

TUCSON, ARIZONA
Supp. No. 122 – 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 19, 2019. 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. 122”. If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CONTAINING
THE CHARTER AND GENERAL ORDINANCES
CITY OF TUCSON, ARIZONA

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

Published by Order of the Mayor and Council

Republished 1987

Contains Supplement No. 122
Current through March 19, 2019

Published by:
AMERICAN LEGAL PUBLISHING CORPORATION
One West Fourth Street ✧ 3rd Floor ✧ Cincinnati, Ohio 45202
1-800-445-5588 ✧ www.amlegal.com

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BICYCLES AND SHARED MOBILITY DEVICES*

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* **Cross reference**—Traffic regulations, ch. 20.

State law references—Traffic regulations applicable to bicycles, A.R.S. §§ 28-811—28-817; municipal authority to regulate bicycles, A.R.S. § 28-627(A)(8).

ARTICLE I. IN GENERAL***Sec. 5-1. Parking of bicycles.**

It shall be unlawful to park a bicycle upon any public sidewalk or street in a manner that substantially impedes pedestrian or vehicular traffic or obstructs access to public or private facilities.
(Ord. No. 7276, § 1, 9-11-89)

Sec. 5-2. Riding on sidewalks and pedestrian paths, and through underpasses; yielding the right of way and passing or overtaking.

(a) It shall be unlawful to ride a bicycle on any public sidewalks, or upon a designated pedestrian path in any public park, unless signs are posted specifically permitting bicycling.

(b) It shall be unlawful to ride a bicycle through any underpass when signs are posted prohibiting bicycling.

(c) A person riding a bicycle on a multi-use path, trail, or shared use path under the jurisdiction of the City of Tucson must yield the right-of-way to any pedestrian or horse and shall slow to ten (10) miles per hour and communicate to the pedestrian or equestrian rider before overtaking or passing.
(Ord. No. 7276, § 1, 9-11-89; Ord. No. 11582, § 1, 9-5-18)

Sec. 5-2.1. Postal employees and law enforcement officers exempt from certain riding and parking provisions.

The provisions of sections 5-1 and 5-2 shall not apply to U.S. Postal Service employees engaging in the collection or delivery of mail or to law enforcement officers while engaged in the performance of law enforcement duties. For purposes of this section, law enforcement officer shall include local traffic enforcement agents.
(Ord. No. 7276, § 1, 9-11-89; Ord. No. 9046, § 1, 4-20-98)

Sec. 5-3. Enforcement.

Any violation of a provision of this chapter shall be a civil infraction, unless otherwise specified, subject to the provisions of chapter 8 of this Code.

Violations of this chapter shall be deemed civil infractions subject to a sanction of twenty-five dollars (\$25.00).
(Ord. No. 7276, § 1, 9-11-89; Ord. No. 8958, § 1, 9-22-97)

ARTICLE II. MOTORIZED BICYCLE OR TRICYCLE**Sec. 5-4. Regulating motorized bicycle or tricycle; purpose and intent.**

The state has granted municipalities express authority to regulate or prohibit the operation of motorized gas-powered bicycles or tricycles. It is the purpose and intent of this article to provide for the regulation of motorized gas-powered bicycle or tricycle ("motorized bicycle or tricycle") to protect the safety of pedestrians, bicyclists, motor vehicle drivers and operators of motorized bicycles or tricycles. The mayor and council find it is in the public interest to regulate the operation of motorized bicycles or tricycles by prohibiting their use on sidewalks, multi-use paths, shared use paths and pedestrian paths, and by imposing age restrictions and safety requirements for the riders of motorized bicycles or tricycles.
(Ord. No. 10321, § 1, 9-19-06; Ord. No. 11582, § 2, 9-5-18)

Sec. 5-5. Definition.

As used in this article "*motorized bicycle or tricycle*" means a gas-powered bicycle or tricycle that is equipped with a helper motor that has a maximum piston displacement of forty-eight (48) cubic centimeters or less, that may also be self-propelled and that is operated at speeds of less than twenty (20) miles per hour.
(Ord. No. 10321, § 1, 9-19-06; Ord. No. 11582, § 2, 9-5-18)

* **Editor's note**—Section 1 of Ord. No. 7276, adopted Sept. 11, 1989, repealed former art. I, §§ 5-1—5-6, derived from 1953 Code, ch. 7, §§ 1—6, and Ord. No. 5336, § 2, adopted Apr. 6, 1981, and added a new art. I, §§ 5-1—5-3.

Sec. 5-6. Applicability of traffic laws.

In the City of Tucson, a person riding a motorized bicycle or tricycle is granted all of the rights and is subject to all the duties applicable to a bicycle rider under state and local law, except as otherwise provided herein.

Motorized bicycles or tricycles that are operated at speeds in excess of nineteen (19) miles per hour are regulated by state law and must comply with state law requirements. (Ord. No. 10321, § 1, 9-19-06; Ord. No. 11582, § 2, 9-5-18)

Sec. 5-7. Prohibited operation.

(a) It shall be unlawful for a person under sixteen (16) years of age to operate a motorized bicycle or tricycle.

(b) It shall be unlawful to operate a motorized bicycle or tricycle on any public sidewalk, multi-use path, and shared-use path or on any designated pedestrian path in any public park.

(c) It shall be unlawful to use a motorized bicycle or tricycle to carry more persons at one time than the number for which it is designed and equipped.

(d) It shall be unlawful to ride a motorized bicycle or tricycle through any underpass or at any other location where signs are posted prohibiting bicycling. (Ord. No. 10321, § 1, 9-19-06)

Sec. 5-8. Helmet use requirement.

No person under eighteen (18) years of age shall operate a motorized bicycle or tricycle or be a passenger on motorized bicycle or tricycle, ride in a restraining seat attached to a motorized bicycle or tricycle, or ride in a trailer towed by a motorized bicycle or tricycle unless the person is wearing a properly fitted and fastened bicycle helmet which meets the current standards of the American National Standards Institute for protective headgear. (Ord. No. 10321, § 1, 9-19-06)

Sec. 5-9. Nighttime use requirements.

A motorized bicycle or tricycle that is used at nighttime shall have a lamp on the front that emits a white light visible from a distance of at least five hundred (500) feet to the front and a red reflector in the rear of a type that is visible from all distances from fifty (50) feet to three hundred (300) feet to the rear where the reflector is directly in front of the upper beams of head lamps on a motor vehicle. A motorized bicycle or tricycle may have a lamp that emits a red light visible from a distance of five hundred (500) feet to the rear in addition to the red reflector. (Ord. No. 10321, § 1, 9-19-06)

Sec. 5-10. Responsibilities of parents, guardians, and legal custodians.

(a) The parent, guardian, or legal custodian of any minor shall not authorize or knowingly permit such minor to violate any of the provisions of this article.

(b) If a fine is imposed upon a minor who is found to be in violation of this section, the parents or legal guardian having custody or control of the minor shall be jointly and severally liable with the minor for payment of the fine, whether or not the parents or guardian knew of, or anticipated, a violation of this section. (Ord. No. 10321, § 1, 9-19-06)

Sec. 5-11. Violation declared a civil traffic violation.

(a) Violation of this article shall constitute a civil traffic violation punishable by a mandatory minimum fine of one hundred dollars (\$100.00).

(b) All complaints for violations of this article shall be issued and adjudicated in accordance with the Arizona Rules of Procedure in Civil Traffic Violation Cases and applicable state and local law. (Ord. No. 10321, § 1, 9-19-06)

ARTICLE III. ELECTRIC BICYCLES

Sec. 5-12. Definition.

An "*electric bicycle*" is defined as a bicycle or tricycle equipped with fully operable pedals and an electric motor and that meets the requirements of one of the following classes:

(a) A "Class 1 electric bicycle" is a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty (20) miles per hour.

(b) A "Class 2 electric bicycle" is a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty (20) miles per hour.

(c) A "Class 3 electric bicycle" is a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight (28) miles per hour.
(Ord. No. 11582, § 3, 9-5-18)

Sec. 5-13. Applicability of traffic laws; specific rules for electric bicycles.

(a) In the City of Tucson, a person riding an electric bicycle is granted all of the rights and is subject to all the duties applicable to a bicycle rider under state and local law, including Article I of this Chapter 5, except as otherwise provided herein.

(b) Electric bicycles are permitted on bicycle, shared and multiuse paths under the jurisdiction of the City of Tucson, in the same manner as any other bicycle and when operated at posted or regulated speeds, or under twenty (20) miles per hour, whichever is lower.

(c) No person under the age of sixteen (16) may operate an electric bicycle. A person under the age of sixteen (16) may ride as a passenger on an electric bicycle designed to accommodate passengers.

(d) All electric bicycles shall comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(e) All electric bicycles must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.
(Ord. No. 11582, § 3, 9-5-18)

Sec. 5-14. Violation declared a civil traffic violation.

(a) Violation of this article shall constitute a civil traffic violation punishable by a mandatory minimum fine of twenty-five dollars (\$25.00).

(b) All complaints for violations of this article shall be issued and adjudicated in accordance with the Arizona Rules of Court Procedure for Civil Traffic and Civil Boating Violations, as they may from time to time be amended or replaced.
(Ord. No. 11582, § 3, 9-5-18)

ARTICLE IV. SHARED MOBILITY DEVICES*

Sec. 5-15. Purpose and intent.

It is the purpose and intent of this article to provide for the regulation of bicycles, electric scooters and other "shared mobility devices" to protect the safety of pedestrians, bicyclists, motor vehicle drivers and operators of shared mobility devices. The mayor and council find it is in the public interest to regulate the operation of shared mobility devices by prohibiting their use unless authorized and permitted by the director of the department of transportation and by imposing age restrictions and safety requirements for the users of shared mobility services.
(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-16. Definitions.

In this article, unless the context otherwise requires:

* **Editor's note**—Article IV, Shared Mobility Devices, shall expire and cease to be effective on September 5, 2019 unless extended by the mayor and council by separate ordinance.

(a) *Applicant* means an entity or person authorized to apply for a Mobility Share Permit.

(b) *Director* means the director of the department of transportation or the director's designee.

(c) *Electric scooter* means a self-propelled device that has an electric motor, a deck on which a person may ride, at least two (2) tandem wheels in contact with the ground and is designed to be operated in a standup mode.

(d) *Mobility share entity* means any person, corporate or otherwise, offering a shared mobility device for hire for use in the City of Tucson right of way (ROW), whether the use in the ROW is intended or not, pursuant to a Mobility Share Permit.

(e) *Mobility Share Permit* means a non-exclusive license to offer shared mobility devices for hire within the City of Tucson or a portion thereof.

(f) *Permittee* means any entity or person granted a Mobility Share Permit.

