# City Code

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# City Code

## City of Bisbee
## Arizona

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# CHAPTER 1 GENERAL

## ARTICLE 1.1 HOW CODE DESIGNATED AND CITED

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

## ARTICLE 1.2 CONSTRUCTION OF ORDINANCES

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

## ARTICLE 1.3 DEFINITIONS

### 1.3.1 General Rule Regarding Definitions

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

### 1.3.2 Acts by Agents

When this code or an ordinance requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

### 1.3.3 City

Whenever the word "City" is used, it shall mean the City of Bisbee, Arizona.

### 1.3.4 Code

The words "the Code" or "this Code" shall mean "The Code of the City of Bisbee, Arizona," unless the context indicates otherwise.

### 1.3.5. Council
**(O-09-02)**

Whenever the word "Council" is used, it shall be construed to mean the “Council” of the City of Bisbee, Arizona, as described in Article II of the Bisbee City Charter.

### 1.3.6 Day

A "day" is the period of time between any midnight and the midnight following.

### 1.3.7 Daytime, Nighttime

"Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise

### 1.3.8 Department, Board, Commission, Office, Officer or Employee

Whenever any "department, board, commission, office, officer or employee" is referred to, it shall mean a department, board, commission, office, officer or employee of the City unless the context clearly indicates otherwise.

**1.3.9 Gender; Singular and Plural**
Words of the masculine gender include the feminine; words in the singular number include the plural and words in the plural number include the singular.

**1.3.10 In the City**
The words "in the City" or "within the City" shall mean and include all territory over which the City now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

**1.3.11 Joint Authority**
All words purporting to give a joint authority to three or more City officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.

**1.3.12 Month**
The word "month" shall mean a calendar month.

**1.3.13 Oath**
"Oath" includes affirmation or declaration.

**1.3.14 Or, And**
"Or" may be read "and," and "and" may be read "or," if the sense requires it.

**1.3.15 Owner**
The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

**1.3.16 Person**
The word "person" shall extend and be applied to firms, corporations or voluntary associations, as well as to individuals, unless plainly inapplicable.

**1.3.17 Personal Property**
"Personal property" includes every species of property, except real property as defined in this article.

**1.3.18 Preceding, Following**
The words "preceding" and "following" mean next before and next after, respectively.

**1.3.19 Property**
The word "property" shall include real and personal property.

**1.3.20 Real Property**
"Real property" shall include lands, tenements and hereditaments.

**1.3.21 Shall, May**
"Shall" is mandatory and "may" is permissive.

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

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

**1.3.24 State**
The words "the State" shall be construed to mean the State of Arizona.

**1.3.25 Streets**
The word "streets" includes alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.

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

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

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

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

**1.3.30 Week**
A "week" consists of seven consecutive days.

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

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

### 1.3.33 Ordinances and Resolutions

A. An "ordinance" is a local law of the municipal corporation, duly enacted by the proper authorities, prescribing general, uniform and permanent rules of conduct, relating to the corporate affairs of the municipality. It constitutes a by-law, a local law, a regulation of a general, permanent nature or a legislative act of the municipal body.

B. A "resolution" is an act of a temporary character, ordinarily sufficient for council action on ministerial, administrative or executive matters, and does not rise to the dignity of an ordinance. It denotes something less solemn or formal than an ordinance.

## ARTICLE 1.4 REFERENCE TO CHAPTERS, ARTICLES AND SECTIONS: CONFLICTING PROVISIONS

### 1.4.1 Additional Rules of Construction

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

### 1.4.2 References to this Code

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

### 1.4.3 Conflicting Provisions – Different Chapters

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

### 1.4.4 Conflicting Provisions – Same Chapter

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

## ARTICLE 1.5 HEADINGS

Headings of the several sections of this Code are intended as a convenience to indicate the contents of the section and shall not be deemed as any part of the section, nor do they constitute part of the law.

## ARTICLE 1.6 EFFECT OF REPEAL

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

## ARTICLE 1.7 SEVERABILITY OF PARTS OF CODE

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

## ARTICLE 1.8 PENALTY
**(O-05-19)**

A. Any person found guilty of violating any provisions of this Code, except as otherwise provided in this Code, shall be guilty of a Class 1 misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed two thousand, five hundred dollars, plus statutory assessments, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein above described.

B. Any violation of or failure or refusal to do or perform any act required by Chapter 12 of this Code constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of Title 28, Chapter 5, Articles 3 and 4, Arizona Revised Statutes and amendments thereto.

C. Notwithstanding any other provision of this Code, a violation of any provision of this Code or of any proscription, requirement or duty set forth in any other City ordinance is hereby declared to also constitute a civil code infraction which may be adjudicated and enforced by the Magistrate Court of the City of Bisbee. This civil procedure is an alternative remedy that may be used in lieu of the other remedies provided for in this section or elsewhere in this Code. Use of the civil enforcement alternative is not mandatory and shall be at the discretion of the City officials undertaking the enforcement action, as they may deem to be appropriate for the enforcement of these laws. If an alleged violator is served with notice of a civil infraction pursuant to this authority, he or she shall not be subject to a criminal charge for the same violation.

D. Unless otherwise provided in this Code, when a civil violation or civil infraction has been adjudicated, the following penalties shall be imposed:
   1. For the first violation, a civil fine of not less than fifty dollars ($50.00) and not more than one hundred dollars ($100.00) , plus any applicable court fees.
   2. For the second violation of the same offense, a civil fine of not less than one hundred dollars ($100.00) and not more than two hundred fifty dollars ($250.00), plus any applicable court fees.
   3. For the third violation of the same offense, or any other subsequent violation, a civil fine of not less than five hundred dollars ($500.00) and not more than seven hundred fifty dollars ($750.00), plus any applicable court fee.

Any condition caused or permitted to exist in violation of any of the provisions of this Code or of any other City ordinance shall be deemed to be a public nuisance. In addition to the either the criminal or civil sanctions stated above, the City may include with any such action a cause of action to abate or enjoin any such condition, pursuant to a civil action in the Magistrate Court, or any other court of competent jurisdiction. Each day that any such unlawful condition continues shall be regarded as a new and separate offense. The Magistrate or other judicial officer shall, after making a finding of legal responsibility, order the abatement or injunction of any such conditions that constitute a violation or infraction of the applicable City law.

Any failure to comply with any final abatement or injunctive order imposed through this authority, within a thirty-day period of the date of such order, shall constitute a separate offense which may be prosecuted or enforced as any other violation of this Code.

## ARTICLE 1.9 REPEAL OF EXISTING ORDINANCES

### 1.9.1 Effective Date of Repeal

All ordinances of the City except those specially exempted in this article, now in force and effect are hereby repealed effective at twelve o'clock noon on the twenty first day of July, 1987 but all rights, duties and

obligations created by said ordinances shall continue and exist in all respects as if this code had not been adopted and enacted.

**1.9.2 Ordinances Exempt from Repeal**

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

A. Any special ordinance or ordinances regarding franchises, annexations, dedications, subdivisions or zoning.
B. Any ordinance making an appropriation.
C. Any ordinance affecting any bond issue or by which any bond issue may have been authorized.
D. The running of the statute of limitations in force at the time this Code becomes effective.
E. The continued existence and operation of any department, agency, commission or office heretofore legally established or held.
F. Any bond of any public officer.
G. Any taxes, fees, assessments or other charges incurred or imposed
H. Any ordinances authorizing, ratifying, confirming, approving or accepting any compact or contract with any other municipality, the State of Arizona or any county or subdivision thereof, or with the United States or any agency or instrumentality thereof.

**ARTICLE 1.10 EFFECTIVE DATE OF CODE**

Each and every section of this Code as herein contained and hereby enacted shall take effect and be in force on and after twelve o'clock noon on the twenty first day of July, 1987 except that where a later effective date is provided it shall prevail.

**CHAPTER 2 MAYOR AND COUNCIL**

**ARTICLE 2.1 MAYOR**

**2.1.1 Office of Mayor**
**(O-09-02)**

A. The Mayor shall be directly elected by the qualified electors of the City for a term of two years.
B. No person shall be Mayor unless at the time of election, he or she is eighteen years old, a qualified elector residing within the City at the time of election and a resident therein for one year immediately preceding the election.

**2.1.2 Mayor Pro Tempore**
**(O-09-02)**

The Mayor shall designate a member of the Council as Mayor Pro Tempore who shall serve in such capacity at the pleasure of the Mayor. The Mayor Pro Tempore shall perform the duties of the Mayor during his or her absence or disability.

**2.1.3 Acting Mayor**

In the absence or disability of both the Mayor and Mayor Pro Tempore, the Council may designate another of its members to serve as Acting Mayor who shall have all the powers, duties and responsibilities of the Mayor during such absence or disability.

**2.1.4 Powers and Duties of the Mayor**
**(O-09-02)**

The powers and duties of the Mayor shall be as specified in the City Charter and shall include the following:

A. He or she shall be recognized as the head of the City Government for all ceremonial purposes and by the Governor for purposes of martial law and shall have executive, but no regular administrative duties.
B. He or she shall be the chairman of the Council and preside over its meetings. He or she may make and second motions and shall have a voice and vote in all its proceedings.
C. He or she shall execute and authenticate by signature such instruments as the Council or any statutes, ordinances or this Code shall require.
D. He or she shall make such recommendations and suggestions to the Council as he or she may consider proper.
E. He or she may, by proclamation, declare a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing or any other natural or man-made calamity or disaster or in the event of the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the City. After declaration of such emergency, the Mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the City, including but not limited to:
    1. Imposition of a curfew in all or any portion of the City.
    2. Ordering the closing of any business.
    3. Closing to public access any public building, street or other public place.
    4. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.
F. He or she shall perform such other duties required by State Statute, City Charter and this Code.

**2.1.5 Failure to Sign Documents**
**(O-09-02)**

If the Mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring his or her signature for five days consecutively, then a majority of the members of the Council may, at any regular or special meeting, authorize the Mayor Pro Tem or, in his or her absence, an Acting Mayor to sign such ordinance, resolution, contract, warrant, demand or other document or instrument which when so signed shall have the same force and effect as if signed by the Mayor.

## ARTICLE 2.2 COUNCIL

**2.2.1 Office**
**(O-09-02)**

A. The Council shall consist of the Mayor and six Council Members. Each Council Member shall serve a term of four years and shall continue in office until assumption of duties of office by his or her duly elected successor.
B. No person shall be a Council Member unless, at the time of his or her election, he or she is eighteen years old, a qualified elector, residing within the City at the time of his or her election and a resident in the City and the Ward he or she is representing for one year immediately preceding the election.

**2.2.2 Duties**
**(O-09-02)**

A. The Council may prescribe rules for the governing of its proceedings.
B. Council duties and powers shall be as specified in the Bisbee City Charter and as further defined by this Code.

C. Whenever determined to be in the public interest, the Council may by ordinance, abandon certain streets, easements and properties. Whenever such abandonment is at the request of any party, an advance filing fee shall be charged to that party, for the processing of said request. Said fee shall be set by ordinance of the Mayor and Council.

**2.2.3 Vacancies**
**(O-09-02)**

A. The Council shall fill by appointment for the unexpired term, in the manner specified in the City Charter, any vacancy that may occur on the Council for whatever reason.
B. If a Council Member moves to another ward during his or her term of service, he or she will vacate office.

**2.2.4 Compensation**
**(O-04-05; R-04-23; O-90-06; O-09-02)**

The annual salary of the Mayor shall be $4,800 or $400 monthly. The annual salary of members of the Council shall be $2,400 or $200 monthly. The compensation of the Mayor and members of the Council may be fixed from time to time by ordinance, subject to ratification of the electorate at the next general or special election, including a primary election.

**2.2.5 Oath of Office**
**(O-09-02)**

Immediately prior to assumption of the duties of office, the Mayor and each member of the Council shall, in public, take and subscribe to the oath of office. These officers shall also take and subscribe to the oath of office at least one day before the commencement of the term of office, as required by State law.

**2.2.6 Bond**
**(O-09-02)**

The City shall obtain a blanket bond, by means of the fidelity insurance available through the municipal risk pool or otherwise, to insure the faithful performance of official duties by the Mayor, Council Members and other officials of the City, payable to the State and, to and for the use and benefit of the City or any person who may be injured or aggrieved by the wrongful act or default of any such officer in his or her official capacity. A person so injured or aggrieved may bring an action to recover on this blanket bond in his or her own name without an assignment. The premiums for such blanket bonds shall be paid by the City.

**2.2.7 Financial Disclosure Statement**

The Mayor and each Council Member shall file a Financial Disclosure Statement in a form and with such information as required by State law.

**ARTICLE 2.3 WARDS**
**(O-04-03; O-02-03; O-91-38; O-89-21)**

There are hereby established within the City three Wards which shall each be represented by two (2) Council Members to be elected from said wards by the electors residing therein pursuant to law. The boundaries of said Wards are hereby established as follows:

A. Ward 1 shall include each of the following areas: all of the area of the original City of Bisbee, now commonly known as Old Bisbee, extending northerly and westerly from the intersection of Highway 80 and Naco Road and extending to the existing corporate boundaries of the City in this area; the corporate

boundaries that extend on either side of Highway 80 from Old Bisbee to Lowell and the intersection of the north end of Erie Street; all of that portion of the community known as Lowell, located on the south and west sides of Highways 80 and 92, from the north end of Erie Street to the point where Highway 92 enters the Traffic Circle from the southwest; all of that portion of the City known as Lowell and Saginaw which lies to the north of Highway 80, including the annexed area of the County Jail, to the easterly corporate boundaries of the City of Bisbee lying north of Highway 80. Ward 1 shall also include that portion of the City known as Galena lying west of the center line of Highway 92, extending from the Traffic Circle to the intersection of School Terrace Road, and the westerly half of the Highway 92 right-of-way for this same distance, connecting this area with the Traffic Circle in Lowell.

B. Ward 2 shall include each of the following areas: all of those areas known as Warren and Bakerville, extending from the intersection of Bisbee Road and the Traffic Circle at Highways 80 and 92 in a southeasterly direction, to the corporate limits of the City, including both the easterly and westerly sides of Bisbee Road; and the area extending to the corporate boundaries at the southerly end of Arizona Street to the south, and including all of this area of the City lying easterly and westerly of Arizona Street. Ward 2 shall also include all of that portion of Galena lying east of the center line of Highway 92, extending from the Traffic Circle to the intersection of School Terrace Road, and the easterly half of the Highway 92 right-of-way for this same distance, connecting this area with Bisbee Road and Bakerville.

C. Ward 3 shall include each of the following areas: all of those areas known as San Jose, Don Luis, Tintown and Briggs, including all of the area within the corporate limits of the City of Bisbee lying southwesterly of the intersection of School Terrace Road and Highway 92 and extending to the corporate boundaries in this area.

D. A map depicting these respective Ward boundaries is hereby approved and shall be maintained as a public record within the Office of the City Clerk.

## ARTICLE 2.4 INITIATIVE AND REFERENDUM (CHARTER ARTICLE X) (O-90-34)

### 2.4.1 Power Reserved; Time of Election

There is reserved to the qualified electors of the City, the power of the initiative and the referendum as prescribed by the State Constitution. Any initiative or referendum matter may be voted on at the next ensuing Primary or General Election or at a Special Election called by the City Council for such purpose.

### 2.4.2 Number of Signatures

A. Fifteen percent of the qualified electors of the City of Bisbee may propose measures by initiative. The total number of registered voters qualified to vote at the last municipal election, whether regular or special, immediately preceding the date upon which any initiative petition is filed shall be the basis upon which the number of qualified electors of the City required to file an initiative petition shall be computed.

B. Ten percent of the electors may propose a referendum on legislation enacted within the City of Bisbee. The whole number of votes cast at the City election at which a Mayor and Council members were chosen last preceding the filing of a referendum petition against an ordinance, franchise or resolution shall be the basis on which the number of electors of the City required to file a referendum petition shall be computed.

### 2.4.3 Time of Filing

A. Initiative petitions shall be filed at least one hundred twenty days prior to the election at which they are to be voted upon.

B. Referendum petitions shall be filed within thirty days of the adoption of the ordinance or resolution to be referred. If the City Clerk is unable to provide petitioners with a copy of the ordinance or resolution at the time of application for an official number or on the same business day of the application, the thirty day period shall be calculated from the date such ordinance or resolution is available.

### 2.4.4 Sample Ballots and Publicity Pamphlets (O-92-28; O-09-02; O-10-06)

The following procedures relating to sample ballots and publicity pamphlets are hereby adopted for conducting elections at which an initiative or referendum is to be voted upon:

A. A Publicity Pamphlet shall be mailed by the City Clerk to each household within the City in which a registered voter resides, in the manner required by State law, before the earliest date for receipt by registered voters of any requested early ballot.

B. The pamphlet shall contain the proposition as it will appear on the ballot together with a summary of each proposition. Each summary shall be followed by any arguments supporting the proposition followed by any arguments opposing the proposition. Arguments submitted by the person filing the initiative or referendum shall appear first. The remaining arguments shall be placed in the order in which they were filed.

C. Arguments supporting and opposing propositions appearing on the ballot shall be filed with the Office of the City Clerk by 5:00 p.m. not less than sixty days prior to the election at which the propositions are to be voted upon. If time does not permit compliance with the sixty day deadline, the City Clerk may establish a separate deadline for filing referendum ballot arguments. Arguments supporting or opposing propositions appearing on the ballot shall meet the following requirements:

   1. Arguments must relate to the propositions proposed by initiative or referred by referendum which will appear on the ballot.
   2. Arguments must identify the proposition to which they refer and indicate whether the argument is in support of or opposition to the proposition.
   3. Arguments may not exceed three hundred words in length.
   4. Arguments must contain the original signature of each person sponsoring it. Arguments submitted by organizations shall be signed by two executive officers of the organization, or if the argument is sponsored by a political committee it must be signed by the committee's chairman or Treasurer. All persons signing documents shall indicate their residence or post office address and a telephone number, which information shall not appear in the Publicity Pamphlet.
   5. No person or organization shall submit more than one argument for each proposition to be voted upon.
   6. Each argument shall be accompanied by a deposit in the amount of $100.00 to offset proportional costs of printing. This requirement shall not be waived on any account.

D. The City Clerk shall mail a sample ballot to each household in the City containing a registered voter, in the time and the manner required by State law.

## ARTICLE 2.5 COUNCIL PROCEDURE

### 2.5.1 Regular Meetings (O-08-13)

The Council shall hold regular meetings on the first and third Tuesday of each month at seven p.m., provided that when the day fixed for any regular meeting of the Council falls upon a day designated by law as a legal holiday, such meeting shall be held at the same hour on the next succeeding weekday that is not a holiday. If the Mayor or any two members of the Council will not be available on a regular meeting date, the Mayor may

reschedule a regular meeting for another date when all members will be available. Any rescheduled meeting date shall be within seven days of the date of the regular meeting. The City Clerk shall provide not less than forty-eight hours written notice of any such rescheduled date to all Council Members and shall post public notice of this rescheduled meeting in the manner required for all public meetings of the Mayor and Council. All regular meetings of the Council shall be held in the City Hall of the City of Bisbee.

**2.5.2 Special Meetings**

The Mayor, or a majority of the Council, may convene the Council at any time by notifying the members of the date, hour and purpose of such special meeting. Notice of such meeting shall be made pursuant to State law.

**2.5.3 Agenda**
**(O-91-29; O-09-02)**

Reports, communications, ordinances, resolutions, and other matters to be submitted for consideration by the City Council shall be delivered to the City Clerk prior to 12:00 p.m. on the Wednesday of the week prior to the City Council meeting at which such items are to be considered. The City Manager shall list the matters according to the order of business and provide such listing to the Mayor for approval prior to the preparation of agenda packets for members of the Council and distribution to department heads and to the public. However, any two members of the Council, by written request specifying the agenda item, may place any item on the agenda with or without the approval of the Mayor or City Manager. No items shall be submitted to the Council except through the City Manager. However, any member of the public may submit items to the Council during the Council meeting at the time provided in the order of business, for consideration at future meetings.

**2.5.4 Presiding Officer Duties**
**(0-91-29)**

The Mayor shall be the presiding officer of the Council. In the absence of the Mayor, the Mayor Pro Tempore shall act as presiding officer. In the absence of the Mayor or Mayor Pro, the City Clerk shall call the Council to order, whereupon a temporary chairperson shall be elected by the Council members present. When the Mayor or Mayor Pro Tempore arrives, the temporary chairperson shall relinquish the Chair when the business immediately before the Council is finished.

The presiding officer shall preserve strict order and decorum during regular and special meetings of the Council. He or she shall state every question coming before the Council, announce the decision of the Council on all subjects and decide all questions of order. Any decision or ruling of the presiding officer may be appealed to the Council as a whole by request of any Council member. The presiding officer shall call for roll call to see if the Chair shall be upheld. If the roll call loses, the presiding officer is reversed.

**2.5.5 Order of Business**
**(O-91-29)**

A. The order of business at all regular meetings of the Council shall ordinarily be as follows:
    1. Call to Order
    2. Roll Call
    3. Invocation
    4. Pledge of Allegiance
    5. Announcements
    6. Call to the Public

7. Accounts Payable
8. Consent Agenda
9. Public Hearings
10. Action Items
11. City Manager's Reports
12. Adjournment

B. Council may, by majority vote, consider items out of sequence from the printed agenda. Items placed on the consent agenda are considered routine and may be adopted by one motion. There will be no discussion on separate items unless an item is requested for removal from the consent agenda by a member of the Council. Following removal of an item, the balance of the items remaining on the consent agenda will be considered for approval in one motion. All votes on the consent agenda shall be by roll call vote. Items removed from the consent agenda shall be considered in the order of their original appearance on the consent agenda immediately following approval of the consent agenda.

C. Procedures for Public Hearings:
   1. Staff report explaining the matter before the Council, procedure and recommendations of committees or boards (Limited to 5 minutes).
   2. Brief opening statement by the proponent or initiator explaining and advocating approval of the item (Maximum of 5 minutes).
   3. Testimony by members of the public in support of the item (Maximum of 15 minutes total for all proponents).
   4. Testimony by members of the public in opposition to the item (Maximum of 15 minutes total for all opponents).
   5. Presentation of written communications filed with the City Clerk.
   6. Close of Public Hearing.
   7. Discussion by Council members.
   8. Motion and second.
   9. Further discussion on the motion, if any.
   10. Vote.

D. If the City Council wishes to adjourn to a later time, the Council must pass a motion specifying the date and time to which the regular meeting is being adjourned. A motion to adjourn shall always be in order except during roll call. When a motion is made and seconded to adjourn, any member of the Council may state why it is improper for the Council to adjourn. (Such statement, however, shall not be debatable and shall not take more than 2 minutes.)

**2.5.6 Rules of Debate**
**(O-91-29)**

A. The presiding officer may debate and vote, etc. The Mayor or Council member that is presiding may move, second, and debate from the Chair, subject only to such limitations of debate as are imposed on all members. The presiding officer shall not be deprived of any of the rights and privileges of a Council member.

B. Getting the floor for improper references is to be avoided. Every member desiring to speak shall address the presiding officer, and upon recognition by the same, shall confine himself/herself to the question under debate, avoiding all indecorous language and reference to personalities.

C. Interruptions - A member, once recognized, shall not be interrupted when speaking unless it is to call him/her to order. If a member, while speaking, is called to order, he/she shall cease speaking until the question of order is determined and if, in order, shall be permitted to proceed.
D. Personal privilege - The right of a Council member to address the Council on a question of personal privilege shall be limited to cases in which his/her integrity, character or motives are questioned, or where the welfare of the Council is concerned. A Council member may interrupt another speaker if the presiding officer recognizes the privilege.

**2.5.7 Addressing the Council**
**(O-91-29)**

In order for the presiding officer to determine how many individuals wish to address the Council, a speaker sign-up sheet is provided for each meeting. Any person wishing to address the Council during such meeting shall be requested to sign in indicating the topic they wish to address.

A person wishing to address the Council shall first secure the permission of the presiding officer to do so. The Council may limit the length of time that a person is permitted to address the Council.

A. Written petitions - Interested parties or their authorized representative may address the Council by written petition in regard to matters under discussion.
B. Oral communications - During the proper time on the agenda, taxpayers or residents of the City, or their authorized representatives, may address the Council on any matter concerning the City's business or any matter over which the Council has control. (Oral presentations shall not be repetitious and shall be confined to 3 minutes maximum duration.)
C. After a motion is made - No person shall address the Council after a motion is made without first securing the permission of the Council to do so.

**2.5.8 Decorum**
**(O-91-29)**

A. BY COUNCIL MEMBERS - While the Council is in session, the members must preserve order and decorum. A member shall neither, by conversation, or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to obey the orders of the Council or its presiding officer, except as otherwise herein provided.
B. BY PERSONS - Any person making personal, impertinent or slanderous remarks, or who becomes boisterous while addressing the Council, or who interferes with the order of business before the Council, and who fails, upon the request of the presiding officer to cease such activity, shall be barred from further audience before the Council, unless permission to continue is granted by a majority vote of the Council.

**2.5.9 Enforcement of Decorum**
**(O-91-29)**

The presiding officer may appoint a sergeant-at-arms at the Council meetings. He/she shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the Council meeting. Upon instructions of the presiding officer, it shall be the duty of the sergeant-at-arms to remove any person who violates the order and decorum of the meeting.

**2.5.10 Voting**

A. PRECEDENCE OF MOTIONS - When a motion is before the Council, no further motion shall be entertained except:

1. to adjourn
2. to fix hour of adjournment
3. to lay on the table
4. for the previous question
5. to postpone to a certain day
6. to refer
7. to amend
8. to postpone indefinitely, or
9. to divide the question

These motions shall have precedence in the order indicated.

B. AMENDMENTS - No more than one amendment to an amendment is permitted. When an amendment is before the Council, the Council shall vote first on the amendment. After the amendment has passed or failed, the Council shall vote on the main motion.

C. MOTION TO TABLE - The purpose of this motion is to temporarily by-pass the subject. A motion to lay on the table is undebatable and shall preclude all amendments of debate of the subject under consideration. If the motion prevails, the matter may be "taken from the table" at any time prior to the end of the next regular meeting.

D. MOTION FOR PREVIOUS QUESTION - The purpose of this motion is to close debate on the main motion. It is undebatable, and no further discussion shall be permitted until the motion is acted upon. If the motion fails, debate is reopened; if motion passes, then the Council shall vote on the main motion.

E. DIVISION OF QUESTION - If the question contains two or more divisible propositions, the Mayor may, or upon successful motion of the Council, shall divide the same.

F. WITHDRAWAL OF MOTION - When a motion is made and seconded, it shall be so stated by the Chair before debate commences. A motion may not be withdrawn by the mover without the consent of the member seconding it.

G. CONFLICT OF INTEREST - Council members shall abide by the provisions of A.R.S. Chapter 38, Article 3. When a Council member determines he or she has a conflict of interest, he or she shall announce such conflict and refrain from discussing or voting upon the matter.

H. COUNCIL MEMBER REQUIRED TO VOTE - Council members are required to vote on all issues placed before them with the exception of conflicts of interest. A failure to vote or a voluntary abstention shall be counted as "aye" vote unless excused by State Conflict of Interest Laws.

I. RECORDING VOTES; TIE VOTES - The record of the proceedings of the Council shall record individual's votes on all ordinances, resolutions, and franchises. In the case of a tie in votes on any motion, the motion shall be considered lost.

J. MOTION TO RECONSIDER - "When an ordinance, put to a vote for final passage, fails to pass, and a motion is made to reconsider, the vote on such motion shall not be taken within 24 hours thereafter." (Section 7.08, City Charter) A motion to reconsider any other action by the Council may be made only on the day the action was taken. It may be made during the same session or at a recessed or adjourned session. A motion to reconsider must be made by one of the prevailing side, but may be seconded by any member. A question failing by virtue of a tie vote may be reconsidered by motion of any member of the Council. The motion may be made at any time. It shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or any other motion at a subsequent meeting of the Council.

