If a SBE subconsultant subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it should be presumed that the SBE is not performing a commercially useful function.

Sec. 28-151.1(3). Submission of SBE plan for professional design services projects.

- (1) The solicitation shall contain any applicable SBE requirements. All respondents shall comply with the SBE requirements as set forth in the solicitation.
- (2) The prime consultant shall submit an SBE participation plan or request for good faith waiver for each design project awarded under a request for qualification (RFQ) or job order contracts, that are over the formal solicitation threshold and has a goal established by the director, in accordance with the solicitation, prior to award. Plan(s) shall be submitted during the negotiation stage after the selection committee has identified the top ranked firm(s).
- (3) The completed and signed SBE plan for the project shall include a list of names of the certified SBE prime consultant and SBE subconsultants to be used in the eligible project, the type of work or service each business will perform, and the dollar amount of a certified SBE prime consultant, and/or each certified SBE’s subcontract of the total project.
- (4) The prime consultant shall certify that the SBE plan has met the established SBE project participation goals or, notwithstanding good faith efforts to meet the goals, the consultant has been unable to do so and therefore is entitled to a good faith effort waiver in part or in full.

Sec. 28-151.1(4). Review of SBE plans for professional design services projects.

- (1) The Director shall review and evaluate SBE plans and determine whether the consultant met the project goals, and approve or reject the plan. The director may clarify information relative to the SBE plan with the respondent and/or any listed subconsultants.
- (2) For all professional design services contracts, the director may determine that the plan is not acceptable where the respondent:
 - (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work and value of work of the total negotiated fees sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the director may:
 - (i) If the contract has not been awarded, formally cease negotiations with the firm and enter into negotiations with the next ranked firm or reject all submittals; or
 - (ii) If the contract has been awarded, formally terminate the contract for failure to comply with the SBE provisions.
- (3) The director's determination shall be in writing and state the basis for such decision.
- (4) The director's determination shall be subject to the remedy provisions of section 28-151.2(2).

(5) Replacement of an SBE:

- (a) The director shall review and approve the replacement of an SBE from a professional design services project.
- (b) Removal of an SBE does not relieve the prime consultant of responsibility for meeting the SBE project goal.
- (c) The consultant shall immediately take adequate good faith efforts to obtain another certified SBE to perform equal or greater dollar value of the work.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151.2. SBE Good Faith Effort.

Sec. 28-151.2(1). Good faith effort waiver.

- (1) If the SBE plan does not meet the project goals, the bidder or respondent may seek a waiver. A request for waiver shall be available only when certified firms are determined to not be ready, willing, or able to perform. The application for a waiver shall be in writing and must be fully completed and submitted in accordance with sections 28-150(4), 28-150(5) and 28-151.1(3). The waiver request shall indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. When a full waiver is sought, an SBE plan does not need to be submitted. The bidder or respondent must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the bidder's/respondent's good faith efforts to meet the goals. Evidence of the bidder's/respondent's good faith efforts should include, but is not limited to the following:
 - (a) Documentation of communication with the OEOP seeking technical/professional assistance identifying available SBEs.
 - (b) Copies of written notification to certified SBEs regarding subcontracting opportunities on a project.