(g) *Shared mobility device* means any motorized or non-motorized wheeled device, including, but not limited to, an electric scooter:

- (1) offered for hire on a short-term use basis (typically for a half hour or less, or one (1) or two (2) trips);
- (2) designed for moving one (1) or more persons by means of human or electric power, or any combination thereof; and
- (3) not required to be returned to a specific origin point. This may include, but is not limited to, bicycles, electric bicycles, and electric scooters.

(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-17. Shared mobility prohibition without permit.

(a) It is unlawful for a mobility share entity to operate within the corporate limits of the City of Tucson unless they hold a valid Mobility Share Permit through a mobility share program authorized by the director.

(b) A mobility share entity operating pursuant to a valid Mobility Share Permit as described in paragraph (a) shall comply with all permit requirements and regulations promulgated by the director.

(c) The director is authorized to develop and adopt a mobility share pilot program with reasonable and necessary rules to carry out the purposes of this article. Such rules shall, at a minimum, address the following areas:

- (1) Minimum safety requirements;
- (2) Parking of shared mobility devices;
- (3) Operations and rebalancing;
- (4) Data sharing and privacy;
- (5) Fees;
- (6) Application requirements;
- (7) Indemnification, bond and insurance requirements.

(d) The director shall provide three (3) copies of the above rules to the city clerk for a public review. In addition, the rules shall be posted on a City website in a timely manner.

(e) The rules for the mobility share pilot program shall be effective only upon the approval of the mayor and council.
(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-18. Rules and regulations.

(a) Notwithstanding Tucson Code Chapter 20, Article I, Sec. 30(C)(1), an electric scooter, when operated as a shared mobility device as part of an authorized mobility share program, is granted all of the rights and is subject to all the duties applicable to a bicycle rider under state and local law, except as provided herein.

(b) It is unlawful for a person under the age of sixteen (16) to operate an electric scooter pursuant to this article.

(c) It is unlawful for a person under the age of eighteen (18) to operate an electric scooter pursuant to this article unless the person is wearing a properly fitted and fastened helmet which meets the current standards of the American National Standards Institute for protective headgear.
(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-19. Violations and penalties.

(a) The penalty for a violation of this article shall be as follows:

- (1) Any mobility share entity or an employee of a mobility share entity who commits, causes, permits, facilitates, or aids or abets any violation of, or who fails to perform any act or duty required by, this article is responsible for a civil infraction and is subject to a civil sanction of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00).
- (2) Any user of a shared mobility device who commits a violation of, or who fails to perform any act or duty required by, this article is responsible for a civil traffic violation punishable by a mandatory minimum fine of twenty-five dollars (\$25.00).
- (3) Each day any violation of any provision of this article or the failure to perform any act or duty required by this article exists shall constitute a separate violation or offense.

(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-20. Enforcement authority.

(a) Any law enforcement officer or any other employee of the city with the authority to issue civil infraction or civil traffic citations may enforce the provisions of this article. This section is not intended to create or expand the authority of any department to perform acts that are otherwise prohibited by law.

(b) Any shared mobility device operated in violation of this article may be seized and impounded under the direction of the police department. Upon impound, TDOT shall cause the mobility share entity having ownership of the shared mobility device, if known, to be notified in writing of the removal, the reason therefor, and the place to which the shared mobility device is removed to, within a period of three (3) days of the impound date. If the mobility share entity is not known or not readily ascertainable, TDOT shall make available to the public a written report of the complete description of the shared mobility device, the date, time and place from which removed, the reasons for such removal, and the name of the garage or place where the shared mobility device is stored. The shared mobility device may be recovered upon compliance with this article and payment of all costs of removal, storage and any assessments provided for pursuant to the applicable mobility share program rules, provided this is done within sixty (60) days following date of impoundment. The city, upon order of the city magistrate, may dispose of or destroy any shared mobility device not claimed nor made to comply with the provisions of this article within a period of sixty (60) days.

(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-21. Jurisdiction of court.

(a) Jurisdiction of all proceedings to enforce the provisions of this chapter shall be in the city court of the city.

(b) Civil infraction proceedings to enforce this chapter may be adjudicated by a magistrate or a special limited magistrate.

(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-22. Commencement of proceedings.

(a) Any civil infraction proceedings to enforce the provisions of this chapter shall be commenced and summons shall be issued in accordance with the procedures set forth in Arizona Revised Statutes, city ordinance, or as provided in the Local Rules of Practice and Procedure - City Court - City of Tucson. If the city is unable to personally serve the complaint, the complaint may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure or by certified or registered mail, return receipt requested.

(b) All complaints for civil traffic violations of this article shall be issued and adjudicated in accordance with the Arizona Rules of Procedure in Civil Traffic Violation Cases and applicable state and local law.

(Ord. No. 11583, § 2, 9-5-18)

Sec. 5-23. Appeal of court decision.

Any party may appeal the judgment of city court to the superior court. Appeals from civil infraction proceedings shall be in accordance with the Superior Court Rules of Appellate Procedure - Civil.

(Ord. No. 11583, § 2, 9-5-18)

Chapter 8
CITY COURT*

Art. I. In General, §§ 8-1 – 8-34
Art. II. Reserved

Article I. In General

- Sec. 8-1. Jurisdiction, powers, duties.
- Sec. 8-2. Appointment of magistrates; several powers, duties.
- Sec. 8-2.1. Methods of appointment of magistrates and qualifications; establishing senior special magistrate status and compensation.
- Sec. 8-2.2. Appointment of special magistrates; full-time magistrate pro tempore; terms of office; compensation; powers; duties; qualifications.
- Sec. 8-2.3. Appointment of limited special magistrates; term; powers; duties; qualifications; compensation.
- Sec. 8-2.4. Criminal history records check prior to appointment of city magistrates.
- Sec. 8-2.5. Justices of the peace, weekend arraignments, initial appearances and conflict cases.
- Sec. 8-3. Conducting business on nonjuridical days.
- Sec. 8-4. Magistrates; powers and duties.
- Sec. 8-4.1. Authorizing assignment of an associate presiding magistrate, term, compensation, duties.
- Sec. 8-5. Duty to fix bond, bail, fines, penalties, fees and assessments.
- Sec. 8-5.2. Probation monitoring fees.
- Sec. 8-6. Assumption of chapter 28 procedures.
- Sec. 8-6.1. Penalties.
- Sec. 8-6.3. Reimbursement of city's costs of incarceration; factors to be considered; exemption for indigent persons; reimbursement separate and distinct from any sentence or probation conditions; action for recovery authorized.
- Sec. 8-6.4. Administrative fee for warrants issued for failure to pay fines or restitution; exemption for indigent persons; fee separate and distinct from any sentence or probation conditions; action for recovery authorized.
- Sec. 8-6.5. Case processing fee; exemption for indigent persons; deposit and use of funds collected; fee separate and distinct from any sentence or probation conditions or civil penalty; action for recovery authorized.
- Sec. 8-6.6. Assessment of administrative charge on persons convicted in city court of violations of A.R.S. § 28-1381 et seq.
- Sec. 8-6.7. Administrative default fee; exemption for indigent persons; fee separate and distinct from any fine or other fee; action for recovery authorized.
- Sec. 8-6.8. Post-adjudicated civil motion filing fee; exemption for extraordinary circumstances; fee separate and distinct from any sentence; action for recovery authorized.
- Sec. 8-6.9. Defensive Driving School (DDS) rescheduling fee; fee separate and distinct from any sentence; action for recovery authorized.
- Sec. 8-7. Fines; collection; abatement.
- Sec. 8-8. City court procedures.
- Sec. 8-9. When jury trial required.
- Sec. 8-10. Summoning jurors.
- Sec. 8-11. Number of jurors; challenges for cause.
- Sec. 8-12. Pay of jurors.
- Sec. 8-13. Execution to collect fine.
- Sec. 8-14. Director of finance; powers and duties in relation to city court.
- Secs. 8-15 – 8-34. Reserved.

Article II. Reserved

***Charter Reference** – City court, ch. XII.

Cross references – Penalty for violating ordinances, § 1-8; treatment of prisoners generally, § 1-9 et seq.; violations of traffic regulations, § 20-68 et seq.

TUCSON CODE

ARTICLE I. IN GENERAL***Sec. 8-1. Jurisdiction, powers, duties.**

(a) There shall be a city court which shall be the municipal court for the city, to be known and designated as "The City Court of the City of Tucson, Pima County, State of Arizona". It shall have and exercise the jurisdiction conferred upon it by the Charter and the Code of the city. It shall exercise exclusive original jurisdiction of all proceedings of a criminal nature for the violation of the Charter or of any ordinance of the city, and of every action of any nature for the enforcement of a penalty, or the recovery of a penalty or forfeiture imposed by any ordinance of the city for the violation thereof or for neglect to perform any duty by any ordinance imposed or for a violation of a civil traffic ordinance and of every action for the collection of any license fee, fine or penalty due from any person to the city and required to be paid or which is due and collectible under the ordinances of the city.

(b) The city court shall further have jurisdiction over all actions alleging civil violations or civil infractions of this Code.

(c) The city court shall further have concurrent jurisdiction with justices of the peace over all violations of the laws of the state committed within the limits of the city. The court shall also have jurisdiction of violations of the Charter and ordinances of the city committed on land owned or leased by the city, whether contiguous or noncontiguous, lying without the corporate limits thereof, to the same extent and with like effect as if the violation occurred within the corporate limits of the city, provided that the land is

***Editor's note** – Ord. No. 7733, adopted Dec. 9, 1991, extensively revised this article by amending certain sections, by repealing certain sections, and by renumbering certain sections. The editor has retained the history note as it appeared prior to the renumbering and has included a note giving the former section number.

Section 10 gave an effective date of §§ 2 – 7 as the effective date of the intergovernmental agreement between the city and the county superior court attached to Res. No. 15893. Section 1 of Ord. No. 7756, adopted Jan. 13, 1992, changed the number of the resolution to Res. No. 15917.

signed as provided in subsection B of A.R.S. section 9-401.

(1953 Code, ch. 9A, § 1; Ord. No. 5930, § 1, 12-19-83; Ord. No. 7887, § 2, 8-3-92)

Cross reference – Authority of city to exercise jurisdiction over land owned or leased outside city. § 1-7.

Sec. 8-2. Appointment of magistrates; several powers, duties.

There shall be appointed a sufficient number of magistrates as determined by the mayor and council. Each magistrate shall exercise powers and duties as provided by the Charter and Code of the city and the constitution and laws of the state in such cases made and provided.

(1953 Code, ch. 9A, §§ 2, 3, 4; Ord. No. 1956, §§ 1, 3, 9-8-59; Ord. No. 2529, § 1, 10-14-63; Ord. No. 4679, § 2, 6-27-77; Ord. No. 5169, § 1, 6-16-80; Ord. No. 7733, § 2, 12-9-91)

Charter reference – Term of office of magistrate, ch. XII, § 3.