**2.5.11 Petitions**
**(O-91-29)**

Petitions, remonstrance, communications and comments or suggestions from citizens present may be heard by the Council. All such remarks shall be addressed to the Council as a whole and not to any member thereof. No person other than the individual speaking shall enter into the discussion without asking permission of the presiding officer. No questions shall be asked a Council member except through the presiding officer.

**2.5.12 Enforcement, Suspension and Amendment of Rules**
**(O-91-29)**

Enforcement of these rules shall be incumbent upon the City Council of the City of Bisbee. These rules may be suspended or amended by a two-thirds vote of the City Council, except that this section shall not be construed to permit any action that is contrary to state statutes.

## ARTICLE 2.6 ORDINANCES, RESOLUTIONS AND CONTRACTS
**(CITY CHARTER, ARTICLE VII, 7.01 - 7.16; O-10-07)**

**2.6.1 Prior Approval**

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

**2.6.2 Introduction**
**(O-09-02)**

Ordinances, resolutions, and other matters or subjects requiring action by the Council shall be introduced and sponsored by a member of the Council, except that the Attorney, City Manager, staff member or the Clerk may present ordinances, resolutions and other matters or subjects to the Council, and any member of the Council may assume sponsorship thereof by moving that such ordinance, resolution, matter or subject be adopted; otherwise, they shall not be considered.

**2.6.3 Notice of Intent to Adopt Proposed Ordinance**
**(O-15-04)**

No proposed ordinance, except emergency ordinances, shall be presented to the Mayor and Council for reading and adoption unless the Mayor and Council shall have first approved a Notice of Intent to adopt such ordinance at least thirteen (13) days prior to such reading and adoption; provided, however, that no such Notice of Intent shall be required for a transfer, sale, exchange, abandonment or other conveyance of surplus that has been recommended by the Planning and Zoning Commission pursuant to Section 2.6.9 of the City Code; and provided further, that the first and only reading of an ordinance to transfer, sell, exchange, abandon or otherwise convey real property may be held immediately after the public sale and auction pursuant to subsection D of Section 2.6.9 of the City Code or the determination to abandon and sell pursuant to subsection C of Section 2.6.9 of the City Code

**2.6.4 Requirements for an Ordinance**

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

**2.6.5 Effective Date of Ordinances**
**(O-09-02)**

No ordinance or franchise shall become operative until thirty days after its passage by the Council and approval by the Mayor, except emergency measures necessary for the immediate preservation of the peace, health or safety of the City. An emergency ordinance shall contain a declaration stating that an emergency exists, describing in clear and specific terms the reasons for the necessity of declaring an emergency, and must be passed by the affirmative vote not less than six Council Members upon a roll call vote.

**2.6.6 Signatures Required**

Every ordinance passed by the Council shall, before it becomes effective, be signed by the Mayor and attested by the Clerk.

**2.6.7 Publishing Required**
**(O-09-02)**

All ordinances, except for emergency ordinances, shall be published at least once a week for two consecutive weeks in the official newspaper of the City before they become effective and operative. Emergency ordinances shall be published twice in the official newspaper of the City within thirty (30) days after their passage. Such other orders, resolutions, motions, regulations or proceedings of the Council shall be published as may be required by State statutes or expressly ordered by the Council.

**2.6.8 Posting Required**

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

**2.6.9 Procedures for the Transfer of City Property**
**(O-05-10)**

A. Prior to the sale, exchange or abandonment of any City property, the proposal to transfer the subject property shall be referred to the Planning and Zoning Commission for review and recommendation by that Commission. The Planning and Zoning Commission shall consider whether the proposed transfer is in conformity with any adopted general plan, including the City's policies for open space; whether the subject property is suitable for development under the Zoning Regulations; whether the proposed sale and any anticipated development is compatible with the existing usage and development of the surrounding area; and whether the subject property is or is not suitable for public sale and auction pursuant to subsection C.
B. Notice of the Planning and Zoning Commission meeting to recommend any such proposed transfer shall be provided by one publication in the City's newspaper of record; by posting notice on the subject property; and by first class mail notice sent to those property owners who own property within three hundred (300) feet of the subject property. This notice shall be completed not less than fifteen (15) days prior to date of the Planning and Zoning Commission meeting.

C. After the Planning and Zoning Commission has made its recommendation, the Mayor and City Council shall meet to consider whether or not to pursue any such proposed transfer of City property. For any parcel less than an acre in size and which has been determined to have a minimum acceptable bid less than $5,000, the Mayor and City Council may authorize the abandonment of unnecessary public streets and rights-of-ways or the exchange of City property for appropriate consideration, which amount shall be determined by majority vote of the Mayor and Council. Such abandonment shall not be subject to public auction and bidding requirements if the Mayor and Council, upon the recommendation of the Planning and Zoning Commission, determine that due to the particular situs of the subject property, or because it has historically been associated with, and used in connection with, a particular privately owned parcel, it is not appropriate for public auction and bidding, but rather should be sold to the owner(s) of the property with which it has been historically associated or used in connection with . The Mayor and Council may establish minimum acceptable bids for any sale and may impose other appropriate conditions upon any such sale.

D. Except as provided in 2.6.9(C), any sale of surplus City property shall be by public sale to the highest bidder. Not less than thirty days notice of any such sale shall be provided by one publication in the City's newspaper of record; by posting notice on the property; and by first class mail notice sent to those property owners who own property within 300 feet of the subject property. The Mayor and Council reserve the right to reject any and all bids for such property and to re-offer the property if they determine, in their sole discretion, that the bids are inadequate.

E. The net proceeds of any such sale of City property shall be used for capital improvements of the City and shall be maintained in an appropriate account for this purpose. In the event of a fiscal emergency or change of circumstances, the Mayor and Council, by a vote of not less than five members, may re-allocate any such funds as they deem to be necessary.

**2.6.10 Approval of Contracts and Grants**

All contracts and purchases exceeding the sum of five thousand dollars ($5,000.00) shall require the prior approval of the Council, unless an emergency which poses an imminent danger to the health, safety or welfare of the citizens of the City of Bisbee requires an emergency purchase. All grants and agreements with other governmental agencies shall require the approval of Council prior to the acceptance of any funds or benefits or the performance of any obligations under any such grant or award.

## ARTICLE 2.7 YOUTH COUNCIL
**(O-05-21; O-86-190; O-13-04)**

**2.7.1 Created**

There is hereby created the City of Bisbee Youth Council whose members shall be appointed by the Mayor, with the consent of the City Council.

**2.7.2 Membership**

A. The Youth Council membership shall be composed of up to seven regular members, who shall be students between the ages of thirteen years and eighteen years. One adult, who has demonstrated his or her commitment to working with and serving the youth of this community, shall be also appointed as a non-voting advisor to the Youth Council, in addition to the regular members.

B. A member shall not be absent from Youth Council regular meetings for more than three consecutive times without a reasonable excuse. After the absence from three consecutive meetings, the remaining members of the Council shall vote to retain or recommend to the City Council that the absentee member be released from his or her duties on the Youth Council.

**2.7.3 Organization**

The members of the Youth Council shall serve without compensation. They shall elect by majority vote a chair person, vice chair and such other officers as they shall deem proper. The Youth Council may adopt bylaws and shall hold their regular meetings on a quarterly basis, with such other special meetings as they may determine to be necessary or appropriate. The bylaws, as well as amendments thereof, and all minutes of the Youth Council shall be filed with the City.

**2.7.4 Function and Purpose**

The function and purpose of the Youth Council shall be:

A. To meet regularly as a representative organization of the youth of the Bisbee community.
B. To provide a common forum for discussion and coordination of youth activities.
C. To provide a direct and effective voice for the youth of the community in their communications with the mayor and council.
D. To confer with and advise the mayor and council on matters of concern to the youth of the community and to compile, receive and disseminate information and data relating thereto.
E. To recommend and encourage actions, programs and legislation beneficial to the community youth.
F. To develop and encourage participation by youth in the community in matters of interest to them and to foster community understanding and support of the projects, aims and goals of the youth council and in such manner to promote the general welfare, interests and wellbeing of the citizens of the community.
G. To involve youth in assisting in the planning, operation and evaluation of the local youth service.
H. To improve communication between youth and older persons involved in administration of the youth service system.
I. To provide input, as requested, on the applications for and the proposed use of federal, state, and local funds intended for youth related programs and activities.
J. To perform such other functions as may be assigned to it by the Mayor and Council of the City of Bisbee.

**2.7.5 Limitation of Power**

Neither the Youth Council nor any member thereof may incur City expenses without submitting a request to and receiving prior authorization from the Mayor, nor may the Youth Council or any member thereof obligate the City in any manner or form except that the Mayor is hereby authorized and directed to provide stationery and postage as may be necessary to prepare proposed agendas, minutes of meetings and other business communications of the Youth Council and distribute copies of the same. The Mayor is also authorized to allow use of the council chambers to the Youth Council as a meeting place.

**ARTICLE 2.8 BOARDS, COMMISSIONS AND COMMITTEES (O-94-38; O-12-08)**

**2.8.1 Policy**

The City Council of the City of Bisbee encourages citizens to serve on its various advisory boards, commissions, and committees. The thousands of hours donated each year by citizen volunteers are extremely helpful to the Council in making decisions concerning the many complex issues that face this community. The City Council has established the following guidelines for becoming a member of these advisory boards, commissions and committees to help obtain the best assistance possible:

A. Residency. Applicants must have resided within the City of Bisbee's corporate limits for at least one year prior to being appointed and must continue to so reside during the term of their appointment.

B. Length of Term. A full term shall be three (3) years, unless the Mayor and Council specifically authorize a different term for that body. A person appointed to complete a term vacated by a prior member shall serve for the remainder of that term.
C. Length of Service. No member of any board, committee or commission may be appointed to serve more than three consecutive full terms, or more than three and one half terms if the person was originally appointed to complete the remainder of the term of a vacated position. After serving this maximum time period, a 1-year period shall expire before membership to the same committee is considered.
D. Number of Committee Memberships. No person shall be a member of more than one advisory committee at one time.
E. Ad Hoc Committee or Special Task Force. With the exception of the residency requirement, these requirements will not apply to ad hoc committees or special task forces established by the City Council.
F. Waiver of Requirements. The above requirements may be waived by the City Council. An applicant who desires to serve on an advisory committee may complete a Waiver of Requirements Request form and submit it with the application. The *Application* and *Waiver* form is available from the City Clerk's office.
G. These guidelines and the following standard provisions for boards, commissions and committees shall only be applicable to those advisory bodies established by the Mayor and Council and shall not apply to the Municipal Property Corporation, the Finance Committee, the Transit Advisory Committee, the Employee Council, the Charter Review Committee, and any other bodies that may be exempted by the Mayor and Council.

**2.8.2 Standard Provisions Applicable to All Boards, Commission and Committees.**

Notwithstanding any other provisions in any ordinance, resolution or bylaws creating or authorizing any board, commission or committee or its actions, the following provisions shall be uniformly applied to all boards, commissions and committees of the City of Bisbee that are subject to these standard provisions:

A. Each board, commission or committee shall hold all of its regular meetings in the Council Chamber at City Hall and these meetings shall commence at 5:30 P.M., unless the Mayor and Council have approved a different time for a specific board, commission or committee, based on any particular circumstances. Special meetings may be held at other locations and at other times as particular circumstances may require, but only if necessary for the particular purposes of that meeting.
B. All public meetings held in the Council Chambers shall be broadcast over the City's governmental television channel, subject to the availability of the necessary equipment and access. Video of these meetings may also be posted for public view on the internet, if the necessary equipment and resources are available.
C. Those boards, commissions and committees that serve strictly in an advisory capacity shall hold their regular meetings on a quarterly basis, with such other special meetings as they may determine to be necessary and appropriate. Those boards, commissions and committees that must review, recommend or approve land use and development permit applications shall schedule regular meetings on a monthly basis, with special meetings as they may determine to be necessary and appropriate.
D. Each board, commission or committee shall have not more than seven (7) members. For any such board, commission or committee that has been previously authorized to have more than seven members, the current members shall be allowed to continue to serve until the expiration of their present terms, but no more than seven positions will be filled upon the expiration of these terms or the resignation of any current members
E. Each board, commission or committee member shall be assigned a specific date for the beginning and ending of his or her term. For current members, the City Clerk shall, based on the alphabetical listing

of the last names of each member of that body, assign the first member a term date ending on January 15, 2013; the second member a term date ending on January 15, 2014; and the third member a term date ending on January 15, 2015. This process shall be continued, alternating the assigned dates over these three years, until all existing members of each board, commission and committee have been assigned one of these three dates. Thereafter, the term of the position occupied by each member shall expire on the designated date, or subsequently, on the three-year anniversary of this date. For any newly created board, commission or committee, or for vacant positions on existing bodies, the City Clerk shall use the same process to establish initial term dates for each member or position, to alternate among the following three years.

F. Any replacement for a member who resigns or is otherwise unable to fulfill his or her term shall serve the remainder of the designed term for that retiring member's position. All subsequent terms shall be for a three (3) year period, beginning from the designated term date for that position.

G. The existing The existing terms of all board, commission and committee members serving upon the effective date of this standard provision shall be extended, or shortened, as the case may be, as necessary to allow for this transition into these new, uniform term periods.

## ARTICLE 2.9 BISBEE ARTS COMMISSION (O-10-15)

### 2.9.1 Creation

There is hereby re-established and continued the Bisbee Arts Commission. The Commission shall be composed of seven (7) members who shall be appointed by the Mayor with the consent of Council.

### 2.9.2 Terms of Office

Commission members shall serve for a term of two (2) years commencing with the first meeting in November, 2010; provided, however, the initial term for three (3) of the appointed members shall be for one (1) year commencing with the first meeting in November, 2010. Members should be representative of diverse elements of the community and interested in providing the best possible service to all residents. Each of the City's three wards should be represented to the extent practicable.

### 2.9.3 Ex-Officio Members

The Mayor may appoint him/herself or any member of Council or the City Manager as an ex-officio member of the Commission, without voting privileges.

### 2.9.4 Vacancies

A vacancy in the office of a member of the Commission shall be filled in the same manner as an appointment. Such appointment shall be for the unexpired term of the vacant office. An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of the term of office:

A. Death of the person holding the office.
B. Inability of the person holding the office to perform the duties of the office.
C. Resignation of the person holding the office.
D. Removal from office of the person holding the office by the Mayor and Council with or without cause.
E. The person holding the office ceasing to discharge the duties of office for three consecutive meetings.

### 2.9.5 Staff Liaison

The City Manager may select and appoint staff personnel and/or clerical support to assist the Commission and charge the cost for such personnel and/or support to the Commission.

**2.9.6 Meetings**

The Committee shall meet monthly as needed. Agenda items for such meetings shall be determined by the chair and approved by the staff liaison. All meetings shall be open to the public and conducted in accordance with the Open Meetings Law.

**2.9.7 Officers**

At the first meeting of the Commission, and every year thereafter, its members shall elect a chair and a vice chair to serve for a one-year term. The chair shall preside at all meetings of the Commission. In the absence of the chair, the vice chair shall preside at such meeting.

**2.9.8 Duties and Responsibilities**

The Commission shall have the following duties and responsibilities:

A. Act as an Advisory Commission to the Mayor and Council on art and cultural activities in the City.
B. Prepare and submit to the City Manager a proposed annual budget for the upcoming fiscal year.
C. Develop and make recommendations to the Mayor and Council on ways to best promote the arts and cultural enrichment in the City.
D. Set priorities for and plan development of arts and cultural activities in the City.
E. Raise the level of awareness and involvement of all residents in the preservation, enhancement and enjoyment of culture and the arts in the City.

**2.9.9 Rules, Policies and Procedures**

The Mayor and Council may, from time to time, by motion adopt, repeal, modify or amend uniform rules, policies and procedures that shall apply to the Commission.

## CHAPTER 3 ADMINISTRATION

### ARTICLE 3.1 GENERAL PROVISIONS

**3.1.1 Officers/Department Heads**
**(O-09-02)**

The following officers shall be appointed by the City Council: City Manager, City Attorney, and City Magistrate. The City Manager shall appoint, with the approval of the Council, the City Clerk and the City Treasurer. The City Manager shall appoint all other officers and employees of the City, as provided in the City Charter.

**3.1.2 Additional Officers and Employees**
**(O-09-02)**

The Council shall provide for the organization and operation of the offices and departments of the City and shall provide for the number, title, qualifications, powers, duties and compensation of all officers and employees of the City.

**3.1.3 Bond**
**(O-09-02)**

The Council may require each officer of the City to give bond for the due discharge of his duties in such sums and with such security as it may direct and approve as determined by resolution. This assurance may be in the

form of a blanket bond, provided through the City's fidelity insurance. The City shall pay the costs of such bond.

**3.1.4 Vacancies; Holding More Than One Office**
**(O-09-02)**

Any vacancy that shall occur in any City office shall be filled in the manner required by the City Charter. One person may hold more than one office. The functions of a City official may be validly performed and discharged by a deputy or another City official, or an otherwise qualified individual.

**3.1.5 Additional Powers and Duties**

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

**ARTICLE 3.2 OFFICERS**

**3.2.1 City Clerk**
**(O-09-02)**

A. Appointment. The City Clerk shall be appointed by the City Manager, with the approval of the Mayor and Council for an indefinite term of office. The City Clerk shall be responsible to the Mayor and Council and shall hold office at the pleasure of the Mayor and Council.
B. Records. The Clerk shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the City or that the Council directs.
C. Public Inspection of Records. The Clerk shall keep convenient for public inspection all public records and public documents under his or her control, as provided by State statute. The Clerk shall furnish to any member of the governing body a certified copy of any record or document in his or her custody, and he or she may furnish such a copy to any other person upon payment of a fee to be determined by the governing body.
D. Minutes. The Clerk shall prepare or cause to be prepared all minutes of Council proceedings and ensure their correctness and accuracy.
E. Ordinances, Resolutions, Budgets and Notices. The Clerk shall process, record, file, publish and, if required by State Statute or the Charter, post all ordinances, resolutions, budgets and notices that may be passed by the Council.
F. Election Official. The Clerk shall be the City election official and perform those duties required by State Statute.
G. Term Expirations. The Clerk shall notify the appointing authority of the impending expiration of the term of office of a member of any board or commission at least thirty days before the expiration of the term.
H. Official Seal. The Clerk shall be the custodian of the Official Seal of the Municipality.
I. Licenses. In all cases where the duty is not expressly charged to any other department or office, the Clerk shall issue or cause to be issued all licenses that may be prescribed by state statute or this Code.
J. Administrative Duties. The Clerk shall perform those administrative responsibilities and duties that are conferred upon him or her by the Council in addition to those specified in this Code.

**3.2.2 City Attorney**

A. The City Attorney shall be appointed by the Council and serve at the pleasure of the Council. The Attorney shall act as the legal counselor and advisor of the Council and other officials and, as such, shall give his

opinion in writing when requested. He shall draft all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when required by the Council. He shall approve as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the Council. He shall return, within ten days, all ordinances and resolutions submitted to him for consideration by the Council, with his approval or disapproval as to form noted thereon, together with his reasons therefore. He shall prosecute and defend all suits, actions or causes where the City is a party, and shall report to the Council, when required, the condition of any suit or action to which the City is a party.

B. The Council may employ the services of attorneys or other legal counsel to assist the City Attorney in the performance of his duties, on such terms and pursuant to such compensation as the Council deems reasonable.

### 3.2.3 Zoning Administrator

A. Created. As authorized by § 9-462.05 (C), Arizona Revised Statutes, the position of zoning administrator is hereby created and established.

B. Powers and Duties. In addition to the enforcement of the zoning ordinance, the powers and duties of the Zoning Administrator are as follows:

1. To enforce the zoning ordinance in a manner consistent with the United States Constitution, the Constitution of the State of Arizona, and the statutes of the State of Arizona as those fundamental documents have been interpreted by the Courts of Arizona.
2. To become knowledgeable of such matters and at all times to keep current by a program of continuing education which will include, but not be limited to, the recommendations of the City Attorney.
3. To act as Executive Secretary to the Planning and Zoning Commission, the Board of Adjustment, the Design Review Board, the site plan committee and any other board, commission or committee having to do with the general subject of land use, planning and the enforcement of such plans, all to the end that the actions of said bodies, and each of them be consistent with the guidelines set forth in this section.
4. To prepare and present to the Council and the Chairman of each body involved for its consideration the forms and procedures deemed necessary.
5. To direct the preparation of agenda and information packets in adequate time for study by the members of the body involved prior to the date and hour set for hearing.
6. To either prepare or direct the preparation of minutes of each body involved within the time provided by law.
7. To direct the physical change on the official zoning map within thirty days after the adoption of an ordinance changing zoning classifications or zoning boundaries.
8. To study the zoning ordinance and the subdivision ordinance and prepare proposed ordinances to bring and maintain said ordinances in a manner consistent with the state statutes, changing times and changing needs.
9. To perform the necessary foundation research of the director of planning set forth in Title 9, Article 6.1, Arizona Revised Statutes, on "Municipal Zoning".
10. To perform any other duties as may be directed by the City Council.

## ARTICLE 3.3 MAYOR AND COUNCIL RELATIONSHIPS WITH ADMINISTRATION (O-09-02)

A. No individual member of the Council shall interfere with the execution by the City Manager of his powers and duties or order, directly or indirectly, the appointment by the City Manager of any person to any office or employment or removal there from, except as otherwise provide by the Charter. Except for purposes of inquiry, the Council and its members shall deal with the administrative services under the City Manager solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately. Nothing in this section shall be construed as prohibiting the Council, while in open session, from fully and freely discussing with or suggesting to the City Manager anything pertaining to City affairs or the interests of the City.
B. Any two members of the Council, by written request specifying the agenda item, may place any item on the agenda with or without the approval of the Mayor or City Manager.

## ARTICLE 3.4 PERSONNEL SYSTEM

### 3.4.1 Creation and Scope
**(O-89-29; O-09-02)**

There shall be adopted a personnel policy for the employees of the City, the provisions of which shall apply to all employees of the City except elected officials and persons engaged under contract to supply expert, professional or technical services.

### 3.4.2 Conditions of Employment

The appointment, promotion and tenure of every employee shall be conditioned solely on merit and fitness and the satisfactory performance of the duties and responsibilities assigned. No employee or applicant for employment shall be discriminated against on the basis of race, color, religion, sex, political affiliation or handicapped status.

### 3.4.3 Rules and Regulations

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

### 3.4.4 Political Contributions

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

## ARTICLE 3.5 PROCUREMENT
**(O-08-05; O-95-09)**

### 3.5.1 Purpose; Rules of Construction

A. Liberal Construction. This article shall be liberally construed and applied to promote its underlying purposes and policies. Procurement situations may arise that do not fall within the parameters of following procedures. When such situations arise every effort will be made to adhere to the intent of purposes and policies as outlined in “B” under this section.
B. Purposes and Policies. Underlying purposes and policies of this article are:
   1. To simplify, clarify and modernize the law governing purchasing by the City.
   2. To permit the continued development of purchasing policies and practices.

3. To make as uniform as possible the procedures on purchasing among the various departments and agencies of the City.
4. To provide for increased public confidence in the procedures followed in public purchasing.
5. To promote fair and equitable treatment to all suppliers or prospective suppliers of goods and services.
6. To promote effective competition among prospective suppliers of goods and services.

C. Supplementary General Principles of Law Applicable. Unless displaced by the particular provisions of this article, the principles of law and equity, including the Uniform Commercial Code, the law relative to capacity to contract, principal and agent, fraud, misrepresentation, duress, coercion, mistake and bankruptcy shall supplement its provisions.

D. Application of the Code. This article shall apply to every expenditure of public monies by the City, including funds available under any contract, grant or like business agreement. In the event that any contracts, grants or other agreements with any state or federal agencies may require that the City comply with certain state or federal procurement laws or regulations as a condition for any such contract, grant or agreement, the requirements of any such applicable state or federal provisions shall be met.

E. Construction against Implicit Repeal. This article is intended to provide uniform coverage of its subject matter. No part of it shall be deemed to be repealed by implication by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

**3.5.2 Definitions**

The words in this article shall have the following meanings unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section or portion thereof:

A. "Architect-engineer services" means those professional services within the scope of practice of architecture, professional engineering or registered land surveying as defined by the laws of Arizona.

B. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any legal entity through which business is conducted.

C. "Confidential information" means any information which is available to an employee only because of his status as an employee of the City and is not a matter of public knowledge or available to the public on request.

D. "Conspicuously" means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

E. "Construction" means the building, erection, alteration, demolition or repair of public buildings, structures and highways and other improvements or additions to real property. It does not include routine maintenance, operation or repair of existing facilities.

F. "Contract" means all types of agreements and orders for the procurement or disposal of supplies, services, construction insurance or any other item. It includes awards and notices of award; contracts of a fixed-price, costs, costs- plus-fixed-fee or incentive types; contracts providing for the issuance of job orders, task orders or task letters there under; letter contracts, purchase orders and leases. It also includes supplemental agreements with respect to any of the foregoing.

G. Contract modification" means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bi-lateral actions such as supplemental agreements, and unilateral actions such as change orders, orders for provisions items, administrative changes, notices of termination and notices of the exercise of a contract option.

H. "Contractor" means any person having a contract with the City.
I. "Cooperative procurement" means purchasing conducted by or on behalf of more than one public purchasing unit.
J. "Data" means recorded information, regardless of form or characteristic.
K. "Debarment" means the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the City, or any governmental body thereof, for a specified period of time.
L. "Department" means any agency or governmental body which is authorized or created by the City or any division thereof.
M. "Department head" means the director or chief administrative officer of the department, agency or governmental body.
N. "Designee" means a duly authorized representative. The term may include one or more persons.
O. "Employee" means any person drawing a salary from the City, whether elected or not, and any non-salaried person performing services for the City, exclusive of contractor's personnel.
P. "Established catalogue price" means a price included in the most current catalogue, price list, schedule or other form that is regularly maintained by the manufacturer or vendor of an item; is either published or otherwise available for inspection by customers and states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
Q. "Exhibit" means a document attached to a procurement instrument, referenced by its capital letter identified in a line or sub-line item in the procurement instrument schedule which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or sub-line items in the procurement instrument schedule.
R. "Financial interest" means:
   a. Ownership of any interest or involvement in any relationship from or as a result of which the owner has, within the past three years, received or is presently or in the future entitled to receive more than $100 per year; or
   b. Ownership of more than a 3% interest in any business; or
   c. Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.
   d. This definition is not in any way intended to modify the provisions of §38-502, Arizona Revised Statutes.
S. "Foreign purchasing activity unit" means any buying organization not located in the State of Arizona which, if located in Arizona, would qualify as a public purchasing unit. An agency of the United States Government is a foreign purchasing activity.
T. "Government body" means any department, commission, council, board, bureau, committee, institutions, legislative body, agency, Government Corporation or other establishment of the executive or judicial branch of the City, State of Arizona or the United States of America.
U. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, offer of employment or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
V. "Immediate family" means a spouse, children, grandchildren, parents, brothers and sisters.
W. "Includes" means includes but is not limited to.
X. "Invitation for bids" means all documents whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in this Code.

Y. "Local public purchasing unit" means procuring activities of any county, City, town, governmental entity and other subdivision of the state and public agency thereof, public authority, any other entity which expends public funds for the acquisition or leasing of supplies, services and construction and any non-profit corporation operating a charitable hospital.

Z. "Negotiate or negotiation", when applied to the making of purchases and contracts, means making purchases and contracts without competitive sealed bidding.