- (c) Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
 - (d) Documentation of efforts to assist and negotiate with SBEs for specific sub-bids and reasons for rejection of any such offered, including the names, addresses, and telephone numbers of SBEs who were contacted and reason for the rejection.
 - (e) As to each SBE contacted which the bidder/respondent considered not to be qualified, a written statement of the reasons for the bidder's/respondent's conclusion.
 - (f) Written quotes or records of verbal quotes solicited from all SBEs seeking subcontract work with prime contractors at the time of the solicitation submittal.
 - (g) Verification that the contractor/prime consultant rejected available SBEs because they submitted bids/proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all bids received from potential subcontractors/subconsultants and all relevant dates.
- (2) A project goal may be waived, at least in part, if the bid or proposals received by the bidder requesting a waiver from all SBEs in one trade area exceeds the quote or proposal of the lowest non SBE competing for the same work by the lesser of fifteen (15) percent or two hundred fifty thousand dollars (\$250,000.00), and no other trade area is available to meet the established SBE goal. A bidder may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a bid.
- (3) If after consultation with certified SBE firms and/or appropriate city employees, the director determines that SBE availability is less than projected, the director may waive or reduce established project goals. In such circumstances, the director shall certify that SBEs are not available.
 - (4) If the director determines that SBE availability is sufficient to support the established project goals the director shall deny the good faith waiver request. All decisions regarding the denial of good faith waiver requests or plan decisions made by the director shall be made in writing and shall include the reasons for the decision. The notice shall be sent to the affected party and the affected party shall have the right to seek administrative review pursuant to Tucson Code section 28-151.2(2).
 - (a) *Waiver denial for construction.* If the apparent low bidder is denied a waiver the director shall determine the bid is non-responsive. The determination shall be subject to Tucson Code section 28-151.2(2).
 - (b) *Waiver denial for construction services.* If the waiver is denied, the director's determination shall be subject to Tucson Code section 28-151.2(2).
 - (c) *Waiver denial for professional design services.* If the waiver is denied, the director's determination shall be subject to Tucson Code section 28-151.2(2).
- Sec. 28-151.2(2). Right to appeal good faith effort waiver or plan decision.* An aggrieved party has a right to protest a good faith waiver request or plan decision made by the director as follows:
- (1) An aggrieved party may submit a protest in writing to the director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.

- (2) Within five (5) days of receipt of the protest, the OEOB director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.

The decision of the director is final and not appealable.
(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151.3. Applicability to Procurement of Goods, Materials, and Services.

Sec. 28-151.3(1). Price preference below the competitive bid threshold (small purchase reserve). Insofar as is practical and where a sufficient number of certified SBE firms exist to comply with the small purchase requirements set forth in section 28-20(2), the director of procurement may reserve competition for small purchases for goods and services to certified SBEs. Where insufficient certified SBEs exist, non-SBEs may be included in the quoting process for small purchases. When certified SBEs compete against non-SBEs, the price of a quote received from a certified SBE shall be adjusted by seven (7) percent for purposes of evaluating price. Where no certified SBEs exist for a good or service, this section shall not apply and the purchase shall be governed solely by section 28-20.

Sec. 28-151.3(2). Reducing size, scope, or terms of certain contracts. To the extent practicable, the procurement director may evaluate large purchases of certain commodities and services for purchase through smaller, shorter-term contracts that are more accessible to and enhance participation of local SBEs.
(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151.4. Program Compliance.

Sec. 28-151.4(1) Complaints, investigations of compliance, non-retaliation. The director may receive and investigate complaints and allegations by SBEs and third parties. All affected parties shall cooperate fully with an investigation conducted by the director. Retaliation against anyone who initiates or assists in an investigation is strictly prohibited. Any contractor who engages in retaliatory conduct will be subject to sanctions up to and including debarment. Any city employee who engages in retaliatory actions will be subject to discipline. Complaints filed with the director may include, but are not limited to the following:

- (1) Discriminatory treatment of SBEs on a project or work sites.
- (2) Bid-shopping by prime contractors which has an adverse effect on SBE participation.
- (3) Failure to make prompt payment to SBE contractors.
- (4) Failure to utilize SBE contractors and consultants once the contract has been awarded.
- (5) Substitution of subcontractor issues.
- (6) Allegations of non-performance by SBE subcontractors.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

Sec. 28-151.5. Additional Terms.

Sec. 28-151.5(1). Non-interference. The process of determining and appealing eligibility, certification, continuing certification or decertification of the SBE status of enterprises shall not be subject to interference, influence, or coercion of any sort by parties including departmental and elected officials.

Sec. 28-151.5(2). Authority. The director shall promulgate rules and regulations, consistent with the provisions of article XIII, for implementation of the SBE program.