Sec. 8-2.1. Methods of appointment of magistrates and qualifications; establishing senior special magistrate status and compensation.

(a) There shall be a nonpartisan merit selection commission known as the magistrate merit selection commission on magistrate appointments composed of four (4) attorney members appointed by the county bar association, not more than two (2) of whom shall be of the same political party, and five (5) non-attorney members appointed by the Mayor and Council. Of the five (5) non-attorney members not more than three (3) shall be of the same political party. None of the attorney or non-attorney members of the commission shall hold any other elective or appointive public office or be a member of law enforcement, and no attorney member shall be eligible for appointment to the office of magistrate until one (1) year after ceasing to be a member of the commission. All members shall serve four (4) year terms.

(b) For the purpose of conducting the business of the commission, a quorum shall consist of five (5) members.

(c) Within ninety (90) days from the occurrence of a vacancy in the office of magistrate or at the request of mayor and council, the commission shall recommend to the mayor and council the names of not more than three (3) persons in ranked order to fill the position of magistrate or satisfy such request. Any such candidate shall be:

- (1) Of good moral character;
- (2) A resident of Arizona for one (1) year immediately preceding recommendation; and
- (3) Admitted to the practice of law for five (5) years immediately preceding recommendation.

In addition to other relevant materials and the results of the biennial judicial performance review, where a sitting magistrate seeks a new appointment the commission shall consider the magistrate's courtroom administrative performance, as evidenced by matters including but not limited to case aging, case load, time to rule on matters under advisement and rulings reversed/affirmed on appeal to the extent any such measures do not conflict with judicial independence; and the magistrate's adherence to the city's rules of conduct and code of ethics to the extent adherence is not inconsistent with the Code of Judicial Conduct. The presiding magistrate of the city court shall perform a written annual review of each magistrate's performance measured by these criteria.

(d) No later than nine (9) months prior to the expiration of the term, a magistrate may apply for reappointment in writing to the mayor and council. Upon such notice, the magistrate merit selection commission shall review the term of the magistrate and submit a written report of its findings to the mayor and council, which shall include a recommendation as to the reappointment. Such report shall be submitted at least ten (10) days prior to the expiration of the term. Upon expiration of the magistrate's term, the mayor and council may reappoint the magistrate, or may appoint a successor in accordance with the procedures set forth herein.

(e) A regular magistrate who completes a term in office and does not seek reappointment enters senior special magistrate status. The presiding magistrate of the city court may call a senior special magistrate to serve temporarily as needed; such senior special magistrates shall be compensated (without benefits) at

the per-session rate for special magistrates set forth in Section 8-2.2(b) of this code.

(Ord. No. 4815, § 1, 5-22-78; Ord. No. 4866, § 1, 8-7-78; Ord. No. 4919, § 1, 12-18-78; Ord. No. 7305, § 1, 11-6-89; Ord. No. 7513, § 1, 11-19-90; Ord. No. 8189, § 1, 2-7-94; Ord. No. 8254, § 1, 4-25-94; Ord. No. 8569, § 1, 9-5-95; Ord. No. 8767, § 1, 10-21-96; Ord. No. 9086, § 1, 7-6-98; Ord. No. 10062, §§ 1, 2, 10-11-04; Ord. No. 10952, § 1, 12-20-11, eff. 1-1-12; Ord. No. 11335, § 1, 1-5-16; Ord. No. 11626, § 1, 1-20-19)

Sec. 8-2.2. Appointment of special magistrates; full-time magistrate pro tempore; terms of office; compensation; powers; duties; qualifications.

(a) Upon recommendation of the presiding judge of the Pima County Superior Court and subject to the appointment procedures set forth by the presiding judge, the mayor and council may appoint special magistrates, as needed, to assist in the timely adjudication of city court cases. Special magistrates shall serve a four (4) year term of office, and may be reappointed.

(b) The compensation of a special magistrate during the four (4) year term of appointment is fixed at the rate of one hundred twenty five dollars (\$125.00) for each morning, afternoon or evening session of court at which the special magistrate sits; provided, however, that such special magistrate shall receive no more compensation than would be paid to a regular magistrate each month.

(c) The powers and duties of a special magistrate shall be the same as those of a regular magistrate and shall extend beyond the period of appointment for the purpose of hearing and determining any proceeding necessary for a final determination of a cause heard by the special magistrate in whole or in part during the period of appointment.

(d) Any such candidate for special magistrate shall possess the qualifications for a magistrate set forth in Tucson Code section 8-2.1(c).

(e) Subject to the nomination and appointment procedures set forth in section 8.2.1(a), mayor and council shall appoint construction special magistrates possessing a demonstrated experience and familiarity of not less than five (5) years in contract and

construction law to hear and decide cases arising under Tucson Code section 11-38. The compensation for such construction special magistrates shall be as set forth in subsection (b) above.

(f) Upon recommendation of the presiding judge of the Pima County Superior Court, the mayor and council may appoint a full-time magistrate pro tempore from among the appointed special magistrates, as needed, to assist in the timely adjudication of Tucson City Court cases. The full-time magistrate pro tempore shall serve a four (4) year term of office and may be reappointed. Compensation shall be set at eighty (80) percent of a city magistrate's pay with benefits during the term of the appointment.

(Ord. No. 7887, § 3, 8-3-92; Ord. No. 8835, § 1, 3-3-97; Ord. No. 8943, § 1, 9-8-97; Ord. No. 9158, § 3, 11-9-98; Ord. No. 9973, § 1, 5-17-04; Ord. No. 10063, § 1, 10-11-04; Ord. No. 10952, § 2, 12-20-11, eff. 1-1-12; Ord. No. 11111, § 1, 9-24-13, eff. 10-1-13; Ord. No. 11626, § 1, 1-20-19)

Sec. 8-2.3. Appointment of limited special magistrates; term; powers; duties; qualifications; compensation.

(a) Subject to the appointment procedures set forth in section 8-2.1, the mayor and council may appoint limited special magistrates to provide for the expeditious enforcement of civil violations and civil infractions of the Tucson Code and civil traffic violations under state law. Limited special magistrates shall be full time, shall serve a four-year term of office, and may be reappointed.

(b) Limited special magistrates shall have concurrent jurisdiction with regular and special magistrates to hear and decide actions alleging civil violations or civil infractions of the Tucson Code and civil traffic violations under state law, and shall assume all duties referenced in the Tucson Code as being the responsibility of an administrative hearing officer.

(c) At the time of appointment, limited special magistrates must have demonstrated experience or familiarity with administrative proceedings, technical codes or traffic law.

(d) The compensation to be received by limited special magistrates shall be as set from time to time by the mayor and council and shall include the same fringe benefits as provided to regular magistrates.

(Ord. No. 7887, § 4, 8-3-92; Ord. No. 8179, § 1, 1-3-94; Ord. No. 9398, § 1, 6-12-00; Ord. No. 10063, § 2, 10-11-04)

Sec. 8-2.4. Criminal history records check prior to appointment of city magistrates.

(a) Pursuant to A.R.S. § 41-1750, the City of Tucson is hereby authorized to receive criminal history record information for the purpose of evaluating the fitness of current and prospective city court magistrates.

(b) Each person who seeks to be appointed as a regular, special, or limited special city court magistrate shall, as part of such appointment application process, furnish a full set of fingerprints to the city.

(c) Pursuant to A.R.S. § 41-1750 and Public Law 92-544, the city shall submit such fingerprints accompanied by the appropriate fees, which will be paid by the city, to the Arizona Department of Public Safety and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information on all individuals identified in Section 1, subpart B. Such information shall be used only for the purpose of evaluating the fitness of such current and prospective city court magistrates.

(d) The city shall comply with any relevant State and Federal rules and regulations that may relate to the dissemination of such criminal history record information.

(Ord. No. 9085, § 1, 7-6-98)

Sec. 8-2.5. Justices of the peace, weekend arraignments, initial appearances and conflict cases.

Any justice of the peace, upon assuming office, is appointed as a special magistrate of the city for the specific purpose of presiding over arraignments, initial appearances and any conflict case(s) designated by the presiding magistrate of the Tucson city court involving any state law or city ordinance.

(Ord. No. 9971, § 1, 5-17-04; Ord. No. 10155, § 1, 5-24-05; Ord. No. 10996, § 1, 6-19-12, eff. 7-1-12)

Sec. 8-3. Conducting business on nonjuridical days.

City court shall always be open except on nonjuridical days. On such nonjuridical days, it may transact business within its jurisdiction. (1953 Code, ch. 9A, §§ 2, 3; Ord. No. 1956, § 2, 9-8-59; Ord. No. 4679, § 3, 6-27-77; Ord. No. 7733, § 3, 12-9-91)

Sec. 8-4. Magistrates; powers and duties.

Each magistrate of the city court, in addition to exercising such judicial authority as provided in the Charter and Code of the city and the laws of the state shall:

- (1) Devote his or her entire time to the duties of being a magistrate and shall not engage in the private practice of law.
- (2) Observe, be available, and be present in attendance upon the court for the transaction of business every juridical day between the hours of 8:00 a.m. and 5:00 p.m. In addition to such hours, a magistrate may open court and be in attendance at the court during such additional hours of any juridical or nonjuridical day as may be necessary for the discharge or disposition of business properly coming before the court.
- (3) Dispose with all reasonable promptness all matters taken under advisement and, in any event, issue a decision no later than twenty (20) days thereafter.
- (4) Issue a minute entry of the court's judgment in all matters wherein disposition was based upon legal grounds rather than upon the factual merits of the matter, specifying therein the legal conclusion underlying the court's judgment.
- (5) Follow and adhere to supervision by the presiding judge of the superior court as provided for in Arizona Supreme Court Administrative Order 93-30, and any amendment or successor to this provision.
- (6) Follow and adhere to the city's rules of conduct and code of ethics contained in

administrative directive 2.02-5 and 2.02-14 and any amendments or successors to these provisions to the extent adherence to these provisions does not affect judicial independence or is not inconsistent with the Code of Judicial Conduct.

(Ord. No. 4679, § 12, 6-27-77; Ord. No. 5169, § 3, 6-16-80; Ord. No. 7733, § 4, 12-9-91; Ord. No. 10062, § 3, 10-11-04)

Editor's note – Ord. No. 4679, § 1, adopted June 27, 1977, specifically amended the Code by repealing former § 8-5, which had pertained to office hours and had been derived from the 1953 Code, ch. 9A, § 5. Section 12 of Ord. No. 4679 added a new § 8-5 as hereinabove set out. The section was renumbered § 8-4 and the text amended by § 4 of Ord. No. 7733.

Sec. 8-4.1. Authorizing assignment of an associate presiding magistrate, term, compensation, duties.