AA. "Procurement or purchasing" includes buying, renting, leasing or otherwise obtaining supplies, materials or services, construction insurance or any other item. It also includes all functions that pertain to the obtaining of such supplies, services, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration, acquisition warehousing and disposal.

BB. "Professional services" means work to be performed by persons in possession of a valid license for proficiency in a particular field of endeavor.

CC. "Public purchasing unit" means local public purchasing units, state public purchasing units or foreign purchasing activity.

DD. "Purchase request" means that document whereby a requiring agency requests that a contract be obtained for a specified need and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any determination and funding required pursuant to this article.

EE. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in this Code.

FF. "Responsible bidder or offer or" means one who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

GG. “Responsive bidder” means one who has submitted a bid which conforms in all material respects to the invitation for bids, so that all bidders may stand on an equal footing with respect to method and timeliness of submission and as to the substance of any resulting contract.

HH. "State public procurement unit" means procuring activities of Arizona.

II. "Subcontractor" means any business which holds an agreement or purchase order to perform any part of the work or to make or furnish any article or service required for the performance of a City funded prime contract or subcontract there under.

JJ. "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

KK. "Supplies" means all property except land or interest in land.

LL. "Suspension" means the disqualification of any person to receive invitations for bid or requests for proposals, or to be awarded a contract by the City or any governmental body thereof, for a temporary period pending the completion of an investigation, and any legal proceedings that may ensue.

MM. "Using agency" "(UA)" means any governmental body or activity of the City which consumes supplies or uses services.

### 3.5.3 Purchasing Organization

A. The City Manager shall have full power and authority to serve as the City’s Chief Administrative Officer for the purchase of any and all supplies, services, construction, insurance and other items required by the City, subject to the requirements of this Code and the City Charter.

B. Specific Areas of Responsibility. The City Manager or duly authorized designee shall have the following specific areas of responsibility:
   1. Provide policy guidance to and exercise overall supervision of the other City employees exercising purchasing or property management authority pursuant to this article.
   2. Conduct periodic reviews of the manner in which the provisions of the article are being complied with.
   3. Make recommendations to the Council for changes in the article as it deems necessary or desirable to improve the procurement of supplies and services.
   4. Establish rules and regulations and standard forms and procedures, consistent with the provisions of this article.
   5. To serve as the purchasing and contracting authority of the City.
   6. To contract for, purchase, lease-purchase, lease or otherwise acquire all supplies, construction, services, printing and insurance for the City.
   7. To sell, trade or otherwise dispose of surplus City supplies, as provided under Arizona Revised Statutes.
   8. To accept grants and subsidies from any federal or other governmental body, and to enter into agreements and property transactions or projects with any federal or other governmental body.
   9. To accept gifts, donations, legacies or usages of money from individuals, organizations and public or private corporations, as shall be deemed to be in the public interest.
   10. To exercise general supervision and control over all inventories of supplies belonging to the City, and
   11. To establish and maintain a program for the development and usage of standard specifications and for the inspection and testing of supplies and the inspection of construction and services.

**3.5.4 Methods of Procurement**

All City procurement subject to this Code shall be conducted by one of the means specified in this Code. All contracts for purchases exceeding the sum of $5000 shall be submitted to the Mayor and Council for approval prior to signing the contract, as required by the City Charter. Prior approval for the initiation of the bidding and procurement process shall not be required for purchases that are within the scope of a previously approved budget and for which the City Manager has determined that funds are available.

A. Formal sealed bids shall be required for the purchase of materials, supplies, equipment and other property with an estimated cost of $10,000 or more. This process shall also be used for the purchase of those professional services with a cost that will equal or exceed this amount and for which there is no other authorized or required procedure.
B. Informal quotations may be used for the purchase of those materials, supplies, equipment and other property with an estimated cost of less than $10,000 or for the purchase of professional services with an estimated cost of less than this maximum amount.
C. Direct solicitation may be used for the purchase of materials, supplies, equipment and other property with an estimated cost of less than $5000.
D. Other procurement procedures, as described in this Code and as may be required by applicable state law, may be used for the procurement of certain professional services, for authorized sole source purchases, for emergency purchases, or for construction services.
E. Cooperative purchasing agreements, in conjunction with other public agencies, may be used as a means of fulfilling these procurement requirements, provided that the participating agencies have conducted the solicitations for the subject property or services in a manner that fosters competition and results in the best available price for the City.

F. The intent of each of these methods of procurement is to obtain a proposal that is the most advantageous to the City under the circumstances, with regard to price, conformity to the specifications and other relevant factors.

**3.5.5 Formal Sealed Bids**

For those purchases for which formal sealed bids are to be used, procurement shall be as follows:

A. An advertisement for bids shall be published in the City's official newspaper at least once prior to the date of the bid opening. This advertisement shall specifically describe the goods or services to be purchased and the date upon which bids are due. The publication date shall be not less than five days prior to the date of the bid opening. For construction contracts, two publications are required. (See A.R.S. § 34-201)
B. A notice of the bid shall be posted on the City's website, together with all of the specifications and requirements for this contract. This posting shall occur not less than 14 days prior to the date of the bid opening. Longer periods may be appropriate, depending upon the circumstances of the purchase.
C. Copies of the bid notice, the specifications and requirements shall be transmitted by the Department Head or designee responsible for the procurement to any potentially eligible companies, firms or individuals who may have expressed interest in the proposed purchase or other similar purchases. Copies may also be transmitted directly to other parties that the Department Head or designee can identify who may be eligible and interested in this contract.
D. The procedures for the opening and evaluation of any sealed bids and the award of any contract shall be as specified in the standard procedures and forms developed for this process.

**3.5.6 Informal Quotations**

For those purchases for which the Informal Quotation process is to be used, procurement shall be as follows:

A. A notice of the solicitation shall be posted on the City's website, together with all of the specifications and requirements for this contract. This posting shall occur not less than 14 days prior to the date the quotations are due. Longer periods may be appropriate, depending upon the circumstances of the purchase.
B. Copies of the solicitation, the specifications and requirements shall be transmitted by the Department Head or designee responsible for the procurement to any potentially eligible companies, firms or individuals who may have expressed interest in the proposed purchase or other similar purchases. Copies may also be transmitted directly to other parties that the Department Head or designee can identify who may be eligible and interested in this contract. This notice shall be transmitted, if possible, to not less than three (3) potentially eligible contractors.
C. The contract may be awarded to the potential contractor whose quotation is most advantageous to the City. The Department Head responsible for this procurement may discuss the quotation and the requirements of the contract, together with any adjustments that may be appropriate, with any party prior to the final approval of the award, provided that information derived from proposals submitted by other offerors is not disclosed.
D. The procedures for the opening and evaluation of any proposals and the award of any contract shall be as specified in the standard procedures and forms developed for this process.

**3.5.7 Direct Selection for Small Purchases**

For those purchases for which direct selection is to be used, procurement shall be as follows:

A. Price comparisons for goods and services may be made by a review of the available prices and specifications that are available through catalogues, internet listings, verbal communications, personal

inspection or other information. The employee responsible for this procurement shall maintain a written summary of the sources that were checked for any purchase of more than $1000, sufficient to demonstrate that the purchase is in the best interests of the City and is consistent with the purpose of these policies.

B. This type of procurement will generally only be appropriate for goods and services that are readily available in standard commercial transactions and for which no particular specifications are necessary.

C. This type of purchase may also be used for the purchase of tools, materials and replacement parts from those suppliers that are available in this immediate area, when the additional costs associated with the time and travel required for the use of alternative sources may outweigh the value of any savings in price in those particular circumstances.

### 3.5.8 Other Types of Procurement

A. Professional services from a technical registrant, including but not limited to an architect, engineer, geologist or surveyor, shall be procured in a manner that is consistent with applicable state law. Such services may be procured in any manner allowed by such laws (See A.R.S. § 34-103).

B. Construction work shall be procured in a manner that is consistent with applicable state law. Such work may be procured in any manner allowed by such laws. (See A.R.S. § 34-201) Any such work may be obtained through the design-bid-build, construction-manager-at-risk, design-build, job-order-contracting or any other such procedures that are authorized by applicable state law. (See A.R.S. § 34-603).

C. A contract may be awarded for materials, equipment or services without competition if the City Manager determines in writing that there is only one source for the required materials, equipment or services. The City Manager shall require the submission of cost or pricing data in connection with any such contract. Sole source procurement shall be avoided except when no reasonable alternative source exists. A written determination of the basis for the sole source procurement shall be included in the contract file.

D. Emergency procurement may be authorized by the City Manager in appropriate circumstance. See Article 3.5.18.

E. Contracts for legal services, medical and dental services, appraisal services and other similar services from licensed or certified professionals may be solicited on the basis of a request for a statement of qualifications and an expression of interest. If prices for such work are included in the proposals, any such contract shall be awarded on the basis of the best interests of the City and not solely on the basis of price.

### 3.5.9 Cooperative Purchasing Agreements

A. Cooperative purchasing, by which the procurement is conducted on behalf of more than one public entity, is an acceptable method of complying with these requirements and in many cases will result in an offer that is more advantageous to the City than what would be otherwise available only to this City.

B. The City may enter into, conduct, administer and otherwise fully participate in any cooperative purchasing agreement that has been approved by the Mayor and Council, in accordance with the terms and conditions of any such agreement. Proposals that are obtained for goods and services through any such agreement shall be deemed to be consistent with the requirements of this Code and no further public notice or solicitation shall be required by these provisions.

### 3.5.10 Cancellation of Invitations for Bids or Requests for Proposals

When it is determined to be in the best interest of the City, any invitation for bids, request for proposals or other solicitation may be canceled or all bids may be rejected by the City Manager or designee or by the Mayor and Council.

**3.5.11 Responsibility of Bidders and Offerors**

A. Determination of Responsibility. The responsibility of a bidder or offeror shall be determined as provided herein.

B. Investigation Authorized. A reasonable investigation to determine the responsibility of a bidder or offeror may be conducted. The unreasonable failure of a bidder or offeror to promptly supply information in connection with such an investigation may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

C. Right of Non-disclosure. Except as otherwise provided by law, information disclosed by a bidder or offeror pursuant to this section may not be disclosed by the City of Bisbee or its agents without the prior written consent of the bidder or offeror.

**3.5.12 Pre-qualification of Bidders or Offerors**

The City Manager may employ a method whereby suppliers seeking to provide particular types of supplies, services or construction may pre-qualify as responsible prospective contractors for such supplies, services or construction. Solicitation mailing lists of potential suppliers of such supplies, services or construction shall include, but shall not be limited to, such pre-qualified suppliers. Pre-qualification shall not foreclose a determination between the time of the bid opening or receipt of offers and the making of an award, that a pre-qualified supplier is not responsible or that a supplier who is not pre-qualified at the time of bid opening or receipt of offers is responsible.

**3.5.13 Multi-Year Contracts**

A. Specified Period. Unless otherwise provided in the budget, a contract for supplies or services may be entered into for periods of more than one year, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds.

B. Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined:
   1. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
   2. That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.

C. Cancellation Due to Unavailability of Funds in Succeeding Years. When funds are not made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-reoccurring costs incurred but not amortized in the price of the supplies and services delivered under the contract. The cost of cancellation may be paid from:
   1. Appropriations currently available for performance of the contract;
   2. Appropriations currently available for procurement of similar property or services and not otherwise obligated;
   3. Appropriations made specifically for the payment of such cancellation costs.

**3.5.14 Inspection of Contractor's Plant and Records**

A. Right to Inspect. The City may inspect the plant or business of a contractor or any subcontractor under any contract awarded or to be awarded by the City.

B. Right to Audit. The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm-fixed-price type contract.

Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

**3.5.15 Determinations**

A. Written Determinations Required. Each determination or decision shall be based upon written findings of the officer making the determination or decision and shall be retained in the official contract file.
B. Finality of Determinations. Any such determinations are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

**3.5.16 Reporting of Suspected Collusive Bidding or Negotiation**

A. Notification to the City Attorney. When for any reason collusion is suspected among any bidders or offerors, a written notice of such suspicion shall be transmitted to the City Attorney.
B. Retention of all Documents. All documents involved in any procurement in which collusion is suspected shall be retained until the City Attorney gives notice that they may be destroyed. All retained documents shall be made available to the City Attorney or his designee upon request.

**3.5.17 Enforceability and Modifications**

A. Contracts, grants and agreements of any kind that have been approved by the Mayor and Council shall be enforced.
B. If any section, subsection or paragraph of this article is in violation of applicable state or federal law, the provisions of this article shall be applied in a manner that is consistent with all applicable law.

**3.5.18 Emergency Purchases**
**(O-93-05)**

A. Notwithstanding any provisions herein, the City Manager or designee may purchase materials or services in the event of an emergency which poses an imminent danger to the health, safety and welfare of the citizens of the City of Bisbee for the purpose of ameliorating or dealing with said emergency.
B. Bids and contracts for said emergency services shall be bid telephonically with response time and agreement to price to be established by the City Manager or designee.
C. In the event that telephonic bids received are not sufficient, due to price, delivery time, and/or capability of bidder to deliver said services, the City Manager or designee may competitively negotiate with other potential contractors for provisions of services in time of emergency. Every effort will be made to consider local suppliers and contractors for emergency purchases which are outside the normal bid process.

**3.5.19 Penalty**

Any person who knowingly violates or solicits the violation of any of the provisions of this article wherein such action or inaction is deemed unlawful, shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine of $50.

**3.5.20 Bid Protests**
**(O-98-35)**

A. Filing of Protest
    1. Any interested party may protest a solicitation issued by the City, or the proposed award or the award of a City contract.

2. Content of Protest. The protest shall be in writing and shall include the following information:
   i. The name, address and telephone number of the protester;
   ii. The signature of the protester or the protester's representative;
   iii. Identification of the solicitation or contract;
   iv. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
   v. The form of relief requested.
3. The protester shall promptly supply any other information requested by the City.

B. Time for Filing Protests
1. Protests concerning improprieties in a solicitation.
   i. Protests based upon alleged improprieties in a solicitation that are apparent before bid opening shall be filed before the closing date or bid opening.
   ii. Protests based on other alleged improprieties that occur during the solicitation process shall be filled as soon as possible and prior to the closing or bid opening date.
2. Protests Concerning Contract Award. Protests concerning alleged improprieties in the award of a contract shall be filed within five (5) working days of contract award.
3. In cases other than those covered in subsection (1) and (2) of this Section, protests shall be filed within five (5) working days after the protester knows or should have known the basis of the protest, whichever is earlier, but in no event shall a protest be filed more than ten days after the award of a contract.
4. Protests shall be filed with the City Clerk.
5. The City Clerk shall immediately give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all persons submitting bids/proposals.
6. Protests that are not filed within the time period required shall be deemed to be waived and no further action shall be taken on any such protest.

C. Stay of Procurement during the Protest. If a protest is filed before the award of a contract, the award may be made unless the City Manager determines that the award of the contract is contrary to the best interests of the City.

D. Decision by City Manager.
1. The City Manager shall issue a written decision within three (3) working days after a protest has been filed. The decision shall include a statement of the decision with supporting rationale and a notice of the right to appeal set forth in Section E below.
2. The City Manager shall furnish a copy of the decision to the protester by any method that provides evidence of receipt.
3. The time limit for decision set forth in subsection (1) may be extended for good cause for a reasonable time not to exceed thirty (30) days. The City Manager shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
4. If the City Manager fails to issue a decision within the time limits set forth in subsection (1) or (3), the protester may proceed as if the City Manager had issued an adverse decision.
5. If the City Manager sustains the protest in whole or in part and determines that a solicitation, proposed contract award or contract award does not comply with applicable law and regulations, the City shall implement an appropriate remedy.
6. In determining an appropriate remedy, the City Manager shall consider all the circumstances surrounding the procurement including, but not limited to, the seriousness of the procurement

deficiency, the degree of prejudice system, the good faith of the parties, the extent of performance, costs to the City, the urgency of the procurement and the impact of the relief on the functioning of the City.

E. Appeal of City Manager's Decision.
   1. An appeal from a decision entered or deemed to be entered by the City Manager shall be filed with the City Clerk within five (5) working days from the receipt of the City Manager's decision.
   2. Content and Appeal. The appeal shall contain:
      i. The information set forth in subsection (A) (2); and
      ii. The precise factual or legal error in the decision of the City Manager from which the appeal is taken.
   3. The City Council shall hear and consider the appeal within two (2) regular meetings. The protester and the City Manager shall be given a reasonable opportunity to be heard in the matter.
   4. If the City Council sustains the protest in whole or in part and determines that a solicitation, proposed contract award or contract award does not comply with applicable law and regulations, the City shall implement an appropriate remedy pursuant to subsection D(6) above.
   5. The decision of the City Council is the final administrative action.

## ARTICLE 3.6 CLAIMS AND DEMANDS (O-09-02)

### 3.6.1 Presentation of Claims (O-09-02)

Every person or entity having a claim for damages or monetary compensation against the City, excepting those referred to in the provisions of this section, shall file and serve a statement therefore in writing with the City Clerk stating minutely what the claim is for, in the manner required by state law. The claim shall contain facts sufficient to permit the City to understand the basis upon which liability is claimed, a specific amount for which the claim can be settled and the facts supporting that amount. A notice of claim shall be deemed to be filed and served with the City only when it has been physically delivered to the City Clerk. A claim against an employee must also be served upon that employee. No claim shall be allowed in favor of any person who is indebted to the City without first deducting such indebtedness. Nothing herein shall be held to apply to demands for official salaries, which by express provision of law are made a demand against the City and which may be paid subject to subsequent ratification by the Council.

### 3.6.2 Submission of Demands to Council (O-05-14; O-09-02)

Demands for the payment of goods and services that have been provided to the City shall first be filed with the City Finance Director and shall be passed upon by the Council or a committee or delegate thereof, at their next regular meeting after presentation of said demand, and either allowed, or rejected in whole or in part, as the Council or a committee or delegate thereof, if any, may deem proper. The Council may disallow any demand in favor of any officer whose accounts have not been allowed and approved, or who shall have neglected to make his official returns or report, or who shall have neglected or refused to perform any duty required of him. The Council may examine on oath, or otherwise, the person presenting such demand, or any other person, in order to ascertain the necessary facts in determining the allowance or rejection of demands.

The Finance Director, with the approval of the City Manager, may authorize the payment of those demands which appear to be valid and for which the City would be subject to either statutory or contractual fines,

penalties or additional interest if not paid prior to the next available regular meeting of the council. The Finance Director, with the approval of the City Manager, may also authorize payment of those additional demands which would constitute an emergency or a substantial disruption of the planned functions of City government and staff if not paid on an expedited basis. All such payments shall be identified as such and shall be presented to the council for ratification at the next available meeting of the council. The council reserves the right to reject or disallow, in whole or in part, any such payments and the right to direct the City Manager to obtain a refund or credit for any payment, or portion thereof, that is not subsequently approved.

No legal action may be pursued against the City or its employees for any unpaid claim or demand without first presenting a claim to the City for such payment, in the time and the manner required by applicable state law and this article.

**3.6.3 Payment by Check; Procedures**
**(O-09-08)**

Any provision of this Code notwithstanding, payment of any allowed claim upon the City may be made by bank check, signed by the Mayor and City Treasurer, and under such financial rules and procedures, if any, as the Council may adopt.

**3.6.4 Delegation of Authority**
**(O-09-08)**

In case of absence of the Mayor or City Treasurer, each may delegate his or her authority to sign checks or warrants by a written authorization.

## ARTICLE 3.7 EMPLOYEE-EMPLOYER RELATIONS
**(O-05-18)**

**3.7.1 Findings and Purpose**

The City of Bisbee has a fundamental interest in maintaining a harmonious and cooperative relationship with its employees. The recognition of the right of public employees to organize and the full acceptance of a formal procedure for communications between the City and designated employee organizations can improve the operations of city government. The City, its employees and employee organizations have a basic obligation to the public to assure the orderly and continuous operations and functions of government. This Article is intended to allow the City, public employees and their representatives, acting within the framework of the law, to enter into discussions to consider various matters relating to wages, hours, and working conditions. It is also the purpose of this Article to promote the improvement of employer/employee relations; to provide a uniform basis for recognizing the rights of public employees to join, or refrain from joining, organizations of their own choice; and to allow employees to be represented, if they choose, by such organizations in their employer/employee relations with the City, in accordance with the provisions of this Article.

**3.7.2 Definitions**

A. **Confidential Employee**: An employee, as designated by the City Manager, who has access to confidential information regarding the relations between the City and its recognized employee organizations, including but not limited to information regarding meet and confer negotiations, grievances and all other employee organization discussions, and whose membership in any such organization would be incompatible with his or her official duties. Employee organization representatives who obtain any such information in the context of that representation shall not be included within this class.

B. **Designated Employee Organization**: An employee organization that has met the criteria for designation under this Article and that is eligible to participate in the meet and confer process authorized herein.
C. **Employee**: Any person who is permanently employed by the City on a fulltime or part-time basis and who is eligible for City benefits. Persons who are employed on a contract, temporary, seasonal or probationary basis, or who are on a leave of absence in excess of six months for any reason other than military service, shall not be included within this designation.
D. **Employee Organization**: Any labor organization, union, association, fraternal order, or group which represents or seeks to represent any public employee concerning wages, hours or working conditions.
E. **Employee Unit**: A group of employees that share common employment interests, that perform similar types of work and that can be reasonably joined in a single meet and confer proceeding.
F. **Management Employee**: An employee, as designated by the City Manager, who is primarily engaged in executive, management, or supervisory functions, or who is charged with the responsibility of developing, administering, or effectuating management policies. Fire personnel below the rank of Fire Chief and Police officers at or below the rank of Lieutenant shall not be included within this group.
G. **Meet and Confer**: The process by which the City, through its chief administrative officer or his designee, and designees of a designated employee organization will meet at reasonable times and confer in good faith with respect to wages, hours and working conditions.
H. **Professional Employee**: An employee, as designated by the City Manager, who is registered or licensed by any professional board of registration and whose work involves the consistent exercise of discretion or judgment in a field of science or higher learning. Fire personnel below the rank of Chief and Police officers at or below the rank of Lieutenant shall not be included within this group. No employee shall be included within this category solely because he or she holds a license or registration authorizing the application of pesticides or herbicides.

### 3.7.3 City Council and City Management Rights

The Mayor and Council are the policymaking and legislative body of the City. None of their duties and obligations, as set out by the city charter or otherwise established by law, shall be restricted by this Article. It is the right of the City, through its mayor and council, to determine the purpose of each of its constituent agencies, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the City to direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or other legitimate reasons; determine whether goods or services shall be made, purchased or contracted for; and determine the methods, means and personnel by which the City's operations are to be conducted. The City has the right to take all necessary action to maintain uninterrupted service to the community. The mayor and city council may, at their option and sole discretion, direct the city manager and other city representatives to consult with the City's employees or their authorized representatives about the direct consequences that such decisions may have on wages, hours and working conditions. These rights are illustrative only and are not to be construed as being all inclusive.

### 3.7.4 Public Employee Rights

Public employees shall have the right to form, join and participate in any employee organization or to refrain from forming, joining or participating. Public employees shall have the right, if they so choose, to be represented by a designated employee organization of their own choosing; to meet and confer through a designated employee organization with their public employer in the determination of wages, hours and working conditions; and to be represented in the determination of grievances. Employees may also choose to represent themselves, or to be represented by legal counsel in grievance matters.

### 3.7.5 Ineligible Employees

Unless otherwise required by law, confidential, management and professional employees, judges and elected officials shall not be represented by any employee organization. These persons shall not take any role in the policymaking activities of an employee organization, nor shall they participate directly or indirectly in the meet-and-confer process, except as representatives or assistants to the City.

### 3.7.6 Prequalification of Employee Organizations

Each employee organization seeking recognition as an authorized representative for an employee unit shall file with the City Manager the following:

A. Name and address of the organization and of the designated contacts for that organization.
B. A copy of its Charter, Constitution and bylaws, if such document exists.
C. The names, titles, addresses and telephone numbers of its duly elected officers.
D. A statement that membership in such organization is not denied because of race, color, creed, sex, national origin, ancestry, religion or age.
E. A complete description of the scope of the proposed employee unit to be included for that designation.
F. A petition requesting designation as an authorized representative of the employee unit signed by no less than fifty (50) percent plus one of the eligible employees within that unit.

Upon the receipt of all of the required information and the completed petition, the city manager shall issue a written statement to the employee organization formally recognizing it as a designated employee organization. Upon the receipt of this designation, the employee organization may request that membership dues be withheld and distributed to the organization by the City for all participating employees who have signed specific authorization to permit this.

### 3.7.7 Maintaining Eligibility –Standards

Each designated employee organization shall maintain a membership of not less than fifty percent of the members of its employee unit.

In the event that membership falls below fifty percent, the City shall notify the affected employee organization in writing that, unless the affected employee organization attains not less than 50% membership, payroll deduction will cease and meet and confer eligibility status shall be held in abeyance 90 days from the receipt of notice from the City that membership has fallen below the require 50%.

Should the employee organization fail to attain the required 50% membership within the ninety day period as set forth above, reactivation of payroll deductions and restoration of meet and confer eligibility status will be reinstated within 90 days from the date of cessation of payroll deductions and abeyance of meet and confer eligibility status if the affected employee organization has re-attained the required 50% membership of its employee unit.

If an employee organization fails to attain the required 50% membership level during this second ninety day period that employee organization shall no longer be deemed to be a designated employee organization under this Article.

### 3.7.8 Number of Designated Employee Organizations

The maximum number of employee organizations that may be designated for employee representation under this Article shall be limited to four (4). These groups may include the following eligible employees, or any reasonable combination of them:

A. Fire fighters and all Fire Department personnel below the rank of Fire Chief.
B. Police officers and all Police Department personnel at or below the rank of Lieutenant.
C. Clerical, administrative and technical employees.
D. Labor, equipment operator, maintenance and trade workers, including lead personnel who are otherwise eligible.

**3.7.9 Meeting and Conferring Procedures**

The Council recognizes and affirms the unilateral right of each designated employee organization to select its own representatives for meeting and conferring. The City Manager or his designee shall serve as the representative of the city and he shall meet and confer solely with the representatives of each designated employee organization. Representatives of the designated employee organizations shall meet and confer solely with the City Manager or his designated representative.

On or before November 1st of any year in which meeting and conferring is authorized by this Article, authorized employee organizations shall submit their proposals in writing to the City Manager or his designee and shall file a copy thereof with the city clerk as a public record. Thereafter, on or before January 31st, each authorized employee organization shall hold an initial meeting with the City Manager or his designee. At the initial meeting, the parties shall identify the issues to be discussed and shall establish ground rules for each negotiation, including a proposed schedule for meeting and conferring. The parties shall negotiate in good faith until an agreement is reached or until one party declares that the parties are at an impasse. The parties may, by mutual agreement, invite a representative of the Federal Mediation and Conciliation Service to assist as a mediator, prior to declaring an impasse.

On or before March 31st, the City Manager shall submit to each designated employee organization his recommendations to the City Council, including all agreements that have been reached, and shall concurrently file copies thereof with the City Clerk as a public record. Each designated employee organization may, within ten (10) days thereafter, file with the City Clerk its written exceptions to these recommendations. The Mayor and City Council shall consider the recommendations and exceptions at a public meeting. Each designated employee organization shall be given an opportunity to state its position to the mayor and council. The Mayor and Council may accept, reject or modify the recommendations and exceptions, in whole or in part. The decision of the Mayor and Council shall be final. This process does not compel either party to agree to a proposal or the making of a concession.

**3.7.10 Economic Issue Deadline**

In all cases where a designated employee organization has not been certified prior to January 1st, all meeting and conferring procedures on economic issues shall be concluded prior to the date set by the Council for the tentative adoption of the annual city budget for the following fiscal year.