Sec. 28-151.5(3). Termination. The SBE program may be terminated by the mayor and council, in accordance with the review and reporting requirements under section 28-148(2).
(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12)

ARTICLE XIV. LIVING WAGE

Sec. 28-152. Conditions for use.

Employees of city contractors providing specified services to the city shall be paid a living wage by said contractors for the hours expended providing services to the city, and shall also be offered health insurance or compensated as provided under section 28-157(c).
(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-153 Eligible contract.

An eligible contract shall be any contract awarded by the city pursuant to section 28-17 or section 28-18 and shall be limited to the furnishing of the following services to the city:

- (a) Facility and building maintenance.
- (b) Refuse collection and recycling.
- (c) Temporary employee services.
- (d) Janitorial and custodial.
- (e) Landscape maintenance and weed control.
- (f) Pest control.
- (g) Security and crowd management services.
- (h) Moving services.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-154. Ineligible contracts.

An ineligible contract shall include:

- (a) Contracts under which federal or state regulations preclude the applicability of a living wage;
- (b) Contracts which involve programs where the city shares management authority with other jurisdictions, and intergovernmental and cooperative agreements;
- (c) Contracts that are impacted by bond covenants, grant restrictions, governmental regulations;
- (d) Contracts which involve programs that do not primarily provide direct services to the city but have a franchise or contract to provide services to the residents or property owners of the city;
- (e) Job training and youth or summer employment programs;

(f) Contracts that would otherwise be eligible, in which all eligible employees are compensated at or above the living wage rates required;

(g) Contracts awarded to contractors with no employees.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-155. Eligible employee.

Any person employed by a contractor holding an eligible contract with the city who:

(a) Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;

(b) Expends chargeable time providing services to the city and on city property;

(c) Is at least sixteen (16) years of age.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-156. Reserved.

Sec. 28-157. Wages.

(a) If health insurance benefits are offered, a wage of no less than eight dollars (\$8.00) per hour.

(b) If health benefits are offered, an eligible contractor shall pay no less than fifty (50) percent of the eligible employee's health benefits premium.

(c) If health insurance benefits are not offered, a wage of no less than nine dollars (\$9.00) per hour.

(d) The wage rates shall automatically be adjusted each year based upon the cost of labor adjustment provided to permanent city employees. The adjusted wage rates shall be effective for the calendar year commencing January 1 after the effective date for city employees. Existing contracts shall be adjusted each year upon the contract renewal date.

(e) If the contract is subject to a prevailing wage requirement or union agreement, the higher wage shall apply.

(f) If health benefits are offered to an eligible employee under an eligible contract, proof of said benefits shall be provided at the time of bid or proposal submission or, as the city may require, in accordance with notification by the city of its intent to award a contract.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-158. Compliance.

The city's director of procurement shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this article. In the event of any violation of the provisions set forth in this article, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The city's director of procurement is additionally authorized to take any one (1) or more of the following remedies in the event of a written determination of noncompliance:

- (a) Liquidated damages paid to the city in the amount of fifty dollars (\$50.00) for each incidence of noncompliance for each day of non-compliance and/or each day it continues;
- (b) Suspension of further payments on the contract until the violation has ceased;
- (c) Suspend and/or terminate the contract for cause; and/or
- (d) Debar or suspend the contractor or subcontractor from future city contracts pursuant to article IX.

Protests or appeals of the director's remedies for noncompliance shall be in accordance with article IX.
(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-159. Records.

(a) The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the city's director of procurement, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available,

the director may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to article IX.

(b) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period for three (3) years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(Ord. No. 9913, § 1, 11-17-03)

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10967	2-28-12	1	Ch. 7, Art. XXI, Div. 1 (tit.)
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		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
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9	15-70		
	Added 15-70.1		
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			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)
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		7	21-51
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11016	9-5-12	2	Rpld 10A-160 – 10A-164
		3	Added 10A-160
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		2	22-33(b)
		3	22-41(b)
		4	22-43(e)
11022	9-19-12	1	19-53
11024	10-9-12	1	16-31
11025	10-9-12	1	Added Ch. 23B (note)
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