(a) There is hereby created one administrative assignment position of Presiding Magistrate of the City Court of the City of Tucson whose function it is to assist the presiding judge of the superior court in performing administrative duties associated with the judicial and non-judicial functions of the city court.

(b) The presiding judge of the superior court is hereby authorized to appoint, in his or her sole discretion, any sitting city magistrate to the administrative assignment position of presiding magistrate.

(c) Any sitting city magistrate selected for assignment to the position of presiding magistrate shall serve at the pleasure of the presiding judge of the superior court, and may be removed from the administrative assignment of presiding magistrate at any time, for any reason, without cause and without right of appeal by the presiding judge of the superior court.

(d) While performing the administrative assignment of presiding magistrate, a city magistrate shall receive additional compensation in the amount of ten (10) percent of his or her annual salary, payable on a biweekly basis, pro-rated.

(e) The presiding magistrate shall perform those duties as required by law and this chapter and as assigned by the presiding judge of the superior court. (Ord. No. 9042, § 1, 4-13-98; Ord. No. 10062, § 4, 10-11-04; Ord. No. 10454, § 1, 9-25-07)

Sec. 8-5. Duty to fix bond, bail, fines, penalties, fees and assessments.

The city magistrates shall fix all bonds, bail, fines, penalties, fees and other assessments which are now or hereafter may be provided by law.

(1953 Code, ch. 9A, § 6; Ord. No. 4679, § 4, 6-27-77; Ord. No. 7733, § 7, 12-9-91)

Note – Formerly, § 8-6. Renumbered § 8-5 by § 7 of Ord. No. 7733.

Sec. 8-5.2. Probation monitoring fees.

When granting supervised probation, the city court shall, as a condition of such probation, assess a monthly probation monitoring fee reflecting the actual costs of such supervised probation, including screening sessions, any necessary testing, court-ordered treatment, and any other necessary costs of supervised probation. Such monthly probation monitoring fee shall be not less than the sum specified in A.R.S. 13-901(A), or any successor provision(s), unless, after determining the inability of the probationer to pay the fee, the city court assesses a lesser fee. Such monthly probation monitoring fee may be assessed only when the person is placed on supervised probation.

(Ord. No. 8521, § 1, 6-12-95)

Sec. 8-6. Assumption of chapter 28 procedures.

All references in this Code to section 28-12 shall be amended to read section 8-6.1, all references in this Code to section 28-14 shall be amended to read Rule 23 of Local Rules of Practice and Procedure in City Court Civil Proceedings, and all references in the Code to chapter 28 shall be amended to read chapter 8.

(Ord. No. 7887, § 5, 8-3-92)

Sec. 8-6.1. Penalties.

(a) Unless otherwise provided in this Code, when a civil violation or civil infraction is determined, the following penalties shall be imposed:

- (1) A person found responsible for a civil violation or civil infraction for the first time shall be fined not less than one hundred dollars (\$100.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil violation or civil infraction. A person found responsible for the same civil violation or civil infraction for a second time shall be

fined not less than two hundred dollars (\$200.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil violation or civil infraction. A person found responsible for the same civil violation or civil infraction for a third or subsequent time shall be fined not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil violation or civil infraction. The imposition of a fine for civil violations or civil infractions shall not be suspended.

- (2) The magistrate, special magistrate or limited special magistrate shall, after a finding of responsibility, order abatement of the civil violation or civil infraction. An abatement order shall be effective for one (1) year unless stayed on appeal. If stayed on appeal the order shall be effective for one (1) year from the end of the appeal if the finding of responsible and sentence is upheld.
- (3) The magistrate, special magistrate or limited special magistrate shall warn a violator that additional fines will be imposed for failure to abate a violation and criminal charges may be brought by the city attorney for failure to obey an order to abate a violation.

(b) Failure of a defendant to comply with any order contained in a judgment for a civil violation or civil infraction shall result in an additional fine of not less than one hundred dollars (\$100.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day the defendant fails to comply. A defendant's second failure to comply with any order contained in a judgment for a civil violation or civil infraction shall result in an additional fine of not less than two hundred dollars (\$200.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the first determination of the defendant's failure to comply; a defendant's third and subsequent failures to comply with any order contained in a judgment for a civil violation or civil infraction shall result in an additional fine of not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the second or subsequent determination of the defendant's failure to comply; provided, however, that the total fines imposed by this subsection and subsection (a) shall not exceed twenty-

five hundred dollars (\$2,500.00) per civil violation or civil infraction.
 (Ord. No. 7887, § 6, 8-2-92; Ord. No. 8154, § 2, 11-8-93; Ord. No. 8672, § 1, 4-8-96; Ord. No. 11393, § 3, 8-9-16)

Sec. 8-6.3. Reimbursement of city's costs of incarceration; factors to be considered; exemption for indigent persons; reimbursement separate and distinct from any sentence or probation conditions; action for recovery authorized.

(a) Where the city court sentences a person to a term of incarceration in the Pima County Jail, or makes a term of incarceration a condition of the person's probation for an offense, the city court shall order the person to reimburse the city for all or part of the actual incarceration costs to the city; EXCEPT THAT no person found by the city court to be indigent shall be required to reimburse the city for such incarceration costs.

(b) The city court shall determine the amount of incarceration costs to be reimbursed to the city based on the actual per diem per person cost of incarceration incurred by the city and on the person's ability to pay all or part of the incarceration costs.

(c) The reimbursement of incarceration costs provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or probation conditions imposed by the city court in the criminal case. The city court shall set forth the requirement and amount of such reimbursement of incarceration costs as a separate item in all orders and judgments.

(d) In addition to any other rights and remedies available to the city, where a person fails to reimburse the city for costs of incarceration in accordance with an order of the city court pursuant to this section the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of such costs of incarceration.
 (Ord. No. 8557, § 1, 8-7-95)

Sec. 8-6.4. Administrative fee for warrants issued for failure to pay fines or restitution; exemption for indigent persons; fee separate and distinct from any sentence or probation conditions; action for recovery authorized.

(a) When a city court magistrate issues a warrant for failure to pay a fine or restitution, the court shall impose a warrant fee in the amount of fifty dollars (\$50.00) upon the person who is the subject of the warrant, to cover the city court's administrative cost for processing such warrants. As used in this section, the term "magistrate" includes senior special magistrates, magistrates, special magistrates, and limited special magistrates.

(b) The warrant fee may be waived or suspended when such waiver would be in the interest of justice. No person who is found to be indigent by the city court shall be required to pay the warrant fee.

(c) The warrant fee provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or probation conditions imposed by the city court in the criminal case. The city court shall set forth the requirement and amount of such warrant fee as a separate item in all orders and judgments.

(d) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the warrant fee authorized under this section.
 (Ord. No. 8557, § 1, 8-7-95)

Sec. 8-6.5. Case processing fee; exemption for indigent persons; deposit and use of funds collected; fee separate and distinct from any sentence or probation conditions or civil penalty; action for recovery authorized.

(a) Each person found guilty or responsible or who enters a plea of guilty or responsible for any charge in a city court case shall be assessed a processing fee of twenty dollars (\$20.00) for each charge to cover part of the cost of processing that person's charge through the city court system.

(b) The case processing fee may be waived or suspended when such waiver would be in the interest of justice. No person who is found to be indigent by the city court shall be required to pay the case processing fee.

(c) The case processing fee provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or probation conditions imposed by the city court in any criminal case, or any civil penalty in cases where a civil penalty is imposed. The city court shall set forth the requirement and amount of such case processing fee as a separate item in all orders and judgments.

(d) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the case processing fee authorized under this section. (Ord. No. 9851, § 1, 5-12-03; Ord. No. 10585, § 1, 10-7-08, eff. 1-1-09)

Sec. 8-6.6. Assessment of administrative charge on persons convicted in city court of violations of A.R.S. § 28-1381 et seq.

(a) A person convicted in city court of a violation of A.R.S. § 28-1381 et seq. either after trial or pursuant to plea agreement, shall be assessed an administrative charge to cover all or part of the administrative costs and expenses directly incurred by the city police department in the investigation of violations of A.R.S. § 28-1381 et seq. The administrative charge constitutes a debt of the person, and may be collected by the city.

(b) The city court shall assess and collect the administrative charge on behalf of the city. The court shall set forth the requirement and amount of the administrative charge as a separate item in all orders and judgments, and not as part of any sentence or probation conditions imposed by the city court in the criminal case.

(c) No person whom the city court finds to be indigent shall be required to pay the monetary charge authorized in this section. If the court finds that a person is able to pay only a portion of the administrative charge as calculated by the chief of police pursuant to subsection (d), the court may waive

that portion that the court finds the person is unable to pay.

(d) The chief of police shall, on a periodic basis, determine the amount of costs and expenses, including but not limited to officer salaries, directly incurred by the city police department in the investigation of violations of A.R.S. § 28-1381 et seq., and set the administrative charge to be assessed against each convicted person at an amount reasonably calculated to recover all or part of those costs and expenses, but in no event to exceed the average case amount of such costs and expenses. The calculated amount shall not include costs and expenses for officer testimony given during discovery, or at a hearing or trial. The chief of police shall communicate the amount of the administrative charge to be assessed against each convicted person to the city court.

(e) The administrative charge collected by the city court shall be deposited in the general fund.

(f) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the administrative charge authorized under this section.

(g) The liability imposed under this section is in addition to and not in limitation of any other liability which may be imposed, except that this section shall not apply in any case where the convicted person caused an accident that resulted in an appropriate emergency response, thereby making A.R.S. § 28-1386 et seq. applicable. It is the intent of the mayor and council that this section supplement the provisions of A.R.S. § 28-1386 et seq. in cases where that statute is not applicable, and that A.R.S. § 28-1386 et seq. control in the event of any actual conflict between it and this section.

(h) The administrative charge provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or probation conditions imposed by the city court in the criminal case.

(i) As used in this section, the term "chief of police" includes any designee(s) of that officer. (Ord. No. 8729, § 1, 7-1-96; Ord. No. 8958, § 2, 9-22-97)

Sec. 8-6.7. Administrative default fee; exemption for indigent persons; fee separate and distinct from any fine or other fee; action for recovery authorized.

(a) A default fee of fifty dollars (\$50.00) for each charge shall be assessed against a defendant who fails to appear, or who fails to pay a sanction or penalty imposed by the court, in any case involving a civil traffic violation of the Arizona Revised Statutes or civil violation, civil infraction or civil parking infraction of the Code.

(b) The default fee may be waived or suspended when such waiver would be in the interest of justice. No person who is found to be indigent by the city court shall be required to pay the default fee.

(c) The default fee provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any other fines or fees imposed. The city court shall set forth the requirement and amount of such default fee as a separate item in all orders and judgments.

(d) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute appropriate civil action in any court of competent jurisdiction for recovery of the default fee authorized under this section.