**3.7.11 Prohibited Activities**

A. An employee, employee organization and their representatives shall not:

1. Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex or national origin.
2. Discriminate against an employee because he or she has chosen not to form, join or assist an employee organization.
3. Use City time, property or equipment for employee organization business, except as specified in a memorandum of understanding or as provided to the general public. Police and Fire employee organizations may use City time, property or equipment for conducting employee organization business provided that any such activity does not disrupt the scheduled performance of City business or response to any emergency situation.
4. Obstruct, restrain or coerce any employee, elected or appointed City official in the exercise of any right provided by the provisions of this section.
5. Obstruct, restrain, threaten or coerce any elected or appointed official, representative of the employer or City employee, for the purpose of gaining a concession.
6. Except as expressly authorized herein, disclose or discuss any matters concerning the meet and confer proposal with the news media from the date negotiations commence until the date and time set for hearing before the City Council.
7. Refuse to meet and confer in good faith with the employer.
8. Refuse or fail to comply with any provision of this section.
9. Coerce the employer in the selection of its agents for bargaining or resolving grievances.
10. Engage in any strike or organized work stoppage, slow-down, sick-out, or other similar activity.

B. The City, its management and its representatives, shall not:

1. Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex or national origin.
2. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership status in an employee organization.
3. Obstruct, restrain or coerce any employee in the exercise of any right provided under this section.
4. Dominate or obstruct the formation, existence or administration of any employee organization.
5. Discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in an employee organization.
6. Discharge or otherwise discriminate against an employee because he/she has signed or filed a petition, grievance or complaint or because an employee is forming, joining or choosing to be represented by an employee organization.
7. Obstruct, restrain or coerce any employee, elected or appointed City Official, representative of the employee organization, for the purpose of gaining a concession.
8. Except as expressly required herein or otherwise required by law, disclose or discuss any matters concerning the meet and confer proposal with the public or the news media from the date negotiations commence until the date and time set for hearing before the City Council.
9. Refuse to meet and confer in good faith with the representative selected by a designated employee organization.
10. Refuse or fail to comply with any provisions of this section.
11. Coerce the employee organization in the selection of its agent for meeting and conferring or adjustment of grievances.
12. Engage in any "lock-out" or similar action to restrict the rights of the members of any employee organization to continue to perform their existing employment obligations.

C. Except as expressly authorized herein, solicitation of members, dues, and other internal employee organization business shall be conducted only during non-duty hours and shall not interfere with the work process. Employee organizations and employees shall not engage in, initiate, sponsor or direct a strike, work stoppage, slowdown, sick-out or other similar activity. Conducting any such prohibited practice shall result in the immediate revocation of the designation as an authorized employee representative, ineligibility to be recertified for two years and ineligibility for payroll deductions of dues for a like period of time. Any employee who engages in any prohibited practice may be subject to disciplinary action, including termination.

**3.7.12 Personnel Rules – Amendment Conditions**

Whenever the Personnel Director or the Merit Systems Board or the City Manager consider submittal of personnel rules to the Mayor and Council, each designated employee organization shall be given notice of the intent to submit those rules and an opportunity to comment upon them. The employee organization comments shall be considered prior to City Council consideration. Submittals by the employee organization shall also be filed with the City Clerk as a public record. The employee organization may also submit to the Mayor and Council its written exceptions to any recommendations and the Council shall consider the exceptions prior to taking final action. Also, prior to taking final action, the each designated employee organization shall be given an opportunity to state its position to the Mayor and Council. In the event of any conflict between the City's personnel rules and an approved Memorandum of Understanding, the Memorandum of Understanding shall prevail, with regard to the employees included within that employee unit.

**3.7.13 Memorandum of Understanding**

Each designated employee organization shall enter into a Memorandum of Understanding with the City to implement the provisions of this Article. Any such Memorandum of Understanding must be consistent with these provisions and will become effective upon approval by the Mayor and Council.

## ARTICLE 3.8 LIENS FOR THE COLLECTION OF DELINQUENT FEES (O-06-16)

**3.8.1 Procedure for filing a lien on property**

A. The Finance Director of the City of Bisbee may file a lien on property for the nonpayment of sewer, garbage or other utility user fees for services provided to such property if the payment of the fees is delinquent for more than ninety (90) days.

B. The Finance Director shall not file a lien on residential property occupied by a lessee, for nonpayment by the lessee, where the lessee has entered into a service agreement contract with the City of Bisbee to be financially responsible for the payment of the subject fees for services. The Finance Director shall determine whether any pertinent contract with the City exists prior to filing the lien on any particular property.

C. Before filing the lien, the Finance Director, or his or her designee, shall provide written notice to the owner of the property. The notice shall be given at least thirty (30) days before filing the lien. The notice shall advise the property owner of the right to request a hearing on this matter with the City Manager, or his or her designee, during this thirty (30) day period. The notice shall be either personally served upon or mailed, certified, return receipt requested, to the property owner, at the last known address or the address to which the tax bill for the property was last mailed. The City Manager shall have the authority to correct any demonstrated errors in the amount of the current delinquency or the ownership of the property following any requested hearing.

D. At the conclusion of the thirty (30) day period, or following the hearing if one has been requested, the Finance Director is authorized to record a lien on the subject property in the office of the Cochise County Recorder. The lien shall include accruing interest in the amount of ten percent (10%) per annum, or at such other rate as may be prescribed by A.R.S. § 44-1201, and all associated late fees. The recorded lien shall be prima facie evidence of the truth of all matters recited in the recording and of the regularity of all proceedings before the recording.

**3.8.2 Effect of the lien**

A. The recorded lien shall be a lien on the subject property until all of the accrued and accruing delinquent fees, interest and costs are paid in full. The lien is subject and inferior to the lien for general taxes and to all prior recorded mortgages and encumbrances of record.
B. The City Attorney is authorized to pursue a sale of the property to satisfy any such recorded lien. A sale shall only be made after a judgment of foreclosure and order of sale has been issued in an action to enforce the lien brought in the Cochise County Superior Court. The failure to enforce the lien by any such court action does not affect its validity.
C. A prior recorded lien for delinquent fees does not bar a subsequent assessment for subsequent delinquent fees. Any number of liens on the same property may be enforced in the same action. The filing of a lien on the property does not bar any additional judicial action to collect the delinquent fees or to enforce the City Code.

**3.8.3 Release of the Lien**

A. Upon the full payment of all delinquent fees, interest, penalties and the recording costs, the Finance Director, or his or her designee, is authorized to record on behalf of the City of Bisbee a release of all recorded liens for delinquent fees, interest and costs on any such property.
B. If a property owner owes additional delinquent fees to the City for services associated with the same property, the Finance Director is required to obtain payment in full for all such subsequent delinquent fees prior to accepting payment for the fees that are the subject of any recorded lien. The Finance Director may accept installment payments upon a recorded lien, but the lien will only be released upon the full payment of all amounts secured by the lien.

## ARTICLE 3.9 INVESTMENT OF CITY FUNDS (O-08-09)

**3.9.1. Policy for the Investment of City Funds**

This Article shall govern the investment of all funds of the City of Bisbee which are not immediately necessary for the payment of the City's expenses. The primary objectives of any investment of City funds, in order of priority, shall be to preserve the principal amount of any such funds and to maintain the safety of all such capital; to provide for availability to such funds by maintaining the liquidity necessary to meet all operating requirements; and to produce a reasonable rate of return, subject to these requirements for safety and liquidity.

**3.9.2. Authorized Investments**

A. The funds of the City of Bisbee may be invested in one or more of the following:
    1. Certificates of deposit in eligible depositories or in federally insured banks or savings and loan associations, in accordance with applicable law.

2. Interest-bearing savings accounts in banks and savings and loan institutions doing business in this state whose accounts are insured by federal deposit insurance, but only if deposits in excess of the insured amount are secured in the manner required by state law.
3. Repurchase agreements that are fully secured in the manner required by state law.
4. The pooled investment funds established by the State Treasurer pursuant to law.
5. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.
6. Bonds or other evidence of indebtedness of this state or any of its counties, incorporated cities or towns or school districts.

B. The investment of all funds of the City of Bisbee shall be made in the manner required by state law, with such security and safekeeping arrangements as may be required by such law (See A.R.S. § 35-323 and Article 2.1 of Title 35).

**3.9.3. Management of Investments**

The City Treasurer, acting under the direction and control of the City Manager, shall have the authority to invest the funds of this City, in the manner stated in this Article. Bids and proposals for certificates of deposit and other marketable securities may be accepted by the City Treasurer either orally, in writing, electronically, or in any combination of these methods. The City Treasurer shall obtain sufficient comparable prices and quotes as necessary to obtain a reasonable return on any such investment, consistent with the requirements of this Article.

**3.9.4. Prohibition of Conflicts of Interest**

The City Manager, City Treasurer, and any other person exercising any delegated authority over the investment of City funds shall refrain from any personal business activity that could conflict with the proper execution and management of the investment of City funds. Such officials and employees shall not undertake any personal investment transactions with the same individuals with whom business is being conducted on behalf of the City. This prohibition shall be in addition to the more general prohibitions against any conflicts of interest under applicable state law (See A.R.S. § 38-501, et seq.).

**3.9.5. Investment Reports**

The City Treasurer shall maintain a comprehensive record of the investment of all City funds. The City Treasurer shall provide to the Mayor and Council, on at least an annual basis, a management summary that indicates the status of the investment portfolio and the return received from such investments.

## ARTICLE 3.10 FEE REDUCTIONS FOR PERSONS WITH DISABILITIES (O-09-04)

A. Each service for which the City has established a “Senior Citizen” fee rate shall also be made available to any person with a disability at not more than this designated “Senior” rate.
B. For purposes of this section, a “disability” shall mean any physiological or mental impairment which substantially limits that person’s ability to perform one or more major life activities.
C. Any person who may have a disability which is not immediately apparent may request written confirmation of this status from the City of Bisbee Community Development Director. This written confirmation shall serve as the basis for all future fee reductions. Confirmation of eligibility for this status shall be provided upon the presentation of medical or other documentation which confirms this status. All such documentation shall remain confidential and shall be returned to the applicant after review.

# CHAPTER 4 POLICE AND FIRE DEPARTMENTS

## ARTICLE 4.1 POLICE DEPARTMENT

### 4.1.1 Created; Composition

There is hereby created a Police Department for the City which shall consist of a Chief of Police and as many police officers as may from time to time be deemed necessary by the Council for the safety and good order of the City.

### 4.1.2 Appointment of Police Chief; Powers and Duties (O-09-02)

A. The Chief of Police shall be appointed by the City Manager.
B. The Chief of Police shall be the head of the department and have supervision over all the officers and members thereof.
C. The Chief of Police shall be responsible for the performance of the police department and of its functions, and all persons who are members of the police department shall serve subject to his order.

### 4.1.3 Rewards

No rewards or gratuities are allowed.

### 4.1.4 Departmental Rules and Regulations

A. The Police Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be prescribed by the Police Chief with the consent of the Council.
B. Such rules and regulations may cover, besides the conduct of the member, uniforms and equipment to be worn or carried, hours of service, vacations and all other similar matters necessary or desirable for the better efficiency of the department.

### 4.1.5 Duties of Police Department

A. It is the duty of the Police Department, under the direction of the Chief of Police, to:
    1. Enforce City ordinances and the statutes of the State of Arizona within jurisdictional limits as conferred by law and to arrest and charge the violators thereof.
    2. Render such account of the Police Department, its duties and receipts as may be required by the Council, and keep records of the office open to inspection by the Council at any time, except those records as may be exempt by state or federal law.
    3. Enforce the traffic regulations of the City as specified in Chapter 12 of this Code and enforce the traffic laws of the State within the limits of the City.
    4. Perform such additional duties as may be required by the Council.
B. Any peace officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any provision of this Code, and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this Code.
C. Every member of the Police Department shall appear as witness whenever necessary in a prosecution for a violation of any law. No such member shall retain any witness fee for service as witness in any action or suit to which the City is a party; any fees paid for such services shall be turned over to the Chief of Police, who shall deposit the same with the Treasurer.

**4.1.6 Answering Calls outside the City**

The members of the Police Department of the City are duly authorized to answer calls for aid and assistance beyond the corporate limits of the City pursuant to mutual aid agreements and State statutes.

**4.1.7 Stolen Property**

The Chief of Police shall have the custody of all lost, abandoned or stolen property recovered within the City.

**4.1.8 Vehicle Impound Fees**
**(O-08-06; O-00-19)**

The assessment of certain fees are necessary to provide revenue to offset the costs of inspection, transmission of required documentation to the Arizona Department of Motor Vehicles, and provision of facilities and manpower to effectuate the towing and storage of motor vehicles impounded by the City of Bisbee Police Department.

A. The vehicle impound fee shall include the administrative fee, the daily storage fees, and the actual costs incurred, if any, for towing the vehicle.
B. An administrative fee in the amount of one hundred dollars ($100.00) shall be assessed on each vehicle which is impounded by the City of Bisbee Police Department.
C. A daily storage fee will apply at the rate of fifteen dollars ($15.00) per day of storage, starting with the first (1st) day of impoundment, and including the mandatory impoundment period and days beyond the end of that period.
D. The total vehicle impound fee assessed against any vehicle as a result of each separate impoundment shall not exceed one thousand dollars ($1,000.00) plus the amount of any towing fees actually incurred.
E. Payment of impound fees shall be by U.S. currency, credit card, cashier's check, or money order payable to the City of Bisbee at the Finance Department.
F. The City shall generate a written receipt on payment of any impound fees, and provide the same to payer.
G. The impounded vehicle must be removed from storage on the date impound fees are paid in full, or an additional daily storage fee shall be incurred.
H. The City of Bisbee will comply with all applicable laws regarding the impoundment and the release of motor vehicles (See A.R.S. §§ 28-3511-3515, and other applicable state law).
I. Within the time periods required by applicable law, the City of Bisbee shall send notice to any owner of the impounded vehicle and any other person with an interest in the vehicle, as identified in the Department of Motor Vehicle records, in the manner required by applicable state law (See A.R.S. § 28-3514). Any post-storage hearing that may be requested shall be held in the Justice Court, as provided for by State law.

**ARTICLE 4.2 FIRE DEPARTMENT**

**4.2.1 Created; Composition**

There is hereby created a Fire Department for the City which shall consist of a Chief and as such other personnel as may be deemed necessary from time to time by the Council.

**4.2.2 Appointment, Powers and Duties of Chief**
**(O-09-02)**

A. The Chief of the Fire Department shall be appointed by the City Manager.
B. It is the duty of the Chief to:

1. Be responsible for and direct the operations of the Fire Department subject to the rules and regulations thereof.
2. Be responsible for the control and custody of all Fire Department property and equipment.
3. Be present at all fires, if possible, and plan and direct the extinguishment thereof. During the progress of a fire, the authority of the Fire Chief shall be absolute in all matters directly concerning the extinguishment of the fire and disposition of property endangered by it.
4. Examine the apparatus and buildings of the department as often as necessary to convince him that they are properly kept and cared for, and in good order and serviceable condition, and if any supplies, repairs or additions are required, to report the same to the Council.
5. Conduct suitable drills or instruction in the operation and handling of equipment, first aid and rescue work, salvage, a study of buildings in the City, water supplies and all other matters generally considered essential to good fireman ship and safety of life and property from fire.
6. Assist the proper authorities in suppressing the crime of arson by investigating or causing to be investigated the cause, origin and circumstances of all fires.
7. Inspect buildings and premises and serve written notice upon the owner or occupant to abate, within a specified time, any and all fire hazards that may be found. For the purpose of conducting such inspection, the chief is hereby empowered to enter any and all buildings and premises within the City at any reasonable hour. Any person served with such written notice shall comply and notify the chief of his compliance within a reasonable time.
8. Keep complete records of all fires, inspections, apparatus and equipment, personnel and other information about the work of the department open to Council inspection and furnish to the Council such information upon request.
9. Make a complete annual report, in writing, to the Council as may be specified by the Council. Such report shall include the information specified in paragraph 8 of this subsection, together with recommendations for improving the effectiveness of the department by March 31.
10. Enforce or cause to be enforced all ordinances, laws and regulations of the City and State, insofar as they pertain to fire and safety.
11. Preside at the annual and special meetings of the department and exercise control and have general authority over the department when on duty, parade or inspection. He shall settle all disputes between companies when on duty; his decision to be final.

C. The Fire Chief and the members of the Fire Department shall have the authority of a police officer while actively engaged in fighting a fire, or going to or from a fire, or performing any other duty required by law or the provisions of this Code.

**4.2.3 Departmental Rules and Regulations**

The Fire Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be adopted by the Council.

**4.2.4 Captain**

The Captain shall assist the Chief in the discharge of his duties and, in his absence shall have the same authority and responsibility and exercise all of the powers of the Chief.

**4.2.5 Entry upon Adjacent Property**

It is lawful for any firefighter acting under the direction of the Chief or another officer in command to enter upon the premises adjacent to or in the vicinity of any building or other property that is on fire for the purpose of

extinguishing such fire, and no person shall hinder, resist or obstruct any firefighter in the discharge of his duty as provided in this article.

**4.2.6 Equipment**

The department shall be equipped with such apparatus and other equipment as may be required from time to time to maintain its efficiency and properly protect life and property from fire. Recommendations concerning apparatus and equipment needed shall be made by the Chief, and after approval by the
Council, such apparatus and equipment shall be purchased in such manner as may be designated by the Council. All equipment of the department shall be safely and conveniently housed in such place or places as may be designated by the Council. No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully take away or conceal any article used in any way by the department. No person shall enter any place where the fire apparatus is housed or handle any apparatus or equipment belonging to the department unless accompanied by or having special permission of an officer or authorized member of the department. No fire apparatus and equipment shall be hired out or permitted to leave the fire station except in response to a call for aid at a fire within the corporate limits of the City, or in response to a call for aid at a fire in an area authorized for fire protection service or mutual aid under provisions of Section 4.2.7.

**4.2.7 Providing Fire Protection outside the City**

A. The Council may enter into agreements or contracts to furnish fire protection outside the City or enter into mutual aid agreements, and the fire department is authorized to render firefighting service pursuant to the terms of such agreements or contracts. In addition, the fire department may provide services or assist in providing services outside the town when those services are unavailable or are provided at the request of any law enforcement agency, fire district, fire department or private person, and may receive reimbursement for the costs of providing the emergency services. The person receiving the services, or on whose behalf the services are provided, is liable to the town for the costs, and these costs constitute a debt of that person and may be collected by the town. The cost of providing such services are those costs set forth in resolutions adopted by the City Council establishing fee schedules for emergency response, standby charges, fees for fire cause determination or any other fee that may be required or appropriate to provide services outside of the town's corporate limits. The City Council may engage a service provider to pursue collection of the fees.

**4.2.8 Acknowledgment of Right-of-Way**

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

**4.2.9 Fire Alarms**

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

## ARTICLE 4.3 FIRE FLOW, WATER MAIN AND FIRE HYDRANT SPACING REQUIREMENTS

A. For the purposes of this article, fire hydrant means a mechanical device specifically manufactured for the purpose of supplying waters from water main to fire pumping apparatus.

B. Within the corporate limits of the City not governed or controlled by the City's subdivision code, fire protection facilities, including fire hydrants and water mains, shall conform to the following minimum specifications and installation criteria:

   1. Fire hydrants shall be spaced at distances no greater than five hundred feet in residential zoning districts and at distances no greater than four hundred feet in all other zoning districts. In cases where it is not feasible to construct hydrants to meet the spacing requirements stated above, as determined by the fire chief or an authorized representative, at least one hydrant shall be installed no greater than five hundred feet from the furthest point of any proposed new building in a commercial district, and no greater than five hundred feet from the furthest point of any proposed new building in a residential district. All distances shall be measured along "Streets", "Public Ways" or "Access Roadways", as defined in the Uniform Fire Code (hereafter referred to as "streets").
   2. Fire hydrants shall have two and one-half inch outlets and one four and one-half inch outlet. The four and one-half inch outlet shall be installed so that the outlet faces the street, and the bottom of the outlet shall be no less than one foot above the surface of existing or proposed streets or sidewalks. Threads on all outlets shall be iron pipe hose threads.

C. Personnel in the Fire Department shall color code hydrants in accordance with the flow capabilities of the particular hydrant. Site plans will be approved by the City site review committee only when improvement plans submitted by the developer have been certified by the Fire Chief, the Public Works Director or an authorized representative as conforming to the foregoing standards or approved deviations. The current edition of the Uniform Fire Code should be consulted (and the provisions thereof adhered to) for other applicable requirements and conditions relating to the use or occupancy after construction.

D. New construction may be approved by the Site Review Committee, Fire Chief, Public Works Director or an authorized representative, even though required fire flow is not available.

## ARTICLE 4.4 UNIFORM FIRE CODE
**(O-94-36)**

That certain code entitled 2012 International Fire Code, is hereby adopted as the Fire Code of the City of Bisbee. The Fire Code is made a part of this chapter the same as though said Code was specifically set forth in full herein. At least one copy of the Fire Code shall be on file at the Bisbee Municipal Building and one copy shall be filed in the public library and kept available for public use and inspection.

## ARTICLE 4.5 AMBULANCE
**(O-13-12;O-06-10; O-00-01; O-92-01)**

The City Council of the City of Bisbee is authorized to regulate and to set fees for the ambulance service operated by the City of Bisbee.

### 4.5.1 Rates

The rates for ambulance services provided by the City of Bisbee shall be as follows:

| | |
|---|---|
| ALS Base Rate | $947.87 |
| BLS Base Rate | $947.87 |
| Mileage Charge (Patient loaded miles) | $16.73 per mile |
| Standby/Waiting Charge | $236.96per hour after first 15 minutes |

| | |
|---|---|
| Disposable Medical Supplies | Pursuant to A.R.S. § 36-2239(D) Charges Allowed |
| Subscription Rate | None |

**ARTICLE 4.6 POLICE AND FIRE ADVISORY COMMITTEE (O-03-10)**

**4.6.1 Establishment**

In accordance with Section 5.02, Bisbee City Charter, there is hereby established a Police and Fire Advisory Committee. The committee shall be composed of seven (7) voting members appointed by the Mayor and approved by the City Council. There shall also be four (4) nonvoting members of the committee, one supervisor and one non-supervisor each from the Police and Fire Departments, as selected by the Bisbee Police Chief and the Bisbee Fire Chief from their respective departments.

**4.6.2 Selection of Committee Members**

The seven (7) voting members shall be composed of two (2) members each from the City's three Wards and one member at large. In recruiting and selecting the voting members of the committee, the Mayor and City Council shall seek to reflect the diversity of Bisbee's population in order that there will be input from a broad spectrum of interests, views and concerns. In pursuit of that objective, the Mayor and City Council should seek board members from different personal, professional, ethnic and cultural backgrounds.

**4.6.3 Terms of Office**

The voting members of the committee shall serve staggered terms. Three (3) of the initial committee voting members, one from each Ward, as determined by lot, shall serve a one (1) year term. The remaining initial committee voting members shall serve a two (2) year term. Thereafter, the term of office for a board member shall be two (2) years. The Mayor and City Council shall fill a vacancy during a term in office for the remainder of the term in the same manner as the original appointment. Unexcused absence from three (3) consecutive regularly scheduled meetings by any voting member of the committee shall be deemed to constitute the resignation of the voting member.

**4.6.4 Officers**

The committee shall nominate and elect a chairperson and a vice chairperson to each serve a one-year term.

**4.6.5 Staff Representatives**

The City Manager shall select and appoint staff representatives and/or clerical support for the committee.

**4.6.6 Meetings (O-07-10)**

A. Regular committee meetings shall be held as determined by the committee's chairperson to be necessary. Special meetings may be held as determined by the committee's chairperson or upon request of one or more of the committee's voting members, but only after a 72-hour notice to all committee members.
B. A quorum of the committee shall consist of a majority of voting committee members then appointed and serving.
C. Written minutes of all committee meetings shall be prepared. All committee meetings shall also be recorded.

### 4.6.7 Powers and Duties Generally of the Committee

The committee shall have the following powers and duties:

A. The committee shall establish, with the approval of the Mayor and City Council, such written rules and procedures as it deems necessary for the faithful performance of its duties as expressed in this article; provided, however, such rules do not conflict with applicable laws, ordinances or the City's Charter.

B. The committee shall advise and consult, through its chairperson, with the City Manager as to the items or matters to be included on any committee agenda prior to the preparation and distribution of the agenda.

C. The affirmative vote of a majority of voting members of the committee present shall be required for passage of any matter or recommendation of the committee.

D. The committee shall review and approve the official minutes of all committee meetings.

E. The committee shall identify public safety, law enforcement, fire prevention and emergency service issues that are of concern to the community, or a particular segment of the community, and provide recommendations to the Mayor and City Council or the City Manager, as the case may be, regarding how those issues should be addressed. The issues the committee should consider addressing include, but are not limited to:

- Excessive force concerns;
- Slow response times;
- Community communications and relations;
- Improving ethnic and gender diversity through recruitment;
- Enforcement activities or programs;
- Criminal activity in specific areas or City wide;
- Particular fire safety issues for commercial and residential properties;
- Emergency service concerns and needs;
- Traffic violations concerns;
- Juvenile crime or juvenile activities;
- Crime in and around schools;
- Equipment needs; and
- Staff needs

F. The committee will work through the City Manager to promote and encourage community policing and community fire prevention policies that:

- Reflect a concern for the overall well-being of the community;
- Seek to address underlying causes and problems;
- Deal with the combination of physical and social issues that are at the heart of many
- community problems;
- Require active involvement by community residents;
- Require partnerships and involvement sometimes beyond law enforcement and fire
- prevention to be effective; and
- Establish a strong relationship between the Police and Fire Departments and the community based on trust, assistance and mutual respect.

G. The committee shall promote communication between the Police and Fire Departments and the community by encouraging citizens from all segments of the community to present their views, concerns and complaints about crime and law enforcement, as well as fire prevention and emergency services issues within Bisbee. In pursuit of this objective, the committee shall actively seek out the views and concerns of

citizens from the many racial, ethnic, cultural, socio-economic and minority groups that make up Bisbee's diverse community.

H. The committee may allow citizens to express complaints regarding allegations of specific instances of police or fire fighter misconduct. The committee, however, is not an investigating body; nor shall it consider individual personnel issues. The committee shall advise the complainant of the Police Department's or Fire Department's procedure, as the case may be, for handling such complaints, provide information about how a formal complainant can be filed and refer the matter to the City Manager for his review. The City Manager shall make an immediate inquiry regarding any such complaint and report to the committee regarding his inquiry and recommendations, if any. If the complainant is dissatisfied with the City Manager's report, or if the complaint raises an issue of general concern to the community or a segment of the community, the committee may set the issue on its agenda for a later meeting at which it may consider the issue, including holding a public hearing, and offer its recommendations, if any, to the Mayor and City Council regarding the issue.

I. The committee shall submit an annual report each July to the Mayor and City Council regarding the activities of the committee. At the committee's request, the City Manager shall prepare the annual report on behalf of the committee for the committee's adoption. The report shall include a summary of the issues reviewed by the committee, any recommendations made by the committee and any actions the Police and Fire Departments have taken as a result of those recommendations. The City Manager shall also provide the Mayor and Council with copies of all committee minutes. In addition, from time to time, the committee may request the opportunity to address the Mayor and City Council at regularly scheduled Council meetings regarding crime or law enforcement or fire prevention or emergency service issues.

## CHAPTER 5 MAGISTRATE COURT

### ARTICLE 5.1 MAGISTRATE COURT ESTABLISHED; JURISDICTION

There is hereby established in the City a Magistrate Court which shall have jurisdiction of all violations of this Code, and jurisdiction concurrently with justices of the peace of precincts in which the City is located of violation of laws of the state committed within the limits of the City. The Magistrate Court is established pursuant to the Arizona Constitution and Section 22-402, A.R.S.