(Ord. No. 9194, § 1, 1-25-99; Ord. No. 10010, § 1, 8-2-04)

Sec. 8-6.8. Post-adjudicated civil motion filing fee; exemption for extraordinary circumstances; fee separate and distinct from any sentence; action for recovery authorized.

(a) Each person filing a motion in a post-adjudicated civil case, to include those in default and/or submitted to the Fines Fees and Restitution Enforcement (FARE) program, will pay a five dollar (\$5.00) post-adjudicated civil motion filing fee. The five dollar (\$5.00) filing fee shall be paid prior to acceptance and processing of the motion.

(b) Absent extraordinary circumstances the five dollar (\$5.00) filing fee shall not be waived. When

waving the five dollar (\$5.00) filing fee, city court shall set forth the extraordinary circumstances in all orders and judgments waving the fee.

(c) The post-adjudicated civil motion filing fee provided for in this section is hereby declared to be a cost recovery measure, administrative in nature, separate from and in addition to any sentence or civil penalty previously imposed by the court.

(d) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the post adjudicated civil motion filing fee authorized under this section.

(Ord. No. 10849, § 1, 11-9-10, eff. 12-1-10)

Sec. 8-6.9. Defensive Driving School (DDS) rescheduling fee; fee separate and distinct from any sentence; action for recovery authorized.

(a) Each person requesting the court for an extension of time to complete Defensive Driving School shall pay a seventeen dollar (\$17.00) rescheduling fee. The seventeen dollar (\$17.00) rescheduling fee shall be paid prior to each court authorized extension.

(b) The rescheduling fee provided for in this section is hereby declared administrative in nature, separate from and in addition to any sentence or civil penalty previously imposed by the court.

(c) In addition to any other rights and remedies available to the city, the city attorney is authorized to institute any appropriate civil action in any court of competent jurisdiction for recovery of the DDS rescheduling fee authorized under this section.

(Ord. No. 10901, § 1, 6-14-11, eff. 7-1-11)

Sec. 8-7. Fines; collection; abatement.

Any civil fine not paid within thirty (30) days after judgment shall constitute a lien against the real property of the defendant and may be filed with the county recorder's office. The city attorney may commence a separate legal action in city court to

Chapter 22

PENSIONS, RETIREMENT, GROUP INSURANCE, LEAVE BENEFITS AND OTHER INSURANCE BENEFITS*

- Art. I. In General, §§ 22-1 – 22-12**
Art. II. Social Security, §§ 22-13 – 22-29
Art. III. Tucson Supplemental Retirement System, §§ 22-30 – 22-77
Div. 1. Types of Retirement and Benefits, §§ 22-30 – 22-43.1
Div. 2. Administration of the System, §§ 22-44 – 22-77
Art. IV. Group Insurance and Medical Health Plans, §§ 22-78 – 22-89
Art. V. Leave Benefit Plan, §§ 22-90 – 22-99
Art. VI. Other Insurance Benefits, §§ 22-100 – 22-104

Article I. In General

- Sec. 22-1. Contributions to the public safety personnel retirement system.
Secs. 22-2 – 22-12. Reserved.

Article II. Social Security

- Sec. 22-13. Short title.
Sec. 22-14. Purpose.
Sec. 22-15. Execution of application and agreement authorized.
Sec. 22-16. Effect of membership.
Sec. 22-17. Director of finance to pay city contributions.
Sec. 22-18. Funds for city contributions for current services.
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Sec. 22-21. Employee contributions for past services.
Sec. 22-22. Collection of employee contributions for past services.
Sec. 22-23. Duties of director of personnel.
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Article III. Tucson Supplemental Retirement System

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- Sec. 22-30. Definitions.
Sec. 22-31. Trust fund.
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Sec. 22-33. Membership.
Sec. 22-34. Membership contributions.
Sec. 22-35. City contributions.

***Editor's note** – Ord. No. 10294, § 1, adopted June 27, 2006, amended the title of ch. 22 to read as herein set out. Prior to inclusion of said ordinance, ch. 22 was entitled, "Pensions, Retirement and Group Insurance." It should be noted that said ordinance is effective June 20, 2006.

The 1953 Code, ch. 20, §§ 1 – 24, provided for pensions and retirement. These sections were repealed by Ord. No. 1420, § 1, enacted Nov. 30, 1953. Terms and conditions of the repeal, appearing as ch. 20, §§ 25 and 26 in the 1957 supplement to the 1953 Code, have not been included in this Code because fully executed and rights thereunder are guaranteed by the present supplement retirement systems, § 22-34 et seq.

Charter reference – Civil service generally, ch. XXII.

Cross reference – Civil service generally, ch. 10.

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- Sec. 22-36. Accumulation of credited service.
- Sec. 22-37. Retirements.
- Sec. 22-38. End of service program.
- Sec. 22-39. Disability retirement.
- Sec. 22-40. Death benefits.
- Sec. 22-41. Refund of accumulated contributions accounts; transfers to other systems.
- Sec. 22-42. Retirement benefit payment options.
- Sec. 22-43. Administration of benefit payments; benefit calculations.
- Sec. 22-43.1. System approved domestic relations orders.

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- Sec. 22-44. Board of trustees.
- Sec. 22-45. Investments.
- Sec. 22-46. Finance director duties.
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- Sec. 22-48. System administrator.
- Sec. 22-49. Indemnification.
- Sec. 22-50. Miscellaneous administrative provisions.
- Sec. 22-51. Alteration, amendment, repeal of the system.
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- Sec. 22-54. Reserved.
- Sec. 22-55. Reserved.
- Secs. 22-56 – 22-77. Reserved.

Article IV. Group Insurance and Medical Health Plans

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- Sec. 22-85. Duties of human resources director; employees' premium costs.
- Sec. 22-86. Expenditure of funds held in Self-Insured Health Benefits Trust.
- Sec. 22-87. Effective date of Self-Insured Health Benefits Trust.
- Sec. 22-88. Medical insurance incentive allowance.
- Sec. 22-89. Reserved.

Article V. Leave Benefit Plan

- Sec. 22-90. Providing for leave benefit plan.
- Sec. 22-91. Duties of the human resources director and city manager.
- Sec. 22-92. Peace officer recruitment incentive.
- Sec. 22-93. Conditions for annual sick leave payment to fire department commissioned personnel.
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- Sec. 22-95. Wellness attendance incentive.
- Sec. 22-96. Transfer and accrual of sick leave and vacation for City of Tucson/Pima County Household Hazardous Waste Program employees entering city service.
- Sec. 22-97. Living donor leave.
- Secs. 22-98 – 22-99. Reserved.

Article VI. Other Insurance Benefits

- Sec. 22-100. Reserved.
- Sec. 22-101. Death benefit for employee group eligible for representation by TPOA.
- Sec. 22-102. Death benefit for employee group eligible for representation by IAFF.
- Sec. 22-103. Death benefit for employee group eligible for representation by AFSCME.
- Sec. 22-104. Death benefit for employee group eligible for representation by CWA/TACE.

for those acts, omissions, or conduct resulting from their own willful misconduct, willful failure to act, or gross negligence. The system shall maintain fiduciary liability insurance designed to fund the indemnification provided by this section. The city shall be liable for indemnification under this section only to the extent that the liability exceeds the amount available through the system's fiduciary liability insurance. (Ord. No. 10657, § 5, 4-28-09, eff. 7-1-09)

Sec. 22-50. Miscellaneous administrative provisions.

Sec. 22-50(a). Fraudulent acts prohibited. Any person who knowingly makes any false statement with respect to or falsifies or permits to be falsified any record, application or form of the system in an attempt to defraud the system or defeat the right of a member to receive a retirement benefit to which they may be entitled is guilty of a crime and shall be subject to prosecution in accordance with the applicable criminal statutes.

Sec. 22-50(b). Correction of errors. The board shall correct errors in the records and actions of the system administration. The board shall seek to recover overpayments and shall make up underpayments. Recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments is equal to the actuarial present value of correct payments.

Sec. 22-50(c). Employment rights. The system shall not be construed as giving an employee any right to be retained in the service of the city without its consent nor shall the system interfere with the right of the city to discharge an employee, nor shall an employee be given any right, claim or interest in any benefits of the system except upon fulfillment of the conditions and requirements of the system.

Sec. 22-50(d). Applicable laws. The system shall be construed and enforced under the laws of the State of Arizona and any federal law, rule or regulation applicable to a tax-qualified governmental retirement plan structured in accordance with Section 414(d) of the Code and Section 3(32) of the Employee

Retirement Income Security Act of 1974, and all of the provisions hereof shall be administered in accordance therewith.

(Ord. No. 10657, § 5, 4-28-09, eff. 7-1-09)

Sec. 22-51. Alteration, amendment, repeal of the system.

Sec. 22-51(a). Amendment or repeal of system; non-forfeiture of benefits. The mayor and city council may alter, amend or repeal any provision of the system or its application to any person. All accrued benefits that have vested or accrued at the time of such alteration, amendment or repeal shall not be affected thereby for any member or beneficiary.

Sec. 22-51(b). Continuing administration of the system. In the event the mayor and city council repeal the provisions of this article, the board shall continue to administer the system in accordance with the provisions of this article for the sole benefit of the then members, any beneficiaries receiving retirement benefit payments, and any future persons entitled to receive retirement benefit payments as beneficiaries of any such beneficiaries or members. The remaining assets of the system shall be allocated by the board in an equitable manner to provide a distribution for all designated persons in accordance with the provisions of the system, but based on years of credited service and average final monthly compensation as of the date of repeal and in the following order:

- (1) First, for the benefit of the then members to the extent of their individual accumulated contributions account. Members are hereby declared to have a property right in such accumulated contributions and shall have an unrestricted right to withdraw such accumulated contributions in the event of repeal of this article. If any assets remain, then
- (2) Second, for the benefit of the then beneficiaries and persons already designated by former members under one (1) of the retirement benefit payment options provided for in this article to the extent of the member's accrued benefit. If any assets remain, then

- (3) Third, for the benefit of those members who may elect not to withdraw their accumulated contributions and retain a right to a deferred retirement benefit and the individuals, if any, designated by such members under one (1) of the retirement benefit payment options, to the extent of the member’s accrued benefit. The allocation under this paragraph shall be on the basis of greatest length of credited service first.

Sec. 22-51(c). Allocation of additional funds by the city. In the event the assets at the date of repeal of the system are insufficient to provide all required distributions, the city shall contribute to the assets of the system, as and when required, any amount necessary to make up such deficiency.

Sec. 22-51(d). Payment of distributions. The allocation of assets of the system provided for in this section shall be carried out through the payment of distributions provided for in this section as they become due, or by the transfer of such assets to a successor retirement system replacing this system; provided, that all vested benefits provided in this section shall be fully maintained under any successor retirement system.

Sec. 22-51(e). Reversion of assets to the general fund of the city. Any assets remaining in the system after all liabilities prescribed by this section have been paid shall revert to the general fund of the city. (Ord. No. 10657, § 5, 4-28-09, eff. 7-1-09)

Sec. 22-52. Effective date.

This article first became effective on December 17, 1953. This revision shall be effective as of July 1, 2009, except as otherwise set forth herein. (Ord. No. 10657, § 5, 4-28-09, eff. 7-1-09)

Sec. 22-53. Reserved.

Editor’s note – Ord. No. 10657, § 6, adopted April 28, 2009, effective July 1, 2009, repealed § 22-53, which pertained to end of service incentive and derived from Ord. No. 10320, § 1, adopted Sept. 19, 2006; Ord. No. 10483, § 1, adopted Nov. 27, 2007; Ord. No. 10489, § 1, adopted Jan. 8, 2008.

Sec. 22-54. Reserved.

Editor’s note – Ord. No. 10657, § 6, adopted April 28, 2009, effective July 1, 2009, repealed § 22-54, which pertained to City of Tucson 401(a) Supplemental Retirement Plan and derived from Ord. No. 10322, § 1, adopted Sept. 26, 2006.

Sec. 22-55. Reserved.

Editor’s note – Ord. No. 10657, § 6, adopted April 28, 2009, effective July 1, 2009, repealed § 22-55, which pertained to purchase of permissive service credits and derived from Ord. No. 10483, § 4, adopted Nov. 27, 2007.

Secs. 22-56 – 22-77. Reserved.

ARTICLE IV. GROUP INSURANCE AND MEDICAL HEALTH PLANS*

Sec. 22-78. Short title.

This article may be cited as the Tucson Group Insurance and Medical Health Plan Ordinance. (1953 Code, ch. 20, § 60; Ord. No. 2208, § 1, 9-5-61; Ord. No. 4138, § 1, 2-19-74)

Sec. 22-79. Purpose.

It is hereby declared to be the purpose of this article to authorize and provide group insurance and health plan coverage for officers, employees and retirees of the city and for their dependents, which may be provided on a self-insured basis or through the purchase of fully insured products, as determined by the city and as set forth in the city's applicable health plan documents.

(1953 Code, ch. 20, § 61; Ord. No. 2208, § 1, 9-5-61; Ord. No. 4138, § 1, 2-19-74; Ord. No. 11628, § 1, 3-5-19)

Sec. 22-80. Coverage authorized; coverage optional.

The Mayor and Council may negotiate and execute any necessary agreement with a group insurance carrier or a self-insured health plan containing such terms and conditions as may be

* **Editor’s note** – Section I of Ord. No. 4138, enacted Feb. 19, 1974, amended art. IV, §§ 22-78 – 22-85, to include medical health benefits in the provisions of the article. Formerly art. IV was entitled “Group Insurance.”

required to provide group insurance and health plan coverage for officers, employees and retirees of the city and their dependents. All determinations regarding eligibility and coverage under all city health plan shall be made in accordance with the provisions of the applicable plan documents and agreements. The group insurance or health benefits offered by the city shall be made available to eligible individuals, as determined in accordance with the applicable plan documents, but coverage shall not be mandatory for any eligible individual (absent a change in applicable federal or state law). With regard to any health plan coverage made available to city retirees pursuant to this article, the continued availability of such services after a retiree becomes eligible for Federal Medicare will be determined in accordance with the applicable health plan documents.

(1953 Code, ch. 20, § 62; Ord. No. 2208, § 1, 9-5-61; Ord. No. 4138, § 1, 2-19-74; Ord. No. 11628, § 2, 3-5-19)

Sec. 22-81. Establishment of Self-Insured Health Benefits Trust.

Sec. 22-81.1. There is established the City of Tucson Self-Insured Health Benefits Trust. The mayor and council shall adopt a Trust Agreement that sets forth the specific terms of the Health Benefits Trust, with a stop-loss provision shall be incorporated into the Trust Agreement.

Sec. 22-81.2. Initially, the Trust shall provide funding for medical and pharmacy benefits made available to officers, employees and retirees of the city and their dependents. In the uniform discretion of the city, tax-preferred health care funding vehicles such as health savings accounts and health reimbursement accounts may be funded through the Trust in connection with the self-insured health plan coverage. The Trust may be expanded at future dates to include the self-funding of other employee welfare benefits as directed by the mayor and council and as may be authorized by the annual appropriation of funds by the mayor and council.

Sec. 22-81.3. The Trust shall be held separate from the general assets of the city and the Self-Insured Trust Fund established pursuant to Tucson Code Chapter 18. The Trust Agreement may be amended by the mayor and council at any time in their discretion. The board shall have the power and discretion to

recommend amendments to the Trust Agreement to the mayor and council, and shall be afforded a reasonable opportunity to review and comment on any proposed amendments before action is taken by the mayor and council.

Sec. 22-81.4. An annual audit of the Trust Fund shall be conducted by an external auditor designated by the board. A copy of the audit report shall be kept on file in the city's retirement and benefits office for a period of not less than five (5) years.

Sec. 22-81.5. The city manager shall designate a risk management consultant or an insurance administrator licensed pursuant to Title 20, Chapter 2, Article 3 of the Arizona Revised Statutes. Any insurance administrator or risk management consultant shall present evidence of licensure in accordance with state law to the board periodically and upon request.

Sec. 22-81.6. Any health benefits plan adopted by the city shall include terms and conditions of coverage and exclusions of coverage. Neither the implementation of the Self-Insured Health Benefits Trust, nor anything in a benefit plan document, the Trust Agreement or this Chapter 22, Article IV of the Tucson Code shall be interpreted to expand or increase the liability of the city for any health benefit claim. (Ord. No. 11628, § 3, 3-5-19)

Sec. 22-82. Board of trustees for Self-Insured Health Benefits Trust.

Sec. 22-82.1. The board of trustees shall include five (5) joint trustees, all of whom shall be at least twenty-one (21) years old, citizens of the United States of America and reside or work in the City of Tucson, Arizona. One trustee shall be an officer of the city designated by the city manager and no other trustee shall be an officer or employee of the City of Tucson. Except for the city officer appointed to the board of trustees by the city manager, the trustees shall be appointed by the mayor and council and shall have expertise in the field of finance, health or medical insurance, employment benefits, health care or actuarial science.

Sec. 22-82.2. Trustees shall serve four (4) year staggered terms. The city may, in the Trust Agreement, set forth special initial terms for the individual trustees, to ensure continuity of experience on the board. Any

trustee may be reappointed by his or her appointing authority upon expiration of his or her term, provided that no trustee other than the city officer trustee serves more than two (2) consecutive terms. The city officer who is appointed as a trustee shall not be subject to term limits.

Sec. 22-82.3. No person shall qualify as trustee until he or she has been bonded. The bond requirement may be satisfied by the blanket performance bond or other coverage provided by the city.

Sec. 22-82.4. Trustees are subject to removal and substitution by their appointing authority, with or without cause. Any trustee may, upon expiration of his or her term, continue to serve until a replacement is appointed by the appointing authority. Additional rules regarding the resignation, removal and replacement of trustees, and regarding board officers and procedures, shall be set forth in the Trust Agreement.

Sec. 22-82.5. Trustees shall not be entitled to receive compensation for their services as trustees, except that trustees shall be entitled to reimbursement for any reasonable out-of-pocket cost and expenditures made by the trustees in the performance of their duties as trustees. The employment compensation paid by the city to the city officer who is appointed to serve as a trustee shall not be considered compensation for trustee services.

Sec. 22-82.6. The board of trustees shall be responsible for, and shall have the power and authority necessary to, manage the investment of all trust assets in its discretion, and to provide advice and recommendations regarding management, funding and sufficiency of the trust.

Sec. 22-82.7. The Board of Trustees shall meet at least four (4) times per year or more frequently if determined necessary by the chairperson of the board, or as requested by the city manager.

Sec. 22-82.8. The board of trustees shall serve in an advisory capacity to the city, providing advice, recommendations and feedback to the city with regard to the design and cost of the health benefits program offered by the city on a self-insured basis, all in advance of final approval of such program by the mayor and council. The board shall not be responsible for the design of the health benefits program offered by the city to officers and employees of the city and their

dependents, nor shall the board be authorized to determine the premiums, rates, cost sharing and other financial aspects of the health benefits program.

Sec. 22-82.10. The board shall act in conformance with this Chapter 22, Article IV and the terms of the Trust Agreement.

Sec. 22-82.9. The board of trustees shall be exempt from all provisions of Chapter 10A, title XIII of the Tucson Code, with the exception of Section 10A-136 of the Tucson Code.
(Ord. No. 11628, § 4, 3-5-19)

Sec. 22-83. Manner of financing Self-Insured Health Benefits Trust.

The city manager shall annually recommend to the mayor and council the level of funding necessary to achieve and maintain adequate trust funding. The determination of the appropriate amount of funding for the trust shall be made annually and shall be solely within the discretion of the mayor and council. The trust shall be funded by allocation of funds from general fund and non-general fund departments. Once funds are deposited to the trust, said funds shall not be subject to the local government budgeting provisions of A.R.S. § 42-17101 et seq. All monies received by the city for the purpose of funding the self-insured health benefits plan shall be deposited into the trust fund, including all health care premiums, contributions, credits, rebates and refunds. Incentive payments and allowances that are made available by service providers and spent by the service providers on plan or trust related matters are not received by the city and are not required to be deposited to the trust.
(Ord. No. 11628, § 5, 3-5-19)

Sec. 22-84. City's premium costs; finance director to pay premiums.

The city's predetermined proportionate share of the premium or payment cost of the group insurance, self-insured health plan coverage provided for officers, employees, retirees and dependents and any tax-preferred health coverage funding vehicles included in the trust shall be paid from funds budgeted and authorized to be paid during each fiscal year that such group insurance policy or health plan shall be in effect. The finance director is hereby authorized and directed to pay, upon receipt of duly executed demands, to the group insurance carrier or the self-insured health

benefits such sums as may, from time to time, be due and payable as premiums or payments in accordance with the agreement and master policy. Such payments shall be made from the appropriate fund of the city. (Ord. No. 11628, § 6, 3-5-19)

Sec. 22-85. Duties of human resources director; employees' premium costs.