### ARTICLE 5.2 MAGISTRATE (CITY CHARTER, ARTICLE XI)

#### 5.2.1 Appointment; Compensation (O-91-07; O-89-34; O-89-27)

A. The Magistrate shall be appointed by the Council for a period of two years, with such compensation as may be determined by the Council.

B. The Mayor is hereby authorized to appoint a Magistrate Pro Tempore to act in the temporary absence or inability of the City Magistrate to so act.

C. That said Magistrate Pro Tempore shall assume the duties of Magistrate only upon the approval of the Mayor or Mayor Pro Tempore.

D. That compensation for the Magistrate Pro Tempore shall be as fixed by the Mayor and Council from time to time.

E. That the term of the Magistrate Pro Tempore shall run concurrent with the term of the City Magistrate.

#### 5.2.2 Powers and Duties (O-02-10)

The Magistrate shall exercise powers, duties and responsibilities as provided by the constitution and laws of the State, this Code and the City ordinances. The powers and duties of the Magistrate shall include, but are not necessarily limited to, the following:

A. Submitting all reports required by the Constitution and the laws of the State, this Code and ordinances of the City.
B. Reporting the activities of the Magistrate Court in writing to the council as reasonably required by the Council.
C. The responsibility for fixing and receiving all bonds and bails and receiving all fines, penalties, fees and other monies as provided by law. Such fees shall include a deferred prosecution fee in an amount not to exceed $100.00 (one hundred dollars) per month, for a period not to exceed 12 (twelve) months, as set forth in the written agreement between the City and the defendant. This is pursuant to Rule 38 of the Arizona Rules of Criminal Procedure (or its substitute.)
D. The payment of all fines, penalties, fees and other monies collected by the Court to the City Treasurer. The Magistrate shall make monthly written reports to the Council of all monies collected by the Court. The report shall be filed with the Clerk.

### 5.2.3 Hearing Officers

The Council may appoint one or more hearing officers to preside over civil traffic violation cases when the appointment of such hearing officers is necessary to assure prompt disposition of civil traffic violation cases.

## ARTICLE 5.3 PROCEEDINGS OF COURT; CONDUCT OF BUSINESS

The proceedings shall be conducted in accordance with the State Constitution, the applicable State statutes and rules of the State Supreme Court pertaining to police courts. The proceedings shall also be conducted in accordance with the rules of criminal procedure for the Superior Court, unless otherwise prescribed, and providing this Code and resolutions of the City are not in conflict therewith. The Municipal Court shall at all times be open for transaction of business except on non-judicial days.

## ARTICLE 5.4 CIVIL CODE ENFORCEMENT

### 5.4.1 Code Infractions; Jurisdiction; Purpose

A. The Magistrate Court shall have exclusive jurisdiction to adjudicate, assess and collect penalties for civil violations of the City Charter, City Code and other City ordinances. The jurisdiction of the Magistrate Court shall also include the authority to issue orders of abatement or injunction for continuing violations and to require compliance with the applicable provisions of the City Code and other City ordinances.
B. The jurisdiction of the Magistrate Court over civil code violations shall not be interpreted or applied in any manner to limit the jurisdiction of the Superior Court over civil actions for declaratory relief, injunctive relief, abatement of public or private nuisances or damages, the basis of which may be an act, omission or condition in violation of the City Code or other ordinances.
C. The purpose of this section is to provide, as an additional alternative to other enforcement means, an informal, efficient and inexpensive process for the adjudication of civil code violations. This process is intended to provide a citizen who receives a civil infraction complaint with a prompt, simplified hearing, without the need, in most cases, for an attorney and without the severity of the consequences which might follow a criminal conviction for a Class 1 Misdemeanor.

### 5.4.2 Commencement of Action.

A. A civil code violation action filed under this article may be commenced by the issuance of a citation, by a long form complaint, or by a complaint consistent with the Arizona Rules of Civil Procedure, at the discretion of the designated City officer. Any such complaint form shall include a written description of the alleged violation.
B. A citation shall be in substantially the same form as the Arizona Traffic Ticket and Complaint and shall direct the defendant to appear or to file a written appearance in the Bisbee Magistrate Court within ten days after the receipt of the citation. Any alternative complaint form shall include this same information, including the directions for the defendant's appearance.
C. The citation or complaint form shall further notify the defendant that if he or she fails to appear on or before the date specified a judgment by default will be entered against him or her, and that the court may, in its discretion, impose a civil sanction in accordance with the City Code.
D. Service of the citation or complaint may be accomplished and will be deemed proper and complete by any of the following methods:
    1. By having the defendant sign the citation or complaint with a promise to appear or to file a written appearance in court within ten days of the issuance of the citation or complaint;
    2. If the defendant refuses to sign the citation or complaint, by hand-delivering a copy to the defendant;
    3. By mailing a copy of the citation or complaint to the person charged by certified or registered mail, return receipt requested, to the person's last known address; or
    4. In the event that service cannot be accomplished as set forth in subsections 1, 2 and 3 of this subsection, the state may serve the defendant by any means allowed by the Arizona Rules of Civil Procedure, including by leaving a copy with a person of suitable age and discretion who resides at that person's dwelling house or usual place of abode.

**5.4.3 Authority to Issue Civil Citations or Complaints**

Any of the following persons may issue and file with the Magistrate Court a civil citation or complaint pursuant to this chapter:

A. Any peace officer;
B. The City Attorney;
C. The Code Compliance Officer;
D. The Code Compliance Manager;
E. Any other person designated by the City Manager in writing, filed with the City Clerk.

**5.4.4 Appearance by Defendant**

A. The defendant shall, within ten days of the receipt of the citation or complaint, appear in person, through his or her attorney or by filing a written response, in the Bisbee Magistrate Court and shall either admit or deny the allegations contained in the citation or complaint.
B. If the defendant admits the allegations, the court shall enter judgment against the defendant and shall impose a civil sanction pursuant to the guidelines of this Code.
C. If the defendant denies the allegations contained in the citation or complaint, the court shall set a date for a hearing on the matter.

**5.4.5 Default Judgment**

A. If the defendant fails to appear as directed in the citation or complaint, the court shall enter a default judgment and shall impose a civil sanction for the violation in accordance with the guidelines set forth in this Code.

B. If the defendant fails to appear for the hearing, the defendant's failure to appear shall be deemed an admission of the offense, and the court shall enter judgment against the defendant and shall impose a civil sanction for the violation pursuant to the provisions of this Code.

**5.4.6 Rules of Procedure**

Proceedings under this article shall be conducted in accordance with the Arizona Rules of Procedure in Civil Traffic Violation Cases, except where such rules are modified by or are inconsistent with the express provisions of this Article. Both the defendant and the City shall have the right to be represented by counsel in any proceeding under this Article. The waiver provisions of Rules 11 and 12 of the Rules of Procedure for Civil Traffic Cases shall not be applicable. Any remaining issues not addressed either by this Article or by the Rules of Procedure for Civil Traffic Cases shall be subject to the Arizona Rules of Civil Procedure.

**5.4.7 Collection of Civil Sanctions**

Any judgment for civil sanctions obtained pursuant to this article may be collected in the same manner as a civil judgment in the justice court.

**CHAPTER 6 ANIMALS**

**ARTICLE 6.1 ANIMALS IN GENERAL**

**6.1.1 Definitions**
**(O-01-12)**

In this article, unless the context otherwise requires:

A. "Animal" means all mammals, fowl and reptiles, with the exception of man.
B. "Animal shelter" means an establishment authorized and maintained by the City for the confinement, maintenance and safe-keeping of dogs or other animals which come into the custody of the City.
C. "At large" means any dog off the premises of the owner and not under control of a person by a leash five feet or less in length.
D. "Service Animal" is defined as an animal that has completed a formal training program that assists its owner in one or more daily living tasks that are associated with a productive lifestyle and which is sufficiently conditioned to be of no danger to the health and safety of the general public.
E. "Herd" means more than three.
F. "Humane officer" means the humane officer and any assistant humane officers, appointed by the chief of police.
G. "Impound" means the reception into custody by the humane officer of any dog or other animal for confinement in the animal shelter or in a place of confinement operated by a licensed veterinarian.
H. "Leash" means any chain, rope, strap or other similar material, no longer than ten (10) feet, attached to the collar or harness of an animal or otherwise attached to the animal and used to hold the animal in check.
I. "Livestock" means neat animals, horses, mules and asses.
J. "Owner" means any person owning, harboring or keeping a dog or other animal.
K. "Stray dog" means any dog running at large.
L. "Vicious dog" means any dog that has bitten a person or animal without provocation, or a dog that has a known propensity to attack or bite people or animals.

**6.1.2 Animals within Limits of City; At Large**

A. It is unlawful for any person, firm or corporation to herd, hold, pasture or detain any herd, drove or band of sheep, horses, cattle or any other animals within the corporate limits of the City.
B. It is unlawful for any person to permit or allow any horse, mare, colt, mule, cow, bull, calf, jack, jenny, goat or hog belonging to him or under his control to run at large within the City.
C. It is unlawful for any person to drive or cause to be driven any animal into the City with the intention or the purpose of having such animal impounded.
D. It is unlawful for any person to permit, suffer or allow any chickens, ducks, turkeys, geese or any fowl owned by him or under his care or control to run at large or to trespass within the corporate limits of the City, on either public or private property.
E. Other at large animals, including dogs and cats, are addressed in Article 6.2 and 6.3

**6.1.3 Maintaining Swine**

It is unlawful for any person to keep and maintain within the corporate limits of the City any pigs, hogs or swine.

**6.1.4 Duties of ACO**

It is the duty of the ACO to take up or cause to be taken up any of the animals named in Chapter 6 running at large within the City, or any animal which it is unlawful to maintain in the City pursuant to Chapter 6, and impound them.

**6.1.5 Notice of Impounding of Animals Pursuant to Sections 6.1.2 or 6.1.3**

A. Within twenty-four hours of the taking up of any animal running at large, the Humane Officer shall notify the owner of said animal, if known, of the fact of its being taken up, if the animal be branded and the owner of said brand be known to the humane officer. He shall notify such brand owner of the fact that an animal, describing the same, bearing the brand of said party is impounded and if not redeemed within the time specified in said notice, it will be sold to discharge the cost and penalty of permitting it to run at large within the City limits, and the expense of impounding and keeping the same. He shall also post in three public places in the City notices giving a description of the animal, and stating that if said animal is not redeemed and all charges paid within or before a certain time, stating the day and hour, which shall not be less than ten nor more than fifteen days from the date of the taking up, that at said time and place the animal so impounded will be sold at public auction, to the highest bidder for cash to pay the charges of taking up and keeping of said animal. A copy of said notice shall be published for at least one week in the official newspaper of the City, and no sale shall be made until at least five days after said publication.
B. The ACO shall, upon the taking up of said animal, if branded and the owner of the brand is not known to him, at once send by registered mail to the Bureau of Registration, a written notice, describing the animal so taken by mark, brand, age, sex, kind and color, and where said animal is held. In such case, said animal shall not be sold for at least ten days after date of mailing such notice to said Register of Brands.

**6.1.6 Care of Animals**

Any animal seized and impounded under the provisions of this chapter shall be provided with proper care, food and water while so confined by the ACO or Animal Shelter.

**6.1.7 Claimed by Owner**

If at any time prior to the time fixed for the sale, the owner of any animal so seized and impounded shall claim the same, he shall be entitled to the possession thereof upon payment to the ACO of such sum as provided in this article and the legal charge and expense incident to such taking up and keeping.

**6.1.8 Sale of Animals Impounded**

At the time specified in notice of sale, if the animal so impounded pursuant to Sections 6.1.2 or 6.1.3 is not redeemed, the ACO shall sell the same to the highest bidder for cash, but in no instance shall he be or become interested, either directly or indirectly, in the purchase of any animal sold by him. The ACO shall charge, for taking up, impounding and registering any animal so taken up, fees as determined by resolution of the Council. The ACO shall, within ten days of the sale of any animal, pay over to the Treasurer of the City, all money received from the sale of such animal, after deducting his fees and taking the treasurer's receipt therefore, and deposit the same with the clerk.

The ACO shall keep in a suitable file an account of all moneys received, when and from whom received, the amount paid to the treasurer, and the date of payment, a complete description of all animals impounded, showing the time when impounded and by whom redeemed or when sold, and to whom sold, which book or record shall be the property of the City, and open to the inspection of the public at all reasonable times.

**6.1.9 Payment to Owner**

The Council may, by motion, at any time after the animal is sold, not exceeding six months thereafter, order the clerk to deliver a warrant in favor of the owner of said animal for whatever amount was received from the sale of said animal upon due and sufficient proof as to who was the owner of such animal.

**6.1.10 Grandfather Clause**

Nothing in this chapter shall affect existing property or the right to its continued use for the purpose used at the time the chapter, or any part thereof, takes effect, nor to any reasonable repairs or alterations in buildings, facilities or property used for such existing purpose; providing that said use is maintained and not abandoned or discontinued for a period longer than six months at a time.

**6.1.16 Kennel Provisions**

It is unlawful for any household to harbor or hold more than three dogs older than the age of four months without first having obtained a permit to operate a kennel.

**6.1.17 Minimum Square Footage for Horses or Other Equine**

There shall be an area of one thousand square feet available for one horse or other equine; one thousand one hundred fifty square feet available for two horses or other equine; and one thousand three hundred square feet available for three horses or other equine. The shape and cross-fencing of said area is to be at the option of the landowner as long as the square footage minimum requirement is met.

**ARTICLE 6.2 DOGS**

**6.2.1 License Required**

No owner shall keep, maintain or harbor a dog over three months of age within the City unless a license is obtained for the dog from the Animal Shelter or a department of the City that is authorized to issue such licenses. Tourists or transient owners keeping or maintaining a dog within the City shall not be required to obtain a license for the dog if it has a valid current license from another city or county, is not kept or maintained within the City more than thirty days, and has a rabies vaccination certificate signed by a licensed veterinarian showing the vaccination of the dog with a useful term for at least the period for which it shall be kept within the City. No rabies vaccine shall be acceptable unless it is approved by the Arizona State Veterinarian.

**6.2.2 License Fee**
**(O-02-07)**

The license fee shall be $10.00 per year for each neutered male or spayed female dog. The fee shall be reduced to $6.00 for each neutered male or spayed female dog for senior citizens (age 62 and over). The license fee shall be $30.00 per year for each un-spayed female dog or unneutered male dog; the fee shall be reduced to $20.00 for each neutered male or spayed female dog for senior citizens (age 62 and over). No license fee shall be required for a service animal. The license shall expire on the first day of January of each year and shall be delinquent on the first day of February of each year. After the license becomes delinquent, the fee shall increase by $5.00 for each category of dog. No license fee shall be pro-rated or refunded; the burden of proof as to whether or not a dog is neutered or spayed shall be upon the owner.

**6.2.3 Date of Payment**
**(O-02-07)**

It shall be the duty of each owner who is required to obtain a dog license to pay the license fee to the Animal Shelter on or before the first day of February in each year, or upon acquiring ownership or possession of any unlicensed dog or upon establishing residence in the City. Failure to pay the required fee by the first day of February, or within thirty (30) days of establishing residency in the city, shall result in a fine of $25.00 for the first offense, $35.00 for the second offense and $50.00 for the third and subsequent offenses. Such fine shall be paid to the Animal Shelter within thirty (30) days of notification. The Animal Shelter shall cause a notice of the necessity of paying such license fee to be printed in a newspaper published within the City at least once before the first day of February of each year.

**6.2.4 Receipts and Tags**

A. Upon payment of the license fee, the Animal Shelter shall execute a receipt in duplicate. The receipt shall contain the name and address of the owner of the dog, the date of vaccination of the dog against rabies, the type of rabies vaccine used, the year and series number of the metal dog tag issued, a description of the dog, including name, breed, age, color and sex. The Animal Shelter shall deliver the original receipt to the person who pays the fee and shall retain the duplicate. The Animal Shelter shall deliver a metal tag which shall be inscribed with the name of the City, the number of the license and the year for which it is valid, to the person who pays the license fee. Each tag shall be issued for a specific dog and shall not be transferable to any other dog.
B. The owner shall cause the tag to be permanently affixed by fastening the tag to the collar or harness of the dog in such a manner that the tag may easily be seen by the Animal Control Officer. It shall be the duty of the owner to see that the tag is constantly worn by the dog.
C. In the event that the owner loses a dog tag, a duplicate may be issued by the Animal Shelter on presentation of a receipt showing payment of the license fee for the current year together with a fee of $1.00 for each duplicate tag issued.
D. It is unlawful for any person to counterfeit or attempt to counterfeit a dog tag, or to take from a dog a tag legally placed upon it or place a dog tag upon a dog unless the tag was specifically issued for that particular dog.

**6.2.5 Impounding; Notice**
**(0-93-24)**

A. Any dog or other animal found running at large shall be impounded. The ACO or any police officer may, at his discretion, for any humane reason, immediately kill any dog or other animal found at large within the City.
B. On the impounding of any dog or other animal, the Animal Shelter shall make reasonable efforts to identify and contact the animal's owner to inform them that the animal has been impounded and the steps necessary to redeem the animal.
**C.** Each stray dog impounded and not eligible for a sterilization program shall be kept and maintained at the Animal Shelter for a minimum of seventy-two hours or one hundred twenty hours for an animal that is impounded with a microchip or wearing a license or any other discernible form of owner identification, unless claimed or surrendered by its owner. Any person may purchase or adopt a dog on expiration of the impoundment period, if the person pays all pound fees established by the City and complies with the licensing and vaccinating provisions of this article. If the dog is to be used for medical research, a license or vaccination is not required.

**6.2.6 Redemption**

Any dog or other impounded animal may be timely redeemed from the Animal Shelter by the owner upon providing legal right to possession of the dog or other animal and the payment of an impoundment fee of $10.00 plus a fee of $8.00 a day for each day the dog or other animal has been confined in the Animal Shelter in order to defray part of the cost of impounding and maintaining the dog or other animal. If the animal is a dog and unlicensed, the owner must, in addition to the aforementioned fees, pay to the Animal Shelter the license fee for the current year and present a current, valid certificate of vaccination against rabies or obtain such a certificate before the animal is redeemed. If the animal is a cat or domesticated mustelid (eg., skunk or ferret), the owner must, in addition to paying the aforementioned fees, present a current, valid certificate of vaccination against rabies or obtain such a certificate before the animal is redeemed. Any animal subject to licensing that is found without a tag or microchip identifying its owner shall be considered unowned. Tags and microchips including an owner's or owner agent's current phone number will be used to contact the owner or owner's agent. In addition to the foregoing, to redeem a dog, the owner must demonstrate that the animal has been sterilized and implanted with a microchip for purposes of identification, or must do so before the animal is released to the owner, unless a veterinarian determines that a medical contraindication for sterilization exists that reasonably requires postponement of the sterilization until the surgery or another approved sterilization can be performed in a safe and humane manner.

**6.2.7 Disposition of Animals**

A. Any dog or other animal, which is not claimed within the time limits specified in Section 6.2.5 (C) may be purchased or adopted by paying a fee as determined by the Animal Shelter and provided that all of the conditions of A.R.S. 11-1022 are complied with, including the sterilization and vaccination requirements. Any dog or other animal not timely redeemed or purchased may be destroyed.
B. The ACO shall not take up and dispose of any dog or other animal upon an owner's request, although a property owner or occupant's request to remove a captured wild animal, including a feral cat, from his or her private property shall be honored to the extent feasible. Only under circumstances in which a privately owned or cared for dog or other animal poses imminent and substantial risk to life or property, or must be immediately disposed of for humanitarian reasons, may the ACO properly dispose of said dog or other animal at its owner's request.

C. The Animal Shelter itself does not euthanize animals, and so will not do so upon an owner's or owner's agent's request; however, special circumstances may prompt animal shelter workers to, if deemed necessary and possible, seek an owner's consent to euthanize a properly licensed and tagged animal prior to the end of a timely redemption period.
D. When the Animal Shelter is open and available and animals there are being safely and sustainably kept and cared for, any dog or other animal deemed healthy and safe enough to remain in the facility and deemed otherwise appropriate for the facility may remain until redeemed, adopted or purchased, barring emergency or other special circumstances.
E. Animals received in a condition of terminal illness or mortal injury beyond clinical redemption for any reasonable quality of life may be euthanized.
F. Animals received in a diseased condition may be euthanized if euthanization is necessary to prevent the spread of disease.

G.
H. Animals that for any other reason are deemed inappropriate for the shelter and for whom no other appropriate facilities are timely and affordably available, may be euthanized for humanitarian reasons.

**6.2.8 Improper Care**

A dog or other animal that is found kept without food, water or proper care shall be taken into custody and impounded by the ACO. It shall be improper care if a dog is kept outside without shelter during periods of extreme weather, including without limitation, extreme heat or freezing temperatures, thunderstorms, tornadoes or snow storms

**6.2.9 Reporting of Animal Bites**

A. When on the site where they are housed, all dogs shall be confined in a manner providing them ready access to water and shelter and without posing a risk to the health or safety of the animal.
B. If a properly fenced area is not available, pulleys, running lines or trolley systems are the preferred methods of confinement for dogs outdoors, because they allow more mobility for the animal. These systems must be at least 15 feet in length and at least 7 feet above the ground. Dogs shall not be chained, tied, fastened or otherwise tethered to dog houses, trees, fences, residential structures or other stationary objects, including pulleys, running lines or trolley systems, as a means of confining the animal to the property unless each of the following conditions is met:
   1. The dog is not restrained in this manner for any continuous period longer than nine (9) hours.
   2. The tether is connected to the dog by a buckle-type collar or a body harness made of nylon or leather, not less than one inch in width.
   3. The tether shall not be less than ten (10) feet in length; shall terminate in a swivel at each end; shall not weigh more than 1/8 of the dog's weight; and shall be free of tangles.
   4. The dog is tethered in such a manner as to prevent injury, strangulation, or entanglement. The tether shall be located at sufficient distance from any fence or other structure from which the dog could potentially hang, were the dog to jump over a fence or to climb and fall off the structure.
   5. The dog is not tethered outside during periods of extreme weather, including without limitation, extreme heat or freezing temperatures, thunderstorms, tornadoes or snow storms.
   6. The dog has ready access to water, shelter, and a clean, dry area. Excrement shall be removed from the area on a regular basis and shall not be allowed to accumulate.
   7. The dog is at least nine (9) months of age. Puppies shall not be tethered.

8. The dog is neither sick nor injured.
9. If there are multiple dogs, each dog must be tethered separately.

C. A dog or other animal that is found kept without food, water or proper care, including confinement that violates this section, shall be taken into custody and impounded by the ACO.

**6.2.10 Interference with Humane Officer**
**(O-91-06)**

It is unlawful for any person, in an emergency situation, to fail or refuse to permit the ACO to inspect any dog or other animal and the premises on which it is kept to determine whether any provision of this chapter is being violated, or for any person to interfere in any way with the ACO in the performance of his duties. Nothing in this section shall be construed to empower the ACO to enter the house or dwelling place of any person in violation of any requirement for said officer to obtain a search warrant to inspect and search said premises.

**6.2.11 Nuisance**
**(O-89-16)**

A. It is unlawful for any person to maintain any animal in such a manner so as to become a public nuisance or to deprive others of the peaceful enjoyment of their lives.
B. It is unlawful for any owner to keep or harbor, within the City, any dog or other animal which barks, howls or makes other aggravating noises which unreasonably disturb the peace and quiet of the neighborhood.
C. After a citation has been issued, or a complaint signed and summons issued, the owner shall appear in court within five (5) days and be subject to a $100.00 fine. Upon a second complaint on the same animal, the owner will be subject to a $300.00 fine, and with each day of violation constituting a separate offense.

**6.2.12 Places of Business**

A business establishment, in its discretion, may allow or disallow dogs or other animals on its premises, subject, however, to the laws regarding service animals as set forth in A.R.S. 11-1024, and subject to any laws regarding public health and safety.

**6.2.13 Vicious Dogs**
**(O-14-01)**

A. Except as supplemented by this section, Vicious and Biting Animals, and Aggressive Dogs shall have the meanings ascribed to those terms, and be dealt with, as set forth in A.R.S. 11-1001, -1014, and -1014.01, which are hereby incorporated by reference; provided, however, that references to the county pound shall be replaced with Animal Shelter, and references to county enforcement agent shall be replaced with ACO.

B. Procedure for Viciousness Determination

1. Any person, including the ACO, the Animal Shelter coordinator, the City Attorney, or any citizen, having reasonable grounds to believe a dog is vicious, may petition the City Magistrate for a determination that the animal is vicious.
2. Upon the receipt of the petition, or at any time thereafter, if the City Magistrate finds that there are reasonable grounds to believe that the subject animal meets the definition of “vicious animal”, the City Magistrate may order that the animal be impounded on such terms as the Court deems necessary to protect the public safety, pending further review.

3. After notice to the owner of the animal, the City Magistrate shall conduct a hearing to determine if the animal is "vicious" as defined in this Article. The decision shall be based on the preponderance of the evidence presented at the hearing.
4. A viciousness determination hearing may be conducted with and as a part of any other related proceeding involving the same animal and same owner.
5. At the conclusion of this hearing process, the Magistrate may award reasonable attorney's fees to the prevailing person or party.

C. Disposition of Vicious Dogs

Upon a determination that a dog is "vicious," the Court shall enter such orders as it deems to be necessary to protect the public. These orders may include one or more of the flowing:

1. That the dog at all times be securely confined indoors or in a securely enclosed and locked pen or kennel, with secure gate, sides, and ceiling, expect when the dog is leashed and muzzled. These premises shall be designated with a prominent sign reading "Vicious Dog."
2. That the dog be spayed or neutered.
3. That the dog be defanged or declawed.

4. That the vicious dog be euthanized.
5. That the Court require such other and further relief as may be appropriate in the particular circumstances at issue to protect the public from any future harm or injury that may be caused by the vicious dog.

**6.2.14 Dog Fecal Matter**
**(O-01-12)**

Any person owning, possessing, harboring, or having the care, charge, control or custody of any dog shall immediately remove and thereafter dispose of any fecal matter deposited by the dog on public or private property unless the property owner has given approval for use of said property for this purpose. The dog fecal matter shall be immediately placed in a closed or sealed container and thereafter disposed of by depositing said matter in a trash receptacle, sanitary disposal unit or other closed or sealed container.

**6.3 Fines and Penalties**

Fines and Penalties for violations are as follows:

**A.** Animal at large (other than dogs): $50/offense
**B.** Maintaining swine: $100/offense
**C.** Dog at Large:
  **a.** For a dog that is not spayed or neutered or does not have a rabies vaccination: $60 for a first offense; $90 for a second offense in the same calendar year; $100 for each subsequent offense in a calendar year.
  **b.** For a dog that is spayed or neutered and has a rabies vaccination: $30 for a first offense; $60 for a second offense in the same calendar year; $90 for a third offense in the same calendar year.
  **c.** For a biting dog: $100 per offense.

**d.** For a vicious dog: $150 per offense.
**e.** For aggressive dogs: $125 for a first offense.

**D.** Improper Confinement: $50 per dog for a first offense; $75 per dog for subsequent offenses.

## ARTICLE 6.3 CATS

### 6.3.1 Definitions

**6.3.1.1** "Colony caregiver" means anyone feeding, medicating, recording or otherwise maintaining a feral or free-roaming cat colony operated by or sponsored by the Animal Shelter.

**6.3.1.2** "Feral Cat" means any cat born in the wild that cannot be domesticated.

### 6.3.2 Complaints of Cats at Large; Penalties; Colony Caregiver Program

**6.3.2.1** An ACO shall only pick up a cat when the ACO suspects that the cat-at-large is feral; or when a City resident makes a specific complaint about a cat-at-large; and as time permits.

**6.3.2.2** When a cat owner can be identified, the owner will be counseled for a first offense and may be cited for subsequent offenses for failing to control his or her pet. An ACO cannot remove a cat from the property of its owner without the owner's permission unless the health and safety of the animal or others are at risk.

**6.3.2.3** When a specific complaint has been made against a cat and the cat has not yet for the purposes of this complaint been captured, the complaining City resident may, by personal check, pay a $25 refundable deposit to the Animal Shelter for a humane capture trap. Complainant must place the trap in the shade on his or her own premises, place food and water in the trap and immediately telephone the ACO once a cat has been captured. An ACO may not be available on holidays and weekends, so residents shall close the doors of empty traps on those days and as directed by the ACO. As time permits, an ACO may assist complainants to capture a cat-at-large if the complainant(s) require assistance due to advanced age or disability.

**6.3.2.4** An ACO who believes that any cat within the city limits is at large, may impound the animal. Upon impounding a cat, the requirements for impounding, redemption and adoption set forth in Article 6.2.5 and 6.2.6 for dogs, including the requirements for rabies vaccination, spaying and neutering, and microchipping, shall equally apply to a cat.

**6.3.2.5** An impounded cat, other than a feral cat, may be adopted or purchased on the same terms and conditions as a dog as set forth in Article 6.2.7.

### 6.3.3 Feral Cats; Colony Caregiver Program

**6.3.1** A Colony Caregiver Program is hereby established. The Colony Caregiver program is aimed at humanely treating Feral Cats while reducing the feral cat population by spaying and neutering them.

**6.3.2** The general outline of the Colony Caregiver Program is as follows. Cats in this program are fed by Colony Caregivers. Colony Caregivers, an ACO, or other volunteers, may trap Feral Cats, take them to the

Animal Shelter, where they are spayed or neutered, given a rabies vaccination, microchipped and their ears notched so that they may be identified, then returned to the colony. Kittens may be purchased or adopted.
**6.3.3** The Animal Shelter will develop a more thorough protocol and rules for the Colony Caregiver Program, which shall be posted on the City's website.
**6.3.4** Residents wishing to become Colony Caregivers must apply to the Animal Shelter, which will determine eligibility.
**6.3.5** The success of the Colony Caregiver Program will depend in part on resources. Residents may donate money to the Colony Caregiver Program.

## CHAPTER 7 BUILDING

### ARTICLE 7.1 BUILDING CODE

**(O-94-33; R-94-50; O-90-33; R-90-29; O-96-40; O-14-04; O-14-06)**

### 7.1.1 Adoption of Code

**(O-03-03)**

The 2012 International Building code, the 2012 International Existing Building Code, and the 2012 International Residential Code, including all tables and appendixes, are hereby adopted for use in this jurisdiction, except as specifically amended or excluded by the amendments specified in this City Code. For purposes of each of the designated Codes adopted in this Chapter 7 of the City Code, the subject Code, as adopted and as may be amended from time to time, shall hereafter be designated as the Code of the City of Bisbee. The Building Inspector of the City of Bisbee, or his designee, is authorized to assume all of the responsibilities and authorities of the "building official," as that term is used in these respective Codes.

### 7.1.1A Climatic and Geographic Design Criteria (all applicable Codes)

Wind Speed _____90mph
Ground Snow Load_____20 psf
Topographic Effects _____No
Seismic Design _____Category B
Weathering _____Moderate
Frost Line Depth _____12 Inches
Termite _____Heavy to Very Heavy
Winter Design Temperature ___18-20 degrees F
Flood Hazards _____See Cochise County Flood Control, including new panels as adopted

### 7.1.1.B. City of Bisbee Amendments to the 2012 Edition of the International Building Code

1. At Section 101.2, insert Exception 2 to read: "Existing buildings undergoing repair, alterations or additions and change of occupancy shall be permitted to comply with the International Existing Building Code."
2. At Section 103.2, insert a reference to the adopted Building Permit Fees schedule of the City Code for the applicable fee schedule.
3. At Section 103.3, insert a reference to the permit fee refund authority include with the adopted Building Permit Fee schedule of the City of Bisbee.
4. At Section 406.3.3, change the first paragraph to read: "Carports of combustible construction and garages shall comply with the provisions of this section for separation and opening protection. Carport and grade floor surfaces shall be of approved noncombustible material.

5. At Section 406.3.4 (1), change all references from "1/2- inch gypsum board" to "5/8-inch Type 'X' gypsum board." Revise the second paragraph to read: "For garages beneath habitable rooms, cover above by not less than two layers of 5/8-inch Type 'X' gypsum board." At the end of this section, insert: "Windows are not permitted in the separation wall. All walls supporting the fire-resistance rated ceiling shall be protected with 5/8-inch Type 'X' gypsum board."
6. At Section 406.3.4(3), Add "Refer to Section 714 for protection of other through or membrane penetrations."
7. At Section 406.3.4, Add subsection 406.3.4(4): "Attic access opening. The attic access opening protection supports shall be of noncombustible material."
8. At Section 708.1, Add number 6, to read: "Walls separating tenant spaces."
9. At Section 903.2.1.3(2), change "300" to "100 or more."
10. At Section 903.2.3, insert a new item 3 as a new required area: "Where Group E fire area has an occupant load of 30 or more."
11. At Section 1006.3, insert a new number 7 to read: "Interior electrical service rooms."
12. At Section 1009.9.3, in the exception, change reference to "1/2-inch" to read: "5/8-inchType'X'."
13. At Table 2304.9.1, insert #35- connection: "Story-to-story tie at 48" o.c. by minimum 18 gauge strap with minimum 9" lap on studs. Fastening: per schedule in manufacture's installation instructions, or continuous sheathing with minimum 9" lap on studs."
14. At Section 2902.2, Insert a new Exception No. 4 to read: "In existing building occupancies, one public/employee restroom is allowed where the occupant load does not exceed 50 for other than M occupancies, and for M occupancies, where the occupant load does not exceed 100, provided that the one restroom for all such occupancies is code compliant with ICC A117.1-2009. Where it is not technically feasible to comply with the new construction standards, the above shall conform to the requirements to the maximum extend feasible."
15. At Section 3109, change the required height of the required barrier or fence from "4 feet" or "48 inches" to "5 feet" or "60 inches," as applicable. Enclosure requirements shall be not less than those required by applicable state law.
16. Appendices C, E, F, and G are adopted, Appendices A, B, D, H, I, J, K, L and M are not adopted.

**7.1.1.C. City of Bisbee Amendments to the 2012 Edition of the International Existing Building Code**

1. At Section 103.2, insert a reference to the Building Permit Fees schedule of the City Code for the applicable fee schedule.
2. At Section 103.3, insert a reference to the permit fee refund authority included with the Building Permit Fee schedule of the City of Code.
3. At Section 609.2, delete the exception. Water conservation requirements are applicable to new fixtures.
4. At Section 805.4.4, change to read: "Doors serving a Group H occupancy and all other occupancy groups not covered by item 2 in Section 1008.1.9.3, serving rooms or spaces with an occupant load of 50 or more, shall not be provided with a latch or lock unless it is panic release hardware, suitable for a fire exit."

5. At Section 1010.3, insert at the end of the paragraph: "…International Plumbing Code and Building Code, Bisbee City Code, and comply with City of Bisbee standards."
6. Appendices A, B, and C are adopted. Resource A is included as a source material in this Code.

**7.1.1.D. City of Bisbee Amendments to the 2012 Edition of the International Residential Code**

1. At Section R103.2, insert a reference to the Building Permit Fees schedule of the City Codefor the applicable fee schedule.
2. At Section R103.3, insert a reference to the permit fee refund authority included with the Building Permit Fee schedule of the City Code.
3. At Section R105.2.1 change "200 square feet" to "120 square feet."
4. Add a new Section R105.2.4 "Ordinary Repairs," to read: "Ordinary repairs which involve only the replacement of component parts of existing work with similar parts or materials and do not exceed $1000 in valuation (materials and labor at market value) and do not change any structural, electrical, mechanical, plumbing, or fire safety condition. Ordinary repair are subject to the provisions of R105.2.2."
5. At Section R105.2(6), amend to read: "Painting, papering, tiling, carpeting, and similar finish work."
6. At Section 106.3.1, change the stamp language to read: "Approval and date – City of Bisbee."
7. At Table R302.6, change the three references from "1/2-inch gypsum board" to "5/8-inch Type X gypsum board or equivalent." Change the one reference from "5/8-inch Type X qypsum board" to Two layers of 5/8-inch Type X gypsum board or equivalent."
8. At Section R302.6, insert subsection R302.6.1, as follows: "Attic access opening. The attic access opening protection supports shall be of noncombustible material."
9. At Section R309, insert the words "or carport of combustible construction" after all references to garage. (Requires fire separation from carport.)
10. Delete Section R309.5 regarding fire sprinklers, per Arizona law.
11. At Section R313, delete, mandatory language. Add the following: Fire Sprinklers are not required where the implementation of any such Code provision is prohibited by Arizona law, They may be an appropriate form of optional fire protection.
12. At Section R314.4, insert the following after the second sentence: "Smoke alarms shall not be installed on a dedicated circuit and shall originate from a general-purpose branch circuit."
13. At Section R602.3, insert at the end of the first paragraph: "In multi-story structures, floor ties shall be provided at 48" o.c. or wood structural panels shall be installed with a minimum of a 9" overlap of both floor studs."
14. At Section R606.11, change beginning to read: "Masonry walls shall be reinforced and anchored…."
15. At Figure R606.11(2), retitle to read: "Requirements for Reinforced Grouted Masonry Construction in Seismic Design Category B," and change the following: change #4 bars to "10 ft. o.c." to "#4 bars at 4' o.c."; add one ½" bar @ top of foundation: add two ½" bars @ bottom of foundation; and one ½" bar @ top of wall; add one 1/2 " bar @ roof connection.
16. At Section R606.12.2.3.3, end of first paragraph, change to read: "…and at a maximum spacing of 4 feet."

17. At Table 1101.10- Climate Zones, City of Bisbee requirements shall be not less than those required for Zone 1 for all purposes.
18. At Section N1103.4.2, change to read: "Refer to the City Code, Section 7.2.3 (R-4 minimum)."
19. At Section P2801.5.1, Pan Size and Drain. Add the following at the end of the second sentence: "A drain shall not be required for replacement water heaters in locations where no previously installed drain is available.
20. At Section P2094.1.1 Required Sprinkler Locations. Delete the first sentence and replace it with the following: "Sprinklers are not required within dwelling units. This section serves as a guide for voluntary installations or to allow for a fire separation reduction pursuant to sections R302.2 and R302.2.2."
21. At Section P3009, Gray Water Recycling Systems, delete Sections 3009.11, Drain, and 3009.14, Landscaping, and all references to those sections.
22. At Section P3201.2, change the Exception to read: "Traps for floor drains shall be fitted with a trap primer."
23. At Section E3601.6.2, change the first sentence to read: "Service disconnecting means and risers shall be surface mounted and provided on the outside of the structure. A recessed service entry is not permitted."
24. At Section E3608.1, insert a second paragraph to read: "All accessory structure with a poured foundation require the installation of a concrete-encased electrode as required by SectionE3608.1.2."
25. At Section E3902.5, change to read: "…receptacles installed in ground level rooms and unfinished basements shall have…" and "For purposes of this section, ground level rooms and unfinished basements are defined…"
26. At Section E4003.12, change the section title to read: "Luminaries in Clothes Closets, Pantries, and Storage Rooms." (All reference in this section to closet or clothes closet shall apply to clothes closets, pantries, and storage rooms.)
27. At Section AG105.2(1), change to read: "The top of the barrier shall be at least 60inches above grade…"
28. Appendices A, B, C, D, E, G, J, K and M are adopted. Appendices F, H, I and L are not adopted.

**7.1.2 Condition Precedent to Issuance of Building Permits (O-10-16; O-11-17; O-14-06)**

No building permit shall be issued for the construction of a new structure unless that structure and the proposed usage are in compliance with the Zoning Code of the City of Bisbee.

**7.1.3 Building Permit Fees (O-07-14; O-06-05; O03-03; O-09-05; O-10-03; O-14-06)**

The following fees and fee schedules shall be applicable to all projects and improvements within the City of Bisbee for which a building permit of any type is required and for which fees may be charged under any of the respective Codes which are adopted in this Chapter.

**PERMIT FEES**

| TOTAL VALUATION | FEE |
|---|---|
| $1 to $500 | $24 |
| $501 to $2000 | $24 for the first $500, plus $3 for each additional $100 or fraction thereof |
| $2001 to $40,000 | $69 for the first $2000, plus $11 for each additional $1000 or fraction thereof |
| $40,000 to $100,000 | $487 for the first $40,000, plus $9 for each additional $1000 or fraction thereof |
| $100,001 to $500,000 | $1027 for the first $100,000, plus $7 for each additional $1000 or fraction thereof |
| $500,001 to $1,000,000 | $3,827 for the first $500,000, plus $5 for each additional $1000 or fraction thereof |
| $1,000,001 to $5,000,000 | $6327 for the first $1,000,000, plus $3 for each additional $1,000 or fraction thereof |
| $5,000,001 and over | $18,327 for the first $5,000,000, plus $1 for each additional $1,000,000 or fraction thereof |

For the purposes of determining the "Total Valuation" for a project, the following values shall be used:

a. New residential structures shall be valued at $73.00 per square foot.
b. New accessory structures associated with residential occupancies, but not intended for residential use (garages, storage buildings, and similar types of uses,) shall be valued at $36.50 per square foot.
c. Remodels, additions, and alterations of existing residential structures shall be valued at the total cost of all such work, based on the contract documents, or the builder's estimates, if there is no contract amount.
d. New commercial structures and additions, alterations, and remodels of existing commercial structures shall be valued based on the contract documents for this work. If there are no contract documents for such work these valuations shall be based on the most current "Building Valuation Data" available, as provided by the International Code Council.

e. If the applicant fails or is unable to provide a commercially reasonable Total Valuation amount for all labor, materials, and other costs associated with that project, for any project other than those with per square foot values or flat rates established in this City Code, the Building Official may use the most current available "Building Valuation Data" provided by the International Code Council to determine a Total Valuation for that project.
f. Total fees for the following Permits shall be charged at the following flat rates, rather than values:
    1. Electrical service upgrade or replacement (does not include Branch Circuit work):$55.00 for residential and $60.00 commercial.
    2. Electrical or gas water heaters: $25.00 residential and $30.00 commercial.
    3. Utility Clearance Inspection (Green Tag): $25.00
    4. Manufactured Home Installation Permit: $200.00
g. Ordinary repairs to residential structures which involve only the replacement of component parts of existing work with similar parts or materials and do not exceed $1000 in valuation (materials and labor at market value) and do not change any structural, electrical, mechanical, plumbing, or fire safety condition do not require a permit and are not subject to any fee.

In addition to the fees specified above, a Plan Review Fee in the amount of 65% of the applicable Building Permit fee will be charged for all permits which require plan review under the applicable Code. The Plan Review Fee shall not be applicable to those permits that are subject to the specified flat rate fees.

These Permit Fees include one initial inspection and two (2) re-inspections for each stage of the project that does not pass the initial inspection. Additional inspections shall be subject to an additional fee in the amount of $47.00. Inspections during weekends or at times other than normal business hours, when specifically requested by the owner or contractor, shall be subject to an additional fee of $47.00 per hour, minimum two hours.

Notwithstanding any other provision or law, the City shall not charge any fee for that portion of any building permit, plan review or inspection services that is associated with the installation of a photovoltaic solar device, a solar hot water heater, or any other similar solar device that will convert solar energy to electrical energy or heat and that will result in a decrease in the production of global warming emissions. This fee exemption shall only be applicable to that portion of any such permit directly associated with the installation of any such solar device and shall not exempt other building components from the generally applicable fees. This fee exemption shall not apply to the installation of skylights, windows or other means of providing natural lighting or to building designs that employ passive solar heating or cooling methods for the structure.

For work which requires a Building Permit pursuant to the applicable Code or Codes, and which is initiated without obtaining an appropriate Building Permit and without paying the applicable Permit Fee, the cost for the required Building Permit shall be two times (2x) the otherwise applicable fee for that work.

The Building Official may authorize a refund of the Permit Fees paid by the applicant if the request for the refund is made prior to the time at which the Building Official has performed any Plan Review or other work on the project and the project is being cancelled. For all other refund requests, the Building Official shall not authorize the refund of the fee, or any portion of it, associated with any portion of the work which has been

performed by the Building Official or his designee prior to the receipt of the request for refund and the notice of the cancellation of the project.

**7.1.4 Conformance to Arizonans with Disabilities Act**

Standards and specifications set forth in Title 41, Chapter 9, Article 8, Arizona Revised Statutes (Arizonans with Disabilities Act), and its implementing rules, including "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities" declared a public record of Resolution No. R-96-46, as applying to public entities, are hereby adopted and incorporated as an amendment to the Uniform Building Code adopted by Ordinance O-94-33 and made a part thereof as tough fully set forth therein. Such standards and specifications shall apply to new construction and alterations and are not required in buildings or portions of existing buildings that do not meet the standards and specifications.

Standards and specifications set forth in Title 41, Chapter 9, Article 8, Arizona Revised Statutes (Arizonans with Disabilities Act), and its implementing rules, including "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities" declared a public record by Resolution No. R-96-46, as applying to public accommodations and commercial facilities, are hereby adopted and incorporated as an amendment to the Uniform Building Code adopted by Ordinance O-94-33 ( Chapter 7, City Code) and made part thereof as though fully set forth therein. Such standards and specifications shall apply to new construction and alterations commenced after September 3, 1996.

**ARTICLE 7.2 PLUMBING CODE**
**(O-94-33; R-94-50; O-90-33; R-90-29; O-88-06, O-14-04)**

**7.2.1 Adoption of Code**

The 2012 International Plumbing Code, including all tables and appendixes, is hereby adopted for use in this jurisdiction except as specifically amended or excluded by the amendments specified in this City Code. The 2012 International Plumbing Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. At Section 101.2, number the existing exception as Exception 1; Exception 2 to read: Plumbing systems in existing buildings undergoing repair, alteration or addition, and change of occupancy shall be permitted to comply with the International Existing Building Code.
2. At Section 106.6.2, insert a reference to the Building Permit Fees scheduled of the City Code for the applicable fee schedule.
3. At Section 106.6.3, insert a reference to the permit fee refund authority included with the Building Permit Fee schedule of the City Code.
4. At Section 403.2, in Exception No. 2, change "15" to "50." Insert new Exception No. 4 to read: " In existing building occupancies, one public/employee restroom is allowed where the occupant load does not exceed 50 for other than M occupancies, and for M occupancies, where the occupant load does not exceed 100, provided that the one restroom for all such occupancies is code compliant with ICC A117.1-2009. Where it is not technically feasible to comply with the new construction standards, the above shall conform to the requirements to the maximum extend feasible."
5. At Section 903.1, insert "6 inches."
6. At Section 1003 and following regarding Grease interceptor requirements, note that the exceptions and protections for existing uses as included in Section 13.5.2 of the City Code shall remain in effect. Upon the adoption of this International Plumbing Code, the provisions of this Code shall replace the provisions of the Uniform Plumbing Code for all purposes, except as may be specifically excepted under State or local law.

7. Appendix B, with a 3 inch per hour rainfall rate, is adopted. Appendices C, D, E and F are informational resources and are adopted for that purpose. Appendix A is not adopted.

**7.2.2 General Amendments**

The Plumbing Code is amended by adding the following:

A. Any new connections from inflow sources such as flood waters and seepage waters into the sanitary sewer portion of the City sewer system shall be expressly prohibited.
B. To ensure that new sewers and connections to the City sewer system are properly designed and constructed, new sewers and connections shall be designed and constructed in accordance with the requirements of the Arizona Department of Health Services, Cochise County Health Department and the City.
C. All wastewater introduced into the treatment works of the City shall not contain toxins or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works, or cause violation of effluent or water quality limitations, or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

**7.2.3 Water Conservation Requirements (O-14-03)**

The following water saving requirements are intended to be applied in connection with the provisions of the adopted Plumbing Code and shall be applicable to all new construction and to that portion of any remodeled or retrofitted commercial construction which includes any substantial replacement or remodeling of the systems or fixtures described in this Article.

A. Plumbing Standards

1. Hot water pipes, including those in any recirculation system, shall be insulated with a minimum thermal resistance (R-value) of R-4.
2. Hot water systems shall be designed and shall include such components as may be necessary to deliver hot water at each demand point with no more than 0.6 gallons (2.3 liters) of water delivered prior to the delivery of hot water.
3. All new single family residential construction shall include plumbing features that will be readily adaptable, accessible, and clearly marked to allow for the optional use of the “gray water” (aka “greywater”) to be produced by the residents, to be used as a source for outdoor irrigation, in the manner allowed by applicable law.
4. Water service pressure at the point of delivery for residential occupancies shall not exceed 60pounds per square inch (psi). The Building Inspector is authorized to allow exceptions where circumstances beyond the control of the property owner may require a higher limit.

B. Plumbing Fixture Standards

Except as otherwise noted, the following designated plumbing fixtures and appliances shall either be “Water Sense” labeled fixtures, or shall meet or exceed the water conservation standard established for these types of fixtures through “Water Sense” program. “WaterSense” is a program established by the U.S. Environmental Protection Agency which, among other matters, establishes criteria for water –efficient plumbing fixtures and maintains listings through the EPA website of the designated criteria and approved fixtures. For proposed fixtures or appliances which do not include the “WaterSense” label, the property owner or contractor shall have the

obligation of demonstrating that the proposed fixture meets or exceeds these requirements. (Where flow rates are provided in parentheses, these represent maximums at the time of the adoption of this regulation, but may be subject to change as the "WaterSense" program efficiencies are improved.)

1. Toilets (1.28 gallons per flush-gpf).
2. Flushing urinals (only custodial cleaning) or non-water using units.
3. Bathroom sink faucets and faucet accessories. (1.5 pm)
4. Kitchen sink faucets and accessories (2.2 gpm max.).
5. Showerheads, single units. – For shower compartments with multiple outlet units, including body sprays, rain systems, waterfalls, and jets, the total flow rate of water from all such outlets into the compartment shall not exceed 2.0gpm.
6. Residential clothes washers, Energy Start qualified with a water factor equal or less than 6.0 gallons of water per cycle per cubic foot of capacity.
7. Commercial laundry facilities, including for-fee washing machines available to the public or residents of a multifamily housing development, Energy Star qualified with a water factor of 4.5 gallons per cubic foot of capacity, or less.
8. Evaporative cooling systems for single family residence shall use a maximum of 3.5 gallons (13.3 liters) of water per ton-hour cooling, when adjusted to maximum water use.
9. Water softener systems shall be certified to meet the standards of NSF/ANSI 44, Residential Caution Exchange Water Softeners, 2, including the efficiency ratings standards in Section 7.
10. Drinking water treatment systems must be certified to yield at least 85 gallons of treated water for each 100 gallons of water processed.

C. Prohibited Plumbing Fixtures

The following designated types of plumbing fixtures and systems shall not be permitted in connection with any new or remodeled commercial or multi-family building or other facility. For purposes of this restriction, a "remodeled commercial or multifamily building or facility" would include any such structure or improvements in which these designated types of plumbing fixtures and systems were not already in place.

1. Outdoor air-cooling misters which release water or water vapor, reducing the apparent ambient temperature in that location.
2. Commercial car washing facilities, including dealerships, which do not include systems which recycle a minimum of seventy-five percent (75%) of the water used in the system.
3. Watering or irrigation systems that do not include rainfall shutoff devices, or other mechanisms that reduce or interrupt the delivery of water during effective rain events.

## ARTICLE 7.3 ELECTRICAL CODE
**(O-94-33; R-94-50; O-90-33; R-90-29, O-14-04)**

### 7.3.1 Adoption of Code

The 2014 National Electric Code, including all tables and appendixes, is hereby adopted for use in this jurisdiction except as specifically amended or excluded by the amendments specified in this City Code.

### 7.3.2 Amendments

The 2014 National Electric Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. Article 210.8 (A)(5). Amend to read: "All 125-volt, single phase, 15-and 20-ampere receptacles installed in ground level rooms and unfinished basements shall have ground-fault circuit-interrupter protection for personnel. For purposes of this section, ground level rooms and unfinished basements are defined as areas not intended as habitable rooms and limited to storage areas, work areas, and the like." (The exception shall remain unchanged.)
2. Article 210.8 (B)(3). Amend to read: "Rooftops. The receptacle(s) shall have the reset located on the roof."
3. Article 210.71. Power Source. Amend by adding this new Section: "Where required, smoke alarms shall not be installed on a dedicated circuit and shall originate from a general-purpose branch circuit."
4. Article 230.6. Amend by adding the following: "A recessed service entry is not permitted."
5. Article 230.70. Amend by adding the following after the first paragraph: "Service disconnecting means and risers shall be surface mounted."
6. Article 250.50. Amend by adding the following: "All accessory structures with a poured foundation require the installation of a concrete-encased electrode as required by NEC 250.52 (A)(3) and IRC Section E3508.1.2."
7. Article 300.21. Amend by adding the following: "Penetrations of one-hour fire resistance-rated walls shall require approved metallic raceway with 12-inch extensions on both sides of the wall. The penetrations of the wall and the conduit ends shall be fire safe. Penetrations of two-hour, or greater, fire-resistance-rated walls shall require approved metallic raceway with 5-foot extensions on both sides of the wall. The penetrations of the wall and the conduit ends shall be fire safe."
8. Article 406. Amend by adding a new sub Article, Article 406.4 (A)(1) Installation, to read as follows: " When installed in a vertical position, grounding-type receptacles shall be installed with the grounding contacts down. When installed in the horizontal position, grounding-type receptacles shall be installed with the grounding contacts on the right."
9. Article 408. Amend by adding a new sub Article 408.31, Subpanels and Low-Voltage Boxes, to read as follows: "Subpanels and low-voltage boxes shall not be located in any firewall, fire barrier, fire partition, or in the garage side of the common wall separating the dwelling from a garage or carport. Subpanels and low-voltage boxes may be surface mounted on any of the above-mentioned walls."

## ARTICLE 7.4 FIRE CODE

### 7.4.1 Adoption of Code
**(O-03-03; O-94-33; R-94-50)**

The 2012 International Fire Code, including all tables and appendixes, is hereby adopted for use in this jurisdiction except as specifically amended or excluded by the amendments specified in this City Code. The 2012 International Fire Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. At Section 102.3, insert "or the international Existing Building Code" after "International Building Code" (at two locations).
2. The Provisions of Article 4.3 of the City Code, Fire Flow, Water Main and Fire Hydrant Spacing Requirements, shall be applicable where there is any conflict with the provisions of the International Fire Code.
3. Appendices, B, C, D, E, F, G, H and I are adopted, Appendices A and J are not adopted.

## ARTICLE 7.5 MECHANICAL CODE
**(O-03-03; O-94-33; R-94-50; O-90-33; R-90-29; O-88-06, O-14-04)**

### 7.5.1 Adoption of Code

The 2012 International Mechanical Code, including all tables and appendixes, is hereby adopted for use in this jurisdiction except as specifically amended or excluded by the amendments specified in this City Code. The 2012 International Mechanical Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. At Section 101.2, number the existing exception 1. Add Exception 2, to read: Mechanical systems in existing buildings undergoing repair, alteration, or addition, or change of occupancy shall be permitted to comply with the International Existing Building Code.
2. At Section 106.5.2, insert reference to the Building Permit Fees scheduled of the City Code for the applicable fee schedule.
3. At Section 106.5.3, Insert reference to the permit fee refund authority included with the Building Permit Fee Schedule of the City Code.
4. Appendix A is adopted. Appendix B is not adopted.