The human resources director is hereby charged with the duty of causing all officers, employees and retirees of the city who are eligible to participate in an employee health or welfare plan to be informed as to their benefits, rights and obligations under such health or welfare plan. The human resources director also is directed to deduct and withhold for each and every payroll period from the compensation of each such officer, employee and retiree (or from pension payments, in the case of a retiree) a sum equal to that individual's predetermined proportionate share of the premium or cost of the group insurance, self-insured health benefits plan provided to and elected by such officer, employee or retiree and any tax-preferred health coverage funding vehicles included in the trust. In appropriate cases, as determined by the human resources director, officers, employees and retirees may submit payment of his or her predetermined proportionate share of the premium or cost of any elected group insurance or self-insured health benefits plan via alternative means acceptable to the human resources director. The amount so withheld or collected shall be paid to the appropriate insurance company or to the Self-Insured Health Benefits Trust as provided by section 22-81; however, failure of the human resources director to withhold such sums shall not relieve such officer or employee from whose compensation such sums are not withheld from liability therefor. If more or less than the correct amount is deducted in any payroll period or collected from the officer, employee or retiree, proper adjustment or refund shall be made, without interest, in such manner and for such time as the human resources director shall prescribe. (Ord. No. 11628, § 7, 3-5-19)

Sec. 22-86. Expenditure of funds held in Self-Insured Health Benefits Trust.

Funds of the Self-Insured Health Benefits Trust shall be expended solely for payment of claims

incurred in accordance with any self-insured medical benefits plan, administration of any such plan and the Self-Insured Health Benefits Trust, overhead and indirect costs allocated by the city to the self-insured medical benefits plan and the trust, wellness programs benefitting city employees participating in the self-insured medical benefits plan and their dependents, and other purposes of the trust as approved by the trustees. The trustees shall adopt an annual budget for the trust, including the administrative costs of administering the trust and the plans, as well as benefit and reinsurance costs.

(Ord. No. 11628, § 8, 3-5-19)

Sec. 22-87. Effective date of Self-Insured Health Benefits Trust.

The trust shall be established effective as of July 1, 2019.

(Ord. No. 11628, § 9, 3-5-19)

Sec. 22-88. Medical insurance incentive allowance.

Notwithstanding other provisions of this article, any city officer or employee eligible for medical coverage under the city's medical plan may waive coverage under the city's medical plan and elect to receive a medical insurance incentive allowance of thirty-six dollars and ninety-two cents (\$36.92) per pay period provided that the city officer or employee is not currently covered by the city's retiree medical plan or as a dependent under another city employee or retiree's plan, and provided that the employee provides acceptable proof of non-city medical insurance to the Benefits division of Human Resources. This waiver does not extend to dental coverage or to other plans provided under section 125 of the Internal Revenue Code.

Any city officer or employee may request the incentive for waiver of medical coverage during the initial thirty-one (31) days of city employment, during the annual open enrollment period, or whenever there is a qualifying life event such as gaining coverage through a non-city medical plan, and provided that the city officer or employee is not currently covered by the city's medical plan.

The actual effective date for the incentive payment will depend upon the reason for the change. For newly hired employees, the effective date for start of the incentive will be the date a new hire employee normally becomes eligible for other city-paid benefits. For an open enrollment change, the effective date for start of the incentive will be the date that the new fiscal year's medical insurance premiums otherwise would take effect. For qualifying life events, the effective date for starting the incentive payment will be the first day the waiver of city medical coverage takes effect. Regardless of the reason, in order for the incentive to take effect on the dates prescribed above, proper documentation supporting the incentive for waiver must be received by the Benefits division of Human Resources before the incentive payment will begin. If documentation is received after the date incentive otherwise would have taken effect, the incentive will begin the pay period that the acceptable documentation is received, and retroactive payments of the incentive will not be made.

When an eligible employee resumes medical coverage on a city plan, the effective date for stopping

the incentive will be the last date prior to the date the city medical coverage begins.

Any city officer or employee waiving medical coverage under the city's plan must provide written proof of medical coverage from another non-City of Tucson source. Failure to provide periodic proof of medical coverage from another non-city source, satisfactory to, and at such frequency as determined by the city, will be grounds for the city to discontinue the incentive and recoup any incentive payments made for the time the employee did not maintain medical coverage. Proof of medical coverage from another non-city source must be provided within thirty (30) days of any request.

(Ord. No. 9857, §§ 1, 2, 6-2-03; Ord. No. 10059, § 1, 10-11-04; Ord. No. 10678, § 2, 6-9-09, eff. 7-1-09; Ord. No. 10991, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11364, § 3, 6-7-16, eff. 6-26-16; Ord. No. 11628, § 10, 3-5-19)

Editor's note – It should be noted that § 22-88 is effective retroactive to April 30, 2003.

Sec. 22-89. Reserved.

ARTICLE V. LEAVE BENEFIT PLAN*

Sec. 22-90. Providing for leave benefit plan.

Sec. 22-90(1). Vacation leave accrual. The city's leave benefit plan shall include vacation, sick, military leave and other paid and unpaid leave and time off work as hereafter set forth. The number of days and accrual rates for vacation, sick leave, and military leave, and conditions governing compensation for unused accrued leave paid to employees separating from city service are as follows, further provided that any provision for compensation of unused accrued sick leave is subject to retroactive and/or prospective change at any time.

- a. Permanent, full-time employees, including Public Safety, shall accrue paid vacation leave as follows:

<i>Continuous Years of Service</i>	<i>Per Pay Period</i>	<i>Per Year</i>
0 - 1 years of continuous service*:	4 hrs. 0 min.	13 days (104 hrs.)
Over 1 to 2 years of continuous service*:	4 hrs. 30 min.	14 days, 5 hrs. (117 hrs.)
Over 2 to 6 years of continuous service*:	5 hrs. 0 min.	16 days, 2 hrs. (130 hrs.)
Over 6 to 9 years of continuous service*:	6 hrs. 0 min.	19 days, 4 hrs. (156 hrs.)
Over 9 to 14 years of continuous service*:	6 hrs. 30 min.	21 days, 1 hrs. (169 hrs.)

*Continuous service excludes AWOL/LWOP

***Editor's note** – Ord. No. 9348, § 1, adopted Feb. 7, 2000, amended the title of art. V to read as herein set out.

D. *Option to pursue special fee determination.*

Where a development is of a type that does not closely fit within a particular category of development appearing on an adopted development impact fee schedule, or where a development has unique characteristics such that the actual burdens and costs associated with providing necessary public services to that development will differ substantially from that associated with other developments in a specified category of development, the city may require the applicant to provide the development impact fee administrator with an alternative development impact fee analysis. Based on a projection of the actual burdens and costs that will be associated with the development, the alternative development impact fee analysis may propose a unique fee for the development based on the application of an appropriate SU factor to the applicable plan-based cost per SU, or may propose that the development be covered under the development impact fee schedule governing a different and more analogous category of development. The development impact fee administrator shall review the alternative impact fee analysis and shall make a determination as to the development impact fee to be charged. The decision shall be appealable pursuant to section 23A-84. The development impact fee administrator may require the applicant to pay an administrative fee to cover the actual costs of reviewing the special fee determination application.

E. *Waivers.* Development impact fees shall not be waived except in accordance with the provisions set forth in section 23A-81(E)(1) and (2) below. When development impact fees are waived, the city shall transmit non-development impact fee funds to cover the waivers into the appropriate development impact fee account.

1. *Affordable housing:* Any waiver of development impact fees for non-profit affordable housing providers, including any waiver pursuant to an affordable housing program approved by the Mayor and Council under which the city provides a subsidy for eligible affordable housing projects, requires the prior approval of the Mayor and Council.

2. *Development agreements:* Through a development agreement between the city and the developer of a property, partial or full development impact fee waivers may be granted for projects that

provide a public benefit to the city and result in a net financial benefit to the city. Development agreements entered into under this section shall comply with the requirements of section 23A-83.

(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14; Ord. No. 11624, § 1, 2-20-19, eff. 3-22-19)

Sec. 23A-82. Development impact fee credits and credit agreements.

A. *Eligibility of capital facility.* All development impact fee credits must meet the following requirements:

1. One of the following is true:

a. The capital facility, or the financial contribution toward a capital facility that will be provided by the developer and for which a credit will be issued, must be identified in an adopted infrastructure improvements plan and fee report as a capital facility for which a development impact fee was assessed; or

b. The applicant must demonstrate to the satisfaction of the city that, given the class and type of improvement, the subject capital facility should have been included in the infrastructure improvements plan in lieu of a different capital facility that was included in the infrastructure improvements plan and for which a development impact fee was assessed. If the subject capital facility is determined to be eligible for a credit in this manner, the city shall amend the infrastructure improvements plan to:

i. include the subject replacement facility, and

ii. delete the capital facility that will be replaced.

2. Credits shall not be available for any infrastructure provided by a developer if the cost of the infrastructure will be repaid to the developer by the city through another agreement or mechanism. To the extent that the developer will be paid or reimbursed by the city for any contribution, payment, construction, or dedication from any city funding source including an agreement to reimburse the developer with future collected development impact fees pursuant to section 23A-83, any credits claimed by the developer shall be:

a. deducted from any amounts to be paid or reimbursed by the city, or

b. reduced by the amount of the payment or reimbursement.

B. *Eligibility of subject development.* To be eligible for a credit, the subject development must be located within the service area of the eligible capital facility.

C. *Calculation of credits.* Credits will be based on that portion of the costs for an eligible capital facility identified in the adopted infrastructure improvements plan for which a development fee was assessed pursuant to the fee report. If the gross impact fee for a particular category of necessary public service is adopted at an amount lower than the plan-based cost per SU, the amount of any credit shall be reduced in proportion to the difference between the plan-based cost per SU and the gross impact fee adopted. A credit shall not exceed the actual costs the applicant incurred in providing the eligible capital facility.

D. *Allocation of credits.* Before credits can be issued to a subject development (or portion of it), credits must be allocated to that development as follows:

1. The developer and the city must execute a credit agreement including all of the following:

a. The total amount of the credits resulting from provision of an eligible capital facility.

b. The estimated number of SUs to be served within the subject development.

c. The method by which the credit values will be distributed within the subject development.

2. It is the responsibility of the developer to request allocation of development impact fee credits through an application for a credit agreement (which may be part of a development agreement entered into pursuant to section 23A-83).

3. If a building permit is issued, and a development impact fee is paid prior to execution of a credit agreement for the subject development, no credits may be allocated retroactively to that permit or connection. Credits may be allocated to any remaining

permits for the subject development in accordance with this article.

4. If the entity that provides an eligible capital facility sells or relinquishes a development (or portion of it) that it owns or controls prior to execution of a credit agreement or development agreement, credits resulting from the eligible capital facility will only be allocated to the development if the entity legally assigns such rights and responsibilities to its successor(s) in interest for the subject development.

5. If multiple entities jointly provide an eligible capital facility, both entities must enter into a single credit agreement with the city, and any request for the allocation of credit within the subject development must be made jointly by the entities that provided the eligible capital facility.

6. Credits may only be reallocated from or within a subject development with the city's approval of an amendment to an executed credit agreement, subject to the following conditions:

a. The entity that executed the original agreement with the city, or its legal successor in interest and the entity that currently controls the subject development are parties to the request for reallocation.

b. The reallocation proposal does not change the value of any credits already issued for the subject development.

7. A credit agreement may authorize the allocation of credits to a non-contiguous parcel only if all of the following conditions are met:

a. The entity that executed the original agreement with the city or its legal successor in interest, the entity that currently controls the subject development, and the entity that controls the non-contiguous parcel are parties to the request for reallocation.

b. The reallocation proposal does not change the value of any credits already issued for the subject development.

c. The non-contiguous parcel is in the same service area as that served by the eligible capital facility.

5. For purposes of this section a certified audit shall mean any audit authenticated by one (1) or more of the qualified professionals conducting the audit pursuant to section 23A-86(B)(1).
(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14)

DIVISION 3. GENERAL PROVISIONS

Sec. 23A-87. Miscellaneous provisions.

A. *Other development requirements.* Nothing in this article shall restrict the city from requiring the construction of reasonable project improvements required to serve the development project, whether or not such improvements are of a type for which credits are available under section 23A-82 above.

B. *Record keeping.* The development impact fee administrator shall maintain accurate records of the development impact fees paid and any other matters that the city deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during normal business hours and with reasonable advance notice. Records pertaining to individual developments shall be maintained for a minimum of ten (10) years from the date the development impact fee is paid or credits are issued, or for three (3) years after the completion of the development, whichever is later.

C. *Amendment of development impact fee assessments.* A development impact fee may be amended after it has been assessed and paid where there is an error or mistake in the calculation of the fee or applicable credits, or where the actual cost of credits changes after the calculation of credits. Any amounts overpaid by an applicant shall be refunded by the development impact fee administrator to the applicant within thirty (30) days after the acceptance of the recalculated amount. Any amounts underpaid by the applicant shall be paid to the development impact fee administrator within thirty (30) days after the acceptance of the recalculated amount. In the case of an underpayment to the development impact fee administrator, the city may not issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the city are not paid within such thirty (30) day period, the city may also rescind any permits issued in reliance on the previous payment of such impact fee.
(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14)

Sec. 23A-88. Severability.

If a provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.
(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14)

Sec. 23A-89. Violation.

Furnishing false information on any matter relating to the administration of this article, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this article.
(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14)

DIVISION 4. DEVELOPMENT IMPACT FEE SCHEDULES AND EFFECTIVE DATES

Sec. 23A-90. Effective dates.

For the period from December 23, 2014 through and including December 31, 2019, development impact fees shall be assessed and paid at the "phase-in fee" rates represented in Table 1 of Section 23A-91. Commencing January 1, 2020, development impact fees shall be fully assessed and paid thereafter at the "full adopted fee" rates represented in Table 2 of Section 23A-91. Nothing in this Section or any other provision of this Article shall prohibit the Mayor and Council from moving the implementation date of the "full adopted fee" rates to an earlier or later effective date. Any such amendment to the implementation date shall not be deemed to be an increase to the development impact fees as provided in this Article, as Mayor and Council expressly adopt and approve the "full fee" rates represented in Table 2 of Section 23A-91.
(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14; Ord. No. 11375, § 1, 6-21-16; Ord. No. 11471, § 1, 6-20-17; Ord. No. 11565, § 1, 6-19-18; Ord. No. 11632, § 1, 3-19-19)

Sec. 23A-91. Fee schedule tables.

CITY OF TUCSON - Development Impact Fee Schedules

Note 1: For the residential land use categories (single-family residential, condo/townhomes, multi-family residential/apartments), fees shown are per residential unit. For the non-residential land use categories (retail, office, industrial), fees shown are per one thousand (1,000) square feet of building area.

Note 2: The tables do not include an administrative fee.

TABLE 1 - "PHASE-IN FEE" RATES*

*Assessed Beginning December 23, 2014 Through and Including December 31, 2019 Unless the Phase-In Period is Changed by the Mayor and Council Pursuant to Section 23A-90.

"PHASE-IN FEE" TABLES

RESIDENTIAL LAND USES*

*Fees are per residential unit

SINGLE-FAMILY RESIDENTIAL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$4,838	\$4,838	\$4,838	\$4,838	\$4,838
PARKS	\$1,935	\$1,935	\$1,826	\$1,935	\$218
POLICE	\$379	\$379	\$379	\$379	\$379
FIRE	\$303	\$303	\$303	\$303	\$303
TOTAL	\$7,455	\$7,455	\$7,346	\$7,455	\$5,738

CONDO/TOWNHOMES

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$3,978	\$3,978	\$3,978	\$3,978	\$3,978
PARKS	\$1,591	\$1,591	\$1,239	\$1,591	\$148
POLICE	\$257	\$257	\$257	\$257	\$257
FIRE	\$206	\$206	\$206	\$206	\$206
TOTAL	\$6,032	\$6,032	\$5,680	\$6,032	\$4,589

MULTI-FAMILY/APARTMENTS

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$2,580	\$2,580	\$2,580	\$2,580	\$2,580
PARKS	\$1,032	\$1,032	\$1,032	\$1,032	\$132
POLICE	\$230	\$230	\$230	\$230	\$230
FIRE	\$183	\$183	\$183	\$183	\$183
TOTAL	\$4,025	\$4,025	\$4,025	\$4,025	\$3,125

NON-RESIDENTIAL LAND USES**

** Fees are per 1000 square feet of building area

RETAIL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$4,282	\$4,282	\$4,282	\$4,282	\$4,282
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$4,798	\$4,811	\$4,783	\$4,796	\$4,763

OFFICE

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$3,797	\$3,797	\$3,797	\$3,797	\$3,797
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$4,313	\$4,326	\$4,298	\$4,311	\$4,278

INDUSTRIAL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$806	\$806	\$806	\$806	\$806
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$1,322	\$1,335	\$1,307	\$1,320	\$1,287

TABLE 2 - "FULL ADOPTED FEE" RATES*

*Assessed Commencing January 1, 2020, and Thereafter Unless the Phase-In Period is Changed by the Mayor and Council Pursuant to Section 23A-90.

"FULL ADOPTED FEE" TABLES

RESIDENTIAL LAND USES*

*Fees are per residential unit

SINGLE-FAMILY RESIDENTIAL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$5,691	\$5,691	\$5,691	\$5,691	\$5,691
PARKS	\$2,945	\$3,953	\$1,826	\$2,775	\$218
POLICE	\$379	\$379	\$379	\$379	\$379
FIRE	\$303	\$303	\$303	\$303	\$303
TOTAL	\$9,318	\$10,326	\$8,199	\$9,148	\$6,591

CONDOS/TOWNHOMES

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$4,059	\$4,059	\$4,059	\$4,059	\$4,059
PARKS	\$1,998	\$2,683	\$1,239	\$1,883	\$148
POLICE	\$257	\$257	\$257	\$257	\$257
FIRE	\$206	\$206	\$206	\$206	\$206
TOTAL	\$6,520	\$7,205	\$5,761	\$6,405	\$4,670

MULTI-FAMILY/APARTMENTS

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$3,457	\$3,457	\$3,457	\$3,457	\$3,457
PARKS	\$1,788	\$2,400	\$1,108	\$1,685	\$132
POLICE	\$230	\$230	\$230	\$230	\$230
FIRE	\$183	\$183	\$183	\$183	\$183
TOTAL	\$5,658	\$6,270	\$4,978	\$5,555	\$4,002

NON-RESIDENTIAL LAND USES**

** Fees are per 1000 square feet of building area

RETAIL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$6,507	\$6,507	\$6,507	\$6,507	\$6,507
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$7,023	\$7,036	\$7,008	\$7,021	\$6,988

OFFICE

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$3,797	\$3,797	\$3,797	\$3,797	\$3,797
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$4,313	\$4,326	\$4,298	\$4,311	\$4,278

INDUSTRIAL

	<i>Central</i>	<i>West</i>	<i>East</i>	<i>Southeast</i>	<i>Southlands</i>
STREETS	\$806	\$806	\$806	\$806	\$806
PARKS	\$38	\$51	\$23	\$36	\$3
POLICE	\$321	\$321	\$321	\$321	\$321
FIRE	\$157	\$157	\$157	\$157	\$157
TOTAL	\$1,322	\$1,335	\$1,307	\$1,320	\$1,287

(Ord. No. 11203, § 1, 10-9-14, eff. 12-23-14; Ord. No. 11375, § 1, 6-21-16; Ord. No. 11471, § 1, 6-20-17; Ord. No. 11565, § 1, 6-19-18; Ord. No. 11632, § 1, 3-19-19)

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.

(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. (RESERVED) ‡

***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.

‡**Editor’s note** – Division 2, "Listing of Words and Terms," of Article IV, Definitions, is repealed by Ord. No. 11203, effective December 23, 2014.

CODE COMPARATIVE TABLE – SUBSEQUENT ORDINANCES

Ordinance Number	Date	Section	Disposition
11464 (Contd.)			10-53.3 10-53.4 10-53.5 10-53.7
11469	6-20-17 (eff. 7-1-17)	1	22-90
11471	6-20-17	1	23A-90, 23A-91
11472	6-20-17 (eff. 9-1-17)	1	19-1, 19-66
11478	8-8-17 (eff. 9-7-17)	1	6-34
11479	8-8-17	1	19-410, 19-415–19-417, 19-425, 19-427, 19-430, 19-435, 19-445, 19-450, 19-455, 19-460, 19-470, 19-475, 19-480, 19-610
11483	8-8-17 (eff. 9-1-17)	1	22-90
11485	8-8-17	1	Ch. 19, Art. II 21-51
11488	9-6-17	1 2	Rpld 2-142 Ch. 2, Art. IX, title
11492	9-19-17 (eff. 10-1-17)	1	19-53
11496	10-24-17	3 4	Rpld Ch. 10A, Art. X, XX Added Ch. 10A, Art. XX
11498	10-24-17	1	20-255
11508	12-5-17	2 (eff. 2-1-18) 9 (eff. 2-1-18) 10 (eff. 1-4-18) 11 (eff. 1-4-18)	Rpld Ch. 3 Ch. 2 (note) 10A-134 11B-3
11509	12-19-17	2	Rpld 10A-200–10A-204
11511	12-19-17	1	10-31
11512	12-19-17	1 2	Rpld 9-1–9-3 Added 9-1–9-3
11513	12-19-17	1	20-210
11515	12-19-17	1	22-37
11518	1-23-18 (eff. 2-1-18)	1 2	19-410, 19-415–19-417, 19-425, 19-427, 19-430, 19-435, 19-445, 19-450, 19-455, 19-460, 19-470, 19-475, 19-480, 19-610 Added Ch. 21, Art. V
11519	1-23-18	1	15-32.4
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11528	2-21-18	1, 2	20-141 (note)
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11534	3-20-18	1	Added 22-97
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