**ARTICLE 7.6 DANGEROUS BUILDING CODE**
**(O-03-03; O-94-33; R-94-50)**

**7.6.1 Adoption of Code**

The 1997 Uniform Code for the Abatement of Dangerous Buildings, plus changes from prior uniform codes for abatement of dangerous buildings, and as prepared by the International Conference of Building Officials, is hereby adopted in its entirety as if fully set out in this ordinance, except Sections 205.1 and 205.2 of the 1997 Uniform Code for the Abatement of Dangerous Buildings pertaining to a Board of Appeals, in accordance with A.R.S. Section 9-802.

**ARTICLE 7.7 ADDITIONAL CODES**
**(O-94-33; R-94-50)**

**7.7.1 Adoption of Code**

The 2012 International Fuel Gas Code, the 2012 Energy Conservation Code, and the 2012 International Property Maintenance Code, including all tables and appendixes, are hereby adopted for use in this jurisdiction except as specifically amended or excluded by the amendments specified in this City Code.

**7.7.2 AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE**

The 2012 International Fuel Gas Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. At Section 101.2, number the existing exception as Exception 1 and add Exception 2, to read as follows: "As an alternative to the provisions of this code, fuel gas piping systems, fuel-gas utilization equipment and related accessories in existing building undergoing repair, alteration, or addition, and change of occupancy shall be permitted to comply with the International Existing Building Code."
2. At Section 106.6.2, add: "City of Bisbee building permit fees shall be as established in the City Code.
3. At Section 106.6.3, add: "Permit fee refund process shall be as established in the City Code.
4. At Section 303.7, insert new subsection 303.7.1 to read: "Liquefied petroleum gas piping shall not serve any gas appliance located in a pit or basement where heavier-than-air gas might collect to form a flammable mixture."
5. Appendices A, B, C and D are adopted.

**7.7.3 AMENDMENTS TO THE INTERNATIONAL ENERGY CONSERVATION CODE**

The 2012 International Energy Conservation Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. The Residential Provisions, pages R-1 through R-42, inclusive, are not adopted.

**7.7.4 AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE**

The 2012 International Property Maintenance Code, as applicable in the City of Bisbee, is hereby amended as follows:

1. At Section 302.4, note that the control of weeds and plant growth is subject to City of Bisbee City Code, Article 9.4.1, which shall be the applicable standard.
2. At Section 302..8, delete this Section
3. At Section 303, change all references to the height of fences and barriers from “48 inches” to “60 inches.”
4. At Section 503.3, delete this Section.
5. At Section 704.1.1, delete this Section.
6. Appendix A is adopted.

**ARTICLE 7.8 PENALTIES**
**(O-94-33)**

Any person found guilty of violating any provision of these codes shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars ($1,000) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein above described.

**ARTICLE 7.9 BUILDING OFFICIAL**
**(O-94-33)**

The building official and administrative authority, as such may be referenced in any section of this chapter for all matters pertaining to any building, plumbing, electrical or any other inspections, shall be vested in the office of the building inspector.

**ARTICLE 7.10 LIGHT POLLUTION CODE**
**(O-94-33, O-98-10)**

That certain code entitled the City of Bisbee Light Pollution Code, three copies of which are on file in the City Clerk's Office and which has been declared as a public record by Resolution R-82-178 is hereby referred to and adopted and made a part of this chapter as if fully set out in this Code.

**7.10.1 Purpose**

The purpose of the Light Pollution Code is as follows:

A. Minimize light pollution and light trespass for the enjoyment and use of property and the night environment by the citizens of the City of Bisbee, and
B. Encourage the use of types, kinds, construction, installation and uses of outdoor light fixtures, lighting practices and systems which will reduce light pollution and light trespass, and
C. Benefit astronomical research and observations, and
D. Conserve energy while increasing nighttime visibility, utility, security and productivity.

**7.10.2 Definitions**

A. "Fully shielded" means that fixtures are shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.
B. "Outdoor light fixture" means outdoor artificial illuminating devices, lamps, and other devices, permanent or portable, used for illumination or advertisement. Such devices shall include, but are not limited to, search, spot or flood lights for buildings and structures, recreational areas, parking lot lighting, landscape lighting, billboards and other signage and street lighting.
C. "Partially shielded" means the fixtures are shielded in such a manner that the bottom edge of the shield is below the plane of the center line of the lamp reducing light above the horizontal.

**7.10.3 Shielding of Outdoor Light Fixtures**

All outdoor light fixtures shall be fully or partially shielded except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less. Streetlight fixtures are exempt from this requirement if the shielding is not available from the manufacturer.

**7.10.4 Nonconforming Light Fixtures**

In addition to other exemptions provided in this article, outdoor light fixtures not meeting the provisions of this article shall be allowed provided such fixtures are extinguished between the hours of midnight and sunrise by an automatic shutoff device.

**7.10.5 Use of Mercury Vapor Light Fixtures**

A. No new mercury vapor outdoor light fixtures shall be installed after the effective date of this section. The use of mercury vapor light fixture is prohibited in the State of Arizona after January 1, 2011.
B. The provisions of this section shall not apply to outdoor light systems erected prior to 1950.

**7.10.6 Searchlights**

The operation of searchlights for advertising purpose is prohibited.

**7.10.7 Exemptions**

A. Light fixtures using fossil fuel (i.e., light produced directly or indirectly by the combustion of natural gas or other utility type fossil fuels) are exempt from the requirements of this ordinance.
B. Outdoor lighting on facilities and lands owned and operated or protected by the United States Government, the State of Arizona, Cochise County, or the City of Bisbee are exempt by law from all requirements of this section. Voluntary compliance with the intent of this ordinance at those facilities is encouraged.
C. The illumination of outdoor recreational facilities, public or private, shall be shielded such that the glare or beam does not emit beyond property lines, and no such facility shall be illuminated after 11:00p.m. except to conclude a specific sporting event of any other activity conducted at a ball park, outdoor amphitheater, arena or similar facility in progress prior to 11:00 p.m.
D. The Board of Adjustment may grant a special exemption upon a written finding that there are extreme geographic or geometric conditions warranting the exemption and that there are no conforming fixtures that would suffice.
E. Display of an American Flag not to exceed 150 watts per fixture.
F. Seasonal holiday displays.

**7.10.8 Light Trespass**

Requirements for laminar heights, shielding, placement and aiming to minimize light trespass and direct glare emitted by a lighting system shall be as follows:

A. Spill light on adjacent residential or unlighted properties shall be minimized by complying with the following:
   1. Wall mounted luminaries shall not be mounted higher above the ground than their distance to the property line unless they are mounted so as to direct the light away from the adjacent property, i.e., on a wall on the property line but directed inward. Maximum mounting height for wall mounted luminaries shall be 15 feet.
   2. Final determination as to compliance with this section shall be based on point-by-point analysis by the Community Development Director.

B. Direct glare shall be minimized by compliance with the following requirements:
   1. The lighting system shall be designed to minimize the impact on sky glow and glare to adjacent properties.
   2. The direct glare from the laminar shall not be visible from six (6) feet above grade at the property line. EXCEPTION: Field Sports lighting.
   3. Where the adjacent property is residential and the laminar is a decorative style, the lot line side of the laminar is to be blocked out to eliminate spill and glare.

**7.10.9 Violations and enforcement**

It shall be unlawful to install or operate an outdoor light fixture in violation of this Code. Any person violating any provision of this Code shall be subject to a fine of not less than $100.00 and not more than $1000.00. Each and every day which the illegal erection, maintenance, and use continue is a separate offense.

**ARTICLE 7.11 SIDEWALKS**
**(O-94-33)**

**7.11.1 Specifications**

Every sidewalk within the corporate limits shall be constructed in accordance with the "Uniform Standard Specifications (and companion 'Details') for Public Works Construction sponsored and distributed by the Maricopa Association of Governments", the most recent addition, with all supplements thereto. All sidewalk construction shall meet the approval of the public works director.

**7.11.2 Property Owner to Construct by Improvement or Assessment District**

In the event that an improvement or assessment district is formed for the purpose of sidewalk and/or other related purposes, it shall be the duty of every property owner therein, to construct sidewalks as prescribed in said district.

**7.11.3 Maintenance**

A. All persons in possession of any real property within the City abutting any highway, street or alley or abutting on any lands or premises over which the public exercises a right-of-way shall keep their sidewalks in good order and repair, and, whenever notified by the director of public works that repairs are necessary to put the sidewalk in good order, shall forthwith make and complete all repairs necessary to put such sidewalks in good order and repair.

B. If any person required by this section to make repairs to any sidewalk shall fail to do so, after being notified by the director of public works, then it shall be the duty of the director of public works to cause the repairs to be made at the expense of the City and to assess the costs of such repair to the property owner.

### 7.11.4 Abutting Property Owners to Clean Sidewalks and Stairs

A. All persons in possession of any real property within the City abutting any highway, street or alley or abutting on any lands or premises over which the public exercises a right-of-way shall keep their sidewalks clean and free of snow, ice, debris and vegetation, and, whenever notified by the director of public works that cleanups of the sidewalk or stair are necessary, shall forthwith do what is necessary to keep their sidewalks clean and free of snow, ice and debris.
B. If any person required by this section to make cleanup to any sidewalk shall fail to do so, after being notified by the director of public works, then it shall be the duty of the director of public works to cause the cleanup to be made at the expense of the City and to assess the costs of such cleanup to the property owner.

## ARTICLE 7.12 EXCAVATIONS (O-94-33; O-10-05)

Applicability - The provisions of this art Article shall apply to the extent they are not inconsistent with the express terms and conditions of a Franchise Agreement between a permittee and the City.

### 7.12.1 Applicability

The provisions of this Article shall apply to the extent they are not inconsistent with the express terms and conditions of a Franchise Agreement between a permittee and the City.

### 7.12.2 Permit Required

No person shall excavate, dig, construct or cause to be made any opening, hole, cut, displacement, depression or impairment of any kind, or perform any work in, on or under the surface of any public place, highway, right-of-way, pathway, street, sidewalk, driveway, curb, gutter, paving or other surface or subsurface drainage structure or facility or other public way for any purpose whatsoever, without first obtaining a permit from the City in accordance with the provisions set forth herein.

### 7.12.3 Exceptions to Permit Requirements

A. The City is not required to obtain permits from itself pursuant to this Article however, contractors or other persons performing work under contract with the City or on behalf of the City in any public way must obtain appropriate permits and comply with all applicable requirements set forth in this article.
B. The marking of pavements, curbs and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and monuments in connection with surveying, design, construction and maintenance work may be done without a permit.
C. In the event of an emergency requiring immediate action in order to protect life or property, a person may perform work described in Section 7.12.2 above without first obtaining a permit; provided such person obtains a permit as soon as is reasonably practicable thereafter and otherwise complies with all requirements set forth in this article.

### 7.12.4 Application Form

A. The City shall prescribe and provide a regular form of application for the use of applicants for permits required by this article. The application shall show such information and details as the City deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed work and shall be submitted to the Public Works Director, or designee, together with a non-refundable

application fee of $50.00 for residential permits, and a non-refundable application fee of $50.00 and inspection fee of $100.00 for commercial permits, and other applicable fees established by the Council.

B. The application shall be accompanied by construction plans, engineered designs, maps, sketches, diagrams or similar exhibits. The same shall be of the size and in the quantity prescribed by the City and of sufficient clarity to illustrate the method of construction, design, location, dimensions, nature and purpose of the proposed work and its relation to existing and proposed structures and facilities in the public way.

C. The applicant shall also enclose with or attach to the application a certified statement that the applicant has obtained all other licenses, permits or approvals required by the City or any other governmental agency or private party.

D. No changes shall be made in the plans, design, location, dimensions, character or duration of the work as approved in the permit except upon the written authorization of the Public Works Director, or designee.

**7.12.5 Issuance**

A. Upon review of the application and other required documents, and payment by the applicant of all applicable fees, the permit application may be approved, conditionally approved or denied by the Public Works Director, or designee. If the Public Works Director, or designee, finds that the application is in compliance with the requirements of this article and this code, he or she may issue a permit for the work, attaching such conditions as are necessary for the protection of the health, safety and welfare of the public including, but not limited to, aesthetic considerations. If the Public Works Director, or designee, finds the application is in conflict with the provisions of this article or this Code, the permit shall be denied and the applicant given written reasons for the denial. No permit is valid unless signed by the Public Works Director, or designee.

B. No permit shall be issued for work which would unduly interfere with the public works of the City, endanger the health, safety or welfare of the public or permanently or unduly restrict, block or interfere with traffic.

**7.12.6 Terms and Conditions of Permits**

A. Indemnification. The Public Works Director, or designee, may require as a condition of issuing any commercial permit that the applicant execute and file with the City an indemnity agreement satisfactory to the City Attorney. Such agreement shall include, without limitation, a requirement that the applicant shall be responsible for and shall indemnify, defend and hold harmless the City, its elected officials, officers and employees from all claims, demands, expenses or liabilities including, but not limited to,
personal injury and property damage arising out of or related to the work performed by the applicant, its agents and employees, under the permit.

B. Insurance. The Public Works Director, or designee, may require as a condition of issuing any commercial permit that the applicant file and maintain on file with the City evidence of self insurance satisfactory to the City or a certificate of insurance demonstrating sufficient public liability and property damage insurance coverage issued by an insurance carrier authorized to do business in this state, insuring the applicant and the City, its elected officials, officers and employees, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to the work performed by the applicant, its agents and employees, under the permit. Such insurance shall be primary and provide coverage for all liability assumed by the applicant under Subsection A of this section and shall be provided by the applicant in minimum amounts as required by the City's Risk Manager, which shall not be less than two million dollars ($2,000,000.00).

C. Performance bonds or other financial security. The Public Works Director, or designee, may require as a condition of issuing any commercial permit, that the applicant post performance bonds or other financial security satisfactory to the City Attorney to ensure compliance with all requirements of this Article
D. Commencement of work. The permittee shall begin the work authorized by a permit issued pursuant to this Chapter within thirty (30) days from the date of issuance, unless a different period is stated in the permit. If the work is not so begun, then the permit shall become void. The permittee shall complete the work authorized by the permit within the time specified in the permit, which shall not be longer than one (1) year.
E. Renewal of permits. Permits may be renewed by the City in its sole discretion upon application under the same terms and conditions as the initial application for a permit.
F. Relocation. Any encroachment including, without limitation, pipes, conduit, wire, cable, appurtenances or other structures or facilities installed or maintained in, on or under any public way, shall be relocated, at the sole expense of the permittee, as may be necessary to facilitate a public purpose or any City project.
G. Assignment. The rights granted by the permit shall not be assignable without the express prior written consent of the Public Works Director, or designee.
H. Supplemental. The Public Works Director, or designee, may require additional conditions for the issuance of a permit as are applicable and necessary to meet specific situations, for the public health, safety or welfare and to insure compliance with this Article and all other City, State or Federal regulations.
I. Acceptance. By accepting a permit, the permittee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City and the permit.

**7.12.7 Terms of Construction**

A. All work done under such permits shall be to the satisfaction of the City and shall be in accordance with the terms and conditions of the permit and all adopted regulations, standards and specifications of the City including, without limitation, the regulations and specifications for pavement restoration and signage. Installation of all facilities shall meet the standard specifications, details and requirements of the Public Works Director, or designee. Prior to commencement of construction, all permittees shall notify an approved utility line identification or locator service such as Arizona Blue Stake.
B. The permittee shall, to the satisfaction of the City, repair all sewer lines, streets, sidewalks, curbs, gutters or other property, structures, improvements or facilities damaged by construction or operation pursuant to the permit. All such repairs shall be done in accordance with the latest updates of the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction and the nationally recognized Manual on Traffic Control devices, and other applicable City specifications, details and requirements of the Public Works Director, or designee.

**7.12.8 Street Cuts**

A. Excavation in new streets within three (3) years after completion of street construction, reconstruction or renovation (major rehabilitation) is discouraged and shall be permitted only where the applicant has shown to the satisfaction of the Public Works Director, or designee, that there are no reasonable alternatives to such excavation. Exceptions to the above are as follows:
   1. Emergencies which pose an immediate danger to life or property.
   2. Work that is mandated by City, County, State or Federal Legislation.

   For the purposes of the section, a street is considered "new" when it is first constructed, when it is reconstructed or when it is renovated. Reconstruction shall mean completely rebuilding all the lanes of the street by removing all the pavement and aggregate base course material, re-compacting the sub-base and

restoring the base material and then completely re-paving the surface. Renovation shall mean a major rehabilitation which shall include mill and overlay or other similar roadway improvement work that physically modifies the surface of the roadway prior to applying new roadway surface or other similar work. The Public Works Director, or designee, shall determine the date of completion for new streets and the date each street was last reconstructed or renovated, based on the date the street was opened or reopened for traffic.

B. In addition to the payment of the Pavement Restoration Fee set forth in Section 7.12.9 below, all commercial street cut permits for cutting the pavement of a street issued within three (3) years after completion of a major rehabilitation (as defined in Subsection A of this section) of such street shall require that the permittee renovate such street by mill and overlay/inlay, or by such other means approved in advance in writing by the Public Works Director, or designee, for a minimum of the full width of all lanes impacted by the cut(s) (outside lane includes to the curb) and for arterial streets extending a minimum length of fifty (50) feet both directions from the area of the cut(s) and for collector streets extending a minimum length of twenty-five (25) feet both directions from the area of the cut(s), all as more specifically directed by the Public Works Director, or designee. Provided however, for pavement cuts smaller than four (4) square feet, the requirement to renovate the street by mill and overlay/inlay shall not apply.

**7.12.9 Pavement Restoration Fee**

A. Whenever any commercial permit is issued to cut into, open, bore, attach to, or make any break or disturbance to the street pavement of any arterial or collector street within the City, the permittee shall, in addition to the repairs required by this article, pay to the City the Pavement Restoration Fee established in Subsection C of this section. Neither the City nor contractors or other persons performing work under contract with the City or on behalf of the City shall be required to pay a Pavement Restoration Fee.

B. The Pavement Restoration Fee shall be paid prior to or at the time a commercial street cut permit is issued. In the event changes or amendments to the commercial street cut permit are required which would result in a change in the amount of the Pavement Restoration Fee, an adjusted fee shall be assessed and charged based on such change or amendment. Such amended permit shall be applied for and any additional fees shall be paid within one (1) week of the field change or prior to any new permits issued to the applicant.

C. The Pavement Restoration Fee per cut shall be payable as follows:

1. For permits issued within three years after completion of a major rehabilitation:

| | |
|---|---|
| a. For 5 square yards or less | $330.00 per square yard of cut |
| b. For greater than 5 to 100 square yards | $1,650.00 plus $18.00 per square yard of cut over 5 square yards |
| c. For greater than 100 square yards | $3,360.00 plus $14.00 per square yard of cut over 100 square yards |

The above fees shall be in addition to the requirement for mill and overlay/inlay set forth in Section 7.12.7(B) of this article.

2. For permits issued from more than three to five years after completion of a major rehabilitation:

| | |
|---|---|
| a. For 5 square yards or less | $ 230.00 per square yard of cut |
| b. For greater than 5 to 100 sq. yards | $1,150.00 plus $13.00 per square yard of cut over 5 square yards |
| c. For greater than 100 square yards | $ 2,385.00 plus $10.00 per square yard of cut over 100 square yards |

In lieu of the above fees, the permittee may choose, with the prior written approval of the Public Works Director, or designee, to perform a mill and overlay/inlay or other approved means set forth in Section 7.12.8(B) of this article.

3. For permits issued from more than five to seven years after completion of a major rehabilitation:
   a. For 5 square yards or less — $130.00 per square yard of cut
   b. For greater than 5 to 100 square yards — $650.00 plus $8.00 per square yard of cut over 5 square yards
   c. For greater than 100 square yards — $1,410.00 plus $5.00 per square yards of cut over 100 square yards
4. For permits issued after seven years after completion of a major rehabilitation:
   a. For 5 square yards or less — $65.00 per square yard of cut
   b. For greater than 5 to 100 square yards — $325.00 plus $4.00 per square yard of cut over 5 square yards
   c. For greater than 100 square yards — $705.00 plus $3.00 per square yard of cut over 100 square yards
5. The Pavement Restoration Fee shall not be required for permits issued within one year prior to a major rehabilitation approved in the capital improvements program of the City's annual budget.

**7.12.10 Supervision and Inspection of Work**

A. The City may make any inspections deemed necessary in connection with permits issued under this article. During the work, the City will inspect all trenching, backfilling, street or pavement cuts, and other work as deemed necessary by the Public Works Director, or designee. Any work utilizing electrical connections must obtain an electrical inspection from the City.
B. In addition to obtaining a permit pursuant to this article, before beginning any work in any public way, the permittee shall notify the City at least three (3) working days in advance of the exact date and time work will commence. Upon completion of all work authorized by the permit, the permittee shall notify the City.
C. No work shall be deemed to be completed until notification of completion is given and the work is approved by the City.

**7.12.11 Abandonment**

If the permittee abandons use of structures, cable, pipes, equipment or other facilities placed in the public way pursuant to the permit then, at City's option, City may require the permittee to remove all such structures, cable, equipment or facilities or may elect to accept ownership, in which case, title to such structure, cable, pipes, equipment or other facilities shall vest in the City. Abandonment shall be presumed if the permittee does not complete the work within the time provided in the permit. The permit may specify a different time period after which abandonment may be presumed.

**7.12.12 Condemnation by City**

Nothing in the permit shall be construed to deny the City the right to acquire the property of the permittee by the exercise of the right of eminent domain in accordance with the Arizona Revised Statutes.

**7.12.13 Excavation Permit is Revocable**

A. All permits may be revoked by the Public Works Director, or designee, when the public way, or any portion thereof, occupied and used by the permittee is needed or required for a public use, and upon notice from the City, the permittee shall promptly remove all property belonging to permittee from the public way.

B. If at any time the Public Works Director, or designee, finds a delay in the completion of the work authorized by a permit due to lack of diligence on the part of the permittee, or a lack of proper traffic control being exercised in the performance of the work, the Public Works Director, or designee, may cancel the permit and the permittee shall immediately restore the public way to its former and safe condition. In the event the permittee fails to do so as determined by the Public Works Director, or designee, the City shall complete such restoration and the permittee shall reimburse the City upon demand for all expenses incurred by the City in restoring the public way.

**7.12.14 Termination**

All permits granted hereunder are subject to termination by the Public Works Director, or designee, if:

A. The permittee fails to comply with the requirements of the permit or this article or any other rule or regulation of the City applicable to the permit granted hereunder; or
B. The permittee fails to pay when due, any fee as required by this article.

**7.12.15 Appeal**

Any person aggrieved by a decision of the Public Works Director, or designee, acting under this article may appeal the decision to the City Manager. The aggrieved person shall file notice, in writing, with the City Clerk within seven (7) calendar days after final action of the Public Works Director, or designee. The City Manager may affirm, modify or reverse the action of the Public Works Director, or designee. The decision of the City Manager shall be final.

**7.12.16 Stop Work Orders**

Whenever any work is being done contrary to the provisions of this article, the Director of Public Works, or designee, may order the unauthorized work stopped by notice in writing served on any person engaged in the doing or causing such unauthorized work to be done, and any such person shall immediately stop such unauthorized work. Any person performing work in a public way shall have a copy of a valid permit issued by the City openly displayed at the site or readily available for inspection by the City at the site at all times work is being performed or property or equipment is located in the public way.

**ARTICLE 7.13 STREET NUMBERING**
**(O-94-33; 0-93-20)**

A. The Planning Department will develop an address and number system to be used within the city limits. The department will identify current physical addresses, assign names to roads without names, assign numbers to occupied dwelling units and business establishments, reserve numbers to vacant properties for future use, and rename duplicate roads.
B. The following criteria will be used when assigning address numbers or changing address numbers within each grid area in the City of Bisbee.
    1. Property numbering shall be uniform, based on street frontage.
    2. Numbering shall be consecutive.
    3. Even numbers shall always be on one side of the street and odd numbers shall be on the other, consistent with the grid area.
    4. The numbering system shall allow for expansion to accommodate future growth in the area.
    5. The numbering system shall be coordinated and tied to any system developed by Cochise County in adjacent unincorporated areas.
C. Posting of Designated Street Addresses
    1. The occupant or person in charge of any house or building to which a number has been

assigned will be notified in writing by the Planning Department of the number assigned to same after adoption of this ordinance.

2. The occupant or person in charge of a house or building to which a number has been assigned shall affix the number on that property within sixty (60) days of receipt of said written notification from the Planning Department.
    a. Property numbering plaques will be the responsibility of the individual property owners.
    b. When a house is some distance from a road, or when view of the house is blocked by trees or shrubs, property numbers shall be placed on a sign attached to a tree, fence, gate, or lawn stake within plain view of the adjacent roadway.
    c. The property number shall face the street named in the address.
    d. Property numbers shall be replaced immediately by the owner, occupant or person in charge of the house or building when damaged, lost, or in any way destroyed.

1. Numerals indicating the official building number for each principal building or each front entrance to such building shall be posted in a manner as to be legible and distinguishable from the street on which the property is located.
2. It shall be the duty of such owner or occupant or person in charge thereof upon affixing the new number to remove any different number which might be mistaken for or confused with the number assigned to said structure, by the Department.
3. Each principal building shall display the number assigned to the frontage on which the front entrance is located. Where a principal building is occupied by more than one business or family dwelling unit, each separate front entrance shall display a separate address number.

D. The following criteria will be used when naming or renaming streets within each grid area in the City of Bisbee. The criteria listed shall be followed whenever practical, recognizing that circumstances may necessitate some flexibility.
    1. There shall be no duplication of street names or numbers used as names. An exception may occur when a court or cul-de-sac has the same name as the street from which it originates. Similar sounding names are considered to be duplications regardless of spelling.
    2. Roads that currently follow the same alignment and connect, yet have more than one (1) name, will receive one name. Roads broken by intervening land uses that are likely to be connected in the future shall be names alike when they are connected.
    3. Roads broken by excessive distance, or geographic or topographic features which make it unlikely that the roads will be connected in the future, may retain given names.
    4. A continuation of an existing road shall be given the same name, even if the road curves. However, if a road makes a 90 degree or sharper angle, and runs in a new direction for more than 500 feet, the name may change.
    5. The length of a road name shall not exceed 20 letters or characters, including spaces.

E. The following procedures will be used when naming or renaming streets within each grid area in the City of Bisbee.
    1. City Planning Department personnel shall determine the need to name or rename a street based upon the criteria of Section D of this Ordinance.
    2. Unless a petition for street naming is received, pursuant to previously adopted procedures, the City Planning Department personnel shall assign a revised street name.
    3. Upon renaming a street due to duplicate names or roads with more than one name, the Department will send notice to each owner of property along that road, recommending a new name. Owners or

tenants may respond to the notice within fifteen (15) days, after which the Department will make a final decision. Notice of the decision will be sent to the owners and other respondents.

4. If the Department's proposed street names are not objected to, each street name shall be effective fifteen (15) days after notice of name assignment is issued.
5. Upon naming a street that has no official name, the Department will propose a road name and notify the owners of occupied properties accessing that road of the proposed name by mail. Residents may submit a Road renaming Petition to change that name within fifteen (15) days after the receipt of the letter from the Department. If 51% support a different name that meets the principles of Section D, the Department will approve that name and give final notice of the road name to the residents at or prior to the time of distributing address numbers.

F. New Structures: Numbers will be assigned to each proposed lot or tract on the City of Bisbee Official Street Address and Number Map. No building permit shall be issued for any principal building until the owner or developer has procured from the Zoning Administrator the official property number for the premises. Final approval for a certificate of occupancy, where applicable, for any principal building erected or repaired after the effective date of this Ordinance shall be withheld until permanent and proper numbers have been displayed in accordance with the requirements of Section C above.

G. Penalties:

1. Enforcement by Civil Penalty: In the event that the occupant or person in charge of any house or building refuses to comply with the terms of this Ordinance by failing to affix the number assigned within sixty (60) days or to remove any old numbers affixed to such house, or house entrance, or elsewhere, which may be confused with the number thereto, they shall be subject to a civil penalty. The owner of the property is also subject to civil penalty, provided, however, that if the occupant or person in charge (if other than the owner) fails to
comply with this Ordinance, the owner shall first be provided thirty (30) days written notice to cure the deficiency.

Violations:

1. For the first violation of this Ordinance, the penalty shall not exceed Fifty ($50.00) Dollars for a person or enterprise.
2. For a second or subsequent violation arising out of the same facts, the penalty shall not be less than Fifty ($50.00) dollars for a person or enterprise, and shall not be more than Two Hundred ($200.00) dollars for a person or enterprise.

## ARTICLE 7.14 BOARDS OF APPEAL

**(O-03-03)**

### 7.14.1 Board of Appeals for Building Code, Mechanical Code and Dangerous Building Code

In order to hear and decide appeals of orders, decisions or determinations made by the building official or inspector relative to the application and interpretation of the City's Building Code, Mechanical Code and Dangerous Building Code, there shall be and is hereby created a board of appeals consisting of the Mayor and members of the Bisbee City Council. The City Clerk shall be an ex-officio member of and shall act as secretary to the board but shall have no vote on any matter before the board. All appeals must be taken within twenty (20) days of the issuance of the order, decision or determination of the building official or inspector by giving written notice of appeal to the City Clerk. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official or inspector.

**7.14.2 Board of Appeals for Fire Code**

To determine the suitability of alternate materials and types of construction and, in order to hear and decide appeals of orders, decisions or determinations by the City's Fire Chief concerning the provisions of the City's Fire Code, there shall be and is hereby created a board of appeals consisting of the Mayor and members of the Bisbee City Council. The City Clerk shall be an ex-officio member of and shall act as secretary to the board but shall have no vote on any matter before the board. All appeals must be taken within twenty (20) days of the issuance of the order, decision or determination of the City's Fire Chief by giving written notice of appeal to the City Clerk. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the City's Fire Chief.

## CHAPTER 8 BUSINESS REGULATIONS

### ARTICLE 8.1 PEDDLERS; OUTDOOR SALES (O-92-06; O-91-05; O-88-11; O-87-201)

**8.1.1 Permission Required for Selling on Streets or Sidewalks; Outdoor Sales**

A. Vacant commercial land may be used for the purpose of barter, sale or trade by first obtaining permission of the owner of the property and then obtaining a business license from the City Treasurer. Said activity shall be allowed only on private property in commercial zones. Public sidewalks may be used for regular sale items only by the adjoining property owner or legal tenant with a current business license. Public street rights-of-way may be used for the purpose of street vending with approved commercial licensed vehicles. Special event business licenses are required for sidewalk and street sale special events for those vendors not having a current business license. Fees for business licenses shall be payable quarterly. Special event licenses fees are payable prior to the actual event. City Council may limit the number of days City property either, street, sidewalk or public area, will be used for special events and may set other reasonable conditions upon the use of public property. It shall be unlawful for any person to occupy in any manner or to erect or maintain any table, booth, stand or counter on any public property in the City except for above said purposes and with exception of newspaper vending machines.

B. This section in no way prohibits such activities of local civic and religious organizations.

**8.1.2 Signs to be observed by Peddlers**

It is unlawful for any person to go on the premises of another for the purpose of soliciting, peddling, hawking, selling or vending of goods, wares, merchandise, newspapers, magazines or services where such premises are posted with a sign or other notice stating "no peddlers", "no solicitors", or otherwise giving notice to the public that peddlers, solicitors or salesmen are not desired.

### ARTICLE 8.2 BUSINESS LICENSE TAX (O-02-01; O-09-07)

**8.2.1 Definitions (O-09-07)**

In this Chapter:

A. "Business" means all vocations, occupations, professions, enterprises, establishments and all other kinds of commercial activities, together with all equipment, machines, vehicles and appurtenances used in conjunction with those activities, any part of which is conducted or operated for profit or financial benefit, either directly or indirectly.

B. "Employee" means each self-employed person and each regularly scheduled individual whose earnings are required to be reported to the Internal Revenue Service.

C. "Special multi-vendor event" means a temporary commercial activity, such as a swap meet, arts and crafts fair, street fair or festival, open to the general public and at which stalls, stands or spaces are allotted to individual vendors for the sale of merchandise or services. Such commercial activities shall be of a periodic nature and not conducted on a continuous basis at any one location.
D. "Transient contractor" means any person who engages in the business of providing a service within the City without having a fixed permanent place of business within the City. This term includes, but is not limited to, all such persons who are required to be licensed as contractors or other professionals by the State of Arizona.

**8.2.2 License Required**
**(O-09-07)**

A. It is unlawful for any non-exempt person, partnership, association, company or corporation to commence, transact or carry on any business in the City without first having procured a license from the City to do so.
B. The practicing, transaction or carrying on of any non-exempt business without first having procured a license from the City to do so, or without complying with any and all regulations of such business contained in this chapter shall constitute a separate violation of this chapter article for each and every day that such business is conducted.
C. Every person who shall conduct a non-exempt business outside of the City and sell products or perform a service within the City shall obtain a license and pay a license fee.
D. The granting of a license shall not constitute evidence or proof that the licensee has complied with the provisions of this chapter or other provisions of this code, nor shall it bar the prosecution by the City for any violation of this Code.

**8.2.3 Issuance of License**
**(O-02-01; O-09-07; O-11-16)**

A. Upon the receipt of a completed and approved application and the payment of the required fee, the City Treasurer, or his or her deputy, shall prepare and issue a business license to each applicant.
Each license shall state the period of time for which it is issued, the business name, the nature of the business and the location or place of business.
B. Each applicant for a business license shall provide, on the designated form the following information: business trade name and legal or corporate name, if different; location of business; business mailing address; state transaction privilege (sales tax) license number, if applicable; business owner name; home street address and telephone number of the owner or principal; business telephone number; exact nature of business; number of employees anticipated during the licensing period; and the date business operations began or will begin in the City. Each applicant shall identify his or her business title and sign the application, certifying that all of the information provided is true and correct.
C. If the business is to be located within the City limits, the building inspector and fire inspector must confirm that the proposed occupancy is consistent with the applicable codes before a license can be issued and used.
D. Upon verification by the zoning administrator that the business is in the appropriate zoning district, the City Treasurer may issue a license to the applicant before the completion of all required improvements or repairs if the building inspector confirms that arrangements have been made to complete all necessary work required for occupancy within a reasonable period of time.

E. As a condition precedent to the issuance of, or renewal of a business license, the applicant must be current in the payment of all fees imposed upon the applicant in connection with the subject business by the City of Bisbee or have entered into and remained current on a payment plan approved by the City.

**8.2.4 Time and Place of Payment**
**(O-09-07)**

A. All fees required by this article shall be paid in advance at the office of the City Treasurer, at City Hall.
B. The annual license fee shall be due and payable on the first business day of January of each year.

**8.2.5 When License Fee Delinquent; Penalty**
**(O-09-07)**

After any license fee provided for herein has been due and unpaid for twenty days, the same shall become delinquent, and the right to conduct further business under any prior license shall be terminated at that time. The City Treasurer shall, on the date of delinquency, add thereto an amount equal to ten percent of the total amount of any fee unpaid and delinquent as a penalty. No license shall be issued by the City Treasurer until the license taxes that are delinquent and the penalties added thereto have been paid in full, or the applicant has entered into an approved repayment plan for all such payments.

**8.2.6 Proration of Fees**
**(O-09-07)**

A. Annual license fees prescribed by this article for new businesses shall be reduced by one-twelfth of the full annual license fee for each month of the license period which has fully lapsed at the date of the license application.
B. There shall be no proration of daily or monthly license fees.

**8.2.7 Separate Licenses Required**
**(O-09-07)**

A separate license must be obtained for each branch establishment or separate place of business in which any business is conducted. Each license issued shall authorize the person obtaining it to conduct only that business described in such license, and only at the location or place of business specifically identified.

**8.2.8 License to be Displayed or Exhibited**
**(O-09-07)**

Every person having a license under the provisions of this article and conducting a business at a fixed place of business shall keep such license openly posted and exhibited while in force, in some conspicuous part of such place of business. Every person having such a license and not having a fixed place of business shall carry such license with him or her at all times while conducting the business for which the license was granted. Every person having a license under the provisions of this article shall produce and exhibit such license whenever requested to do so by any police officer or authorized city official.

**8.2.9 Transferability; Assignment**
**(O-09-07)**

A City business license may only be transferred and assigned upon the express written approval of the City Treasurer. The City Treasurer may, upon receipt of a transfer fee of one dollar, authorize the transfer of any license to any other person by written endorsement thereon, when it appears to his or her satisfaction that the original applicant for such license has sold or otherwise disposed of his or her interest in the subject business, that the new business owner has completed an application form identifying the new owner, and that the same or similar business will be operated at the original location by the new owner.

**8.2.10 Notice of Termination of Business**
**(O-09-07)**

Every licensee shall notify the City Treasurer, in writing, of the termination of his or her business either before the termination date or within ten days thereafter.

**8.2.11 Permit from Health Department (O-09-07)**

Where any business is required to be inspected by the County Health Department, before engaging in any particular business, the applicant must present confirmation that all conditions have been met prior to the issuance of a City license.

**8.2.12 License Inspections**
**(O-09-07)**

The City Treasurer, or his or her designees, may inspect all places of business subject to the provisions of this article.

**8.2.13 Right of Entry**
**(O-09-07)**

The City Treasurer, his or her designees, and police officers shall have the power to enter free of charge, during normal business hours, any place of business for which a license is required by this Article, and to demand the exhibition of the license for the current term from any person engaged or employed in the transaction of such business. Denial of right of entry by the licensee or his agents or employees shall be grounds for termination of any existing license held by the owner.

**8.2.14 Revocation of License**
**(O-02-01; O-09-07)**

Licenses issued under the provisions of this article may be revoked by the City Treasurer after notice and opportunity for a hearing in the Magistrate Court, for any of the following causes:

A. Fraud, misrepresentation or false statement contained in the application for license.
B. Any violation of this article.
C. Conducting a business in violation of any ordinance or code of this City or the Arizona Revised Statutes.
D. Failure to comply with the provisions of Section 8.2.3(E) of this Article.

**8.2.15 Classification and Schedule of Fees**
**(R-87-375, O-09-07, O-13-03, O-13-15)**

All fees are payable annually, except as otherwise specified.

A. Class I, Special Occupational License Fees.
    1. Franchised Utilities — No Additional Fee
    2. Utilities Operating without a Franchise or License — $2400.00

| | |
|---|---|
| 3. Auctioneers | $270.00 |
| 4. Carnival/ Circus | $32.50 per day |
| Each side show or concession | $19.50 per day |
| 5. Newspapers, Daily Publication | $130.00 |
| Newspapers and other Periodicals, | |
| 6. Weekly or Monthly Publication | $78.00 |
| 7. Fortune Tellers and Palmists | $52.00 |
| 8. Special Multi-Vendor Event, Promoter | $32.50 per event |
| 9. Special Multi-Vendor Event, Vendor | $ 4.00 per day |
| 10. Licensed, Inpatient Hospitals (providers of inpatient and outpatient hospital services) | $450,000.00 |

B. Class II, General Occupational License Fee

All other classes of business, not expressly identified above, including transient contractors and merchants, shall pay an annual license fee based upon the number of employees employed within the City of Bisbee according to the following schedule:

| Number of Employees | License Fee Amount |
|---|---|
| 1 | $39.00 |
| 2 | $65.00 |
| 3 | $104.00 |
| 4 | $130.00 |
| 5-8 | $156.00 |
| 9-12 | $260.00 |
| 13-20 | $312.00 |
| 21-30 | $388.00 |
| 31-40 | $520.00 |
| 41 or more | $596.00 |

C. The following businesses specifically identified below shall pay the general license fee indicated above and an additional, supplemental annual fee as follows:

1. Owners of fee-for-use music and amusement machines $3.00 per machine
2. Owners of the following Liquor Licenses

| | |
|---|---|
| a. Distiller/ Producer License | $52.00 |
| b. Microbrewer License | $52.00 |
| c. Domestic Winery License | $52.00 |
| d. Liquor Store License | $104.00 |
| e. Beer and Wine Store License | $104.00 |
| f. Beer and Wine Bar License | $104.00 |
| g. Bar License, all spirituous liquors | $156.00 |
| h. Club license | $156.00 |
| i. Hotel/ Motel License | $260.00 |
| j. Restaurant License | $260.00 |

**8.2.16 Computing General Occupational License Fee (O-09-07)**

A. For the purpose of computing and fixing the general fee imposed on Class II businesses, the number of employees employed in any existing business shall be determined as of the last day of the preceding quarter unless there is clear evidence that this number will change during the licensing period.
B. Any Class II business, having no employment experience during the quarter preceding the issuance of the license shall pay the fee imposed under the general fee for the estimated number of employees to be engaged.

**8.2.17 Collection of Fees**
**(O-09-07)**

A. Compliance. No greater or less amount of license fee shall be charged or received for any license issued than is provided for in this article, and no license shall be issued for any period of time other than as provided in this article.
B. Mistake in Setting Fee. In no case shall any mistake made by the City Treasurer, or his or her deputy, in stating, fixing or collecting the amount of any license fee prevent, prejudice or stop the City from collecting the correct amount due as provided by this article.
C. Effect of Judgment. A judgment against any person for transacting any business without a license shall not excuse or exempt such person from the payment of any license fee due or unpaid at the time of such judgment.

**8.2.18 Exemptions**
**(O-02-11; O-07-06; O-09-07; O-13-03)**

A. The following shall be exempt from the requirement of obtaining a business license:
    1. Any business located outside of the City of Bisbee and solely engaged in the delivery of products to a licensed or exempt occupant of this City for re-sale or personal use.
    2. Any business conducted by an agency or department of the United States Government or by the state, county, any political subdivision or other governmental entity.
    3. Medical clinics, whether or not operated for profit.
    4. Religious, charitable and other nonprofit organizations, institutions or associations, other than licensed inpatient hospitals, providing inpatient and outpatient hospital services.
    5. Physicians, surgeons and nurses not engaged in private practice.
    6. All home occupations that are being conducted in a manner that is consistent with the Zoning Code of the City of Bisbee including periodic garage or yard sales.
    7. All businesses that are expressly exempted from any such business license requirements by law, including but not limited to authorized insurers (A.R.S. § 20-226) and residential rental property owners or managers (A.R.S. § 9-1304.B).

    Exempt occupations are required to refrain from obstructing the use of public property and public ways and to comply with other generally applicable regulations governing the use of property within this jurisdiction.
B. The Treasurer may request verification from any person or entity that is claiming an exemption. The failure to provide sufficient confirmation of any entitlement to an exemption may result in enforcement actions.

**8.2.19 Complaints; Court Action**
**(O-09-07)**

A. Complaints. It shall be the duty of the City Treasurer and City police officers to cause a civil complaint to be filed in the Magistrate Court against any person violating any of the provisions of this article.

B. Court Action. In any action brought under or arising out of any of the provisions of this article, the fact that the defendant, or any agent or employee, has engaged in any business for which a license is required by this article, or that such party exhibited a sign indicating such business shall be prima facie evidence of the obligation of such party to obtain a business license.
C. The Magistrate Court may order injunctive relief as necessary to abate any violation and award damages and fees to the City. The civil damages to be paid to the City in the event of any judgment entered as a result of a failure to obtain a business license or the misuse of any such license shall be in the amount of $250.00 or twice the cost of the business license, whichever is greater, as necessary to reimburse the City for the costs of enforcement. Upon the payment of such damages and fees to the City, the person may be entitled to obtain a business license if all other conditions have been met.

**8.2.20 Commercial Operation of Non-Motor Driven Conveyances and Tours (O-90-05)**

A. Permission required. It shall be unlawful for any person to operate, for commercial purposes, any non-motor driven conveyance upon the public streets of the City of Bisbee; however, the City Council may issue permits for said activities subject to the following:
B. Insurance Requirements.
    1. No permit shall be issued or remain in effect unless the permittee, at the permittee's expense and without cost to the City, shall procure, maintain in force and on file with the City Clerk, sufficient evidence of a personal injury and general liability policy naming the City of Bisbee as an additional insured. The policy shall, at a minimum, be in the amount of one million dollars.
    2. Such insurance coverage constitutes a minimum requirement and shall in no way be deemed to limit or lessen the liability of the permittee under the terms of such permit.
    3. A Certificate of Insurance shall be required naming the City of Bisbee as additional insured and providing thirty (30) days notice to the City in event of any material change or cancellation.
C. Designated Hours and Areas of Operation and Routes. It shall be unlawful for any person to operate such conveyance for tours or commercial use at any location or route other than those permitted by City Council. The City Council must also approve the scheduled stops, boarding points and parking.
D. Waste Control. Any person, owner or operator utilizing animal-drawn conveyances shall be responsible for animal waste by the use of diaper or other such appropriate waste control methods.
E. Control of Animals. Any persons, owners or operators utilizing animal-drawn conveyances shall provide that such animal shall be tended at all times by a responsible adult while on the public right-of-way.
F. Application. Application for permission and requirements for issuance shall be subject to the following:
    1. Shall be valid for one year and only for the applicant to which it is issued and the number of vehicles specified in the application;
    2. The driver of the conveyance shall obey all city, state and federal traffic laws;
    3. The driver of the conveyance must have a valid Arizona motor vehicle operators license; and
    4. Equipment shall be kept in a clean and safe operating condition.

The City reserves the right to limit the number of permits and number of conveyances based on traffic considerations and public safety.

G. Fees. Fees for permits shall be $32.50 per quarter.
H. Indemnity. The holder of any permit issued under the terms of this Chapter shall always release and indemnify, defend and save harmless the City, its officers, agents and employees from and against any

and all claims, actions, causes of action, demands, judgments, costs, expenses, and all damages of any kind and nature incurred by or inuring to any person whatsoever predicated upon injury to or death of any person or damage to property, public or private, or whatever ownership, or damage to business, provided such injury, death, loss or damage shall arise out of or be connected directly or indirectly with the exercise of any right or privilege granted by such permit.

**8.2.21 Records of Real Property Transactions.**
**(O-97-24)**

Any person, partnership, association, company or corporation, which is subject to this Article, at any time that person or entity submits to the County Recorder a deed changing ownership of any real property located within the City of Bisbee, shall submit to the City Treasurer a form supplied by the City setting forth the name and address of the new owner and the property identification number of the property shown on the deed.

**ARTICLE 8.3 CABLE TELEVISION**
**(O-03-01; O-77-63)**

**8.3.1 Definitions**

In this article unless the context otherwise requires:

A. "Cable television system" or "cable system" means the signal reception, processing and distribution system used by licensee in the construction, operation and maintenance of the cable system for the City.

B. “Gross subscriber receipts” means all cash, credits, property or other consideration of any kind or nature received directly or indirectly by the licensee, its subsidiaries, parent or any subsidiary of its parent, arising from, attributable to, or in any way derived from the sale or exchange of cable services by the licensee within the City. Gross subscriber receipts includes, but is not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional, premium or per-channel or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, re-connection and change-in-service fees; leased channel fees; fees, payments or other consideration received from programmers for carriage of programming on the system (excluding reimbursements for launch expenses); converter fees, rentals or sales; studio rental, production equipment and personnel fees (but not for non-cable purposes); advertising revenues; revenues derived by the licensee from home shopping channel sales to City residents; and sales, exchange or cablecast by the licensee of any programming developed on or for access channels or institutional users. If at any time there is a final non-appealable determination by the Federal Communications Commission or a court with jurisdiction over the City determines that revenues received by the licensee from the delivery of Internet access service over its cable service must or may, in effect, be included in gross subscriber receipts, licensee will promptly notify the City of such change in the law and license fees will be assessed on such revenues. Advertising and home shopping revenues shall be allocated on a pro-rata basis based on the proportion of total subscribers on the licensee’s cable system represented by subscribers residing within the City. Gross subscriber receipts shall be the basis for computing the license fee imposed pursuant to Section 8.3.18 hereof. Gross subscriber receipts shall not include any taxes on services furnished by the licensee (other than the license fee) which are imposed on any subscriber or user by the state, county, city or other governmental unit and collected by the licensee on behalf of said governmental unit.

C. "License" means the right and authority granted by this article to a licensee to construct, maintain and operate a cable television system through use of the public streets, other public rights-of-way or the public places in the City.

D. "Licensee" means the person or entity to whom the license is granted by this article and any lawful successor assignee of the original licensee.
E. "License property" means all property owned, installed or used under authority of this article of licensee.
F. "Street" means the surface, the air space above the surface and the area below the surface of any public street, communications or utility easement, or other public right-of-way or public place.
G. "Subscriber" means any person or entity receiving cable service of licensee.

**8.3.2 Rules of Construction**

This article shall be construed liberally in order to effectuate its purpose. Unless otherwise specifically prescribed in this article, the following provisions in addition to those in Chapter 1 of this code shall govern its interpretation and construction.

A. Licensee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this article or the enforcement thereof.
B. This article does not relieve licensee of any requirement of this code, any ordinance, rule, regulation or specification of the City including, but not limited to, any requirement relating to street work, under grounding of utility facilities, including cable system facilities, or the use, removal or relocation of property in streets.

**8.3.3 Purpose and Intent**

It is the purpose and intent of this article to prescribe the conditions for granting a license to engage in the business of operating a cable system in the City. It is the further purpose and intent of this article that the licensee provides the citizens of the City a high quality cable television service.

**8.3.4 License**

A nonexclusive license may be granted by the adoption of a resolution to a licensee for receiving, distributing and supplying radio, television and other cable communication services along, across and upon the public streets, ways, alleys and places within the City.

**8.3.5 License Application**

All prospective licensees shall, prior to the issuance of the license, submit a license application. Each application for a license to construct or operate a cable television system in the City shall be filed with the City Clerk and shall contain or be accompanied by the following:

A. An application fee in the sum of one hundred dollars, which shall be in the form of cash, certified or cashier's check or money order, to pay the cost of studying, investigating and otherwise processing such application and which shall be in consideration thereof and not returnable nor refundable in whole or in part.
B. The name, address and telephone number of the applicant. If the applicant is a partnership, the main address of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and addresses of its directors, main officers, major stockholder and associates, and the names and addresses of parent and subsidiary companies. If the applicant is a corporation, a corporate resolution authorizing the application for and operation of a cable television system, together with a copy of its articles of incorporation and corporate by-laws shall accompany the application.
C. A statement and description of the cable system which was constructed, installed, maintained and is operated by the applicant, and the extent and manner in which existing or future poles or other facilities of existing utilities are or will be used for such system.

D. A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person who proposes to have an ownership interest with respect to the proposed license or to the proposed cable television operation. If a license is granted to a person posing as a front or as a representative of another person and such information is not disclosed in the original application, such license shall be deemed void and of no force and effect whatsoever.
E. A statement or schedule setting forth the number of channels and all the television or radio stations and other communication services initially proposed to be received, distributed, relayed or otherwise conveyed over the cable system.
F. A financial statement prepared by a certified public accountant, or person otherwise satisfactory to the City, showing applicant's financial status and his financial ability to complete the construction and installation of the proposed cable system, and, in the case of an existing cable system, the applicant's financial status and financial ability to continue the operation and maintenance of the cable system for which the license is granted.

**8.3.6 Nature and Extent of Grant**

The license granted by this article to a licensee constitutes authority to use the public streets, other public rights-of-way or public places in the City to engage in the business of operating a cable television system, within the service area hereinafter described, subject to all of the terms and conditions contained in this article. Pursuant to such authority, until lawfully revoked, licensee may construct, maintain and operate wires, cables, conduits, manholes or other equipment in connection with its receiving and distributing signals.

**8.3.7 Service Area**

This license relates to the present corporate limits of the City and to any area henceforth added thereto during the term of this license. The development of the cable service within the limits of the City shall be on a reasonable and equitable basis.

**8.3.8 Duration of Grant**

A. The license shall become effective as hereinafter provided, upon the condition that the licensee within thirty days of the adoption of the resolution granting the license has filed with the City Clerk a written instrument addressed to the Council accepting the license and agreeing to comply with all provisions of this article and of the resolution.
B. The term of the license shall be twenty-five years commencing on the effective date of the license as provided in subsection A of this section. Upon written notice given by the City or the licensee to the other, not less than one year prior to the twenty-fifth anniversary of the effective date, the council within thirty days of the written notice shall schedule a public hearing affording due process, said hearing to be held within forty-five days of the notification, at which time the license may be renewed for a reasonable term. If good faith renegotiations prior to the end of the term of the license do not result in agreement between the City and the licensee for continuance of the license, the license shall terminate without further action by the City at the end of its first twenty-five year term.
C. The term of any renewal license or term of any extension or grant of a new license after January 1, 2003 shall be fixed and determined by the City in the resolution granting any renewal, extension or grant of a new license. The term of any renewal, extension or grant of a new license may be conditioned on such terms as the City Council deems necessary or proper, including, but not limited to, the configuration, upgrade or changes to the licensee's cable or information system at the discretion of the City.

**8.3.9 Limitation upon Grant**

A. No privilege or exemption is granted or conferred by this article except those specifically prescribed in it.
B. The license granted by this article is a privilege personal to the original licensee. It cannot in any event be sold, transferred, leased, assigned or disposed of as a whole, or in part or otherwise, without prior consent of the City expressed by ordinance or resolution, and then only under such conditions as may be prescribed in the consenting ordinance or resolution. No such consent shall be unreasonably withheld, and no such consent shall be required for any transfer in trust, mortgage or other hypothecation, as a whole or in part, to secure indebtedness. There shall be no restrictions upon the transfer of this license to a controlled subsidiary or to a parent corporation.

**8.3.10 Extension of Service**

A. The extent of construction for the area to be covered by the license is hereby approved, and licensee is authorized to extend construction throughout the license area.
B. In order that existing subscribers shall not be unfairly burdened, where one hundred fifty feet or more of line or cable is required, or where under grounding of cable is required to reach the proposed subscriber, in such cases special rates (including a capital contribution) may be negotiated with the proposed subscriber. Absent a non-refundable capital contribution, licensee shall not be required to extend service to an area unless at least thirty-five subscribers per strand mile request service.
C. The licensee shall, within sixty days of the effective date of the license, apply for a certificate of compliance from the Federal Communications Commission, which application licensee shall diligently pursue.

**8.3.11 Regulation of Services**

A. The Council shall have the power and right at all time for the duration of the license granted to require the licensee to conform to the terms and conditions of this license.
B. The licensee shall:
    1. Render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time practical.
    2. Where circumstances warrant, correct problems within a reasonable period of time, and be able to demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered to the subscriber's terminal.
    3. Comply with all FCC regulations regarding carriage of the programming and signals of broadcast television stations. Such signals will be carried throughout the broadcast day of the broadcast television station, without alteration, deletion or substitution, except as required by FCC rules and regulations.
    4. Operate a cable system having the channel capacity required by the FCC.

**8.3.12 Special Provisions**

A. Licensee shall provide reasonable arrangements for interconnection to cable systems operating in the City or in adjoining communities.
B. System Maps and Layout. The licensee shall have at all times up-to-date route maps showing trunk and distribution lines. The licensee shall make all such maps available for review by the appropriate City personnel.
C. System Construction and Equipment Standards. The cable system shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the

National Electrical Safety Code and the Federal Communications Commission's Rules and Regulations as they apply.

D. The Council, by resolution granting the license or any subsequent modifications thereof, may impose additional special provisions upon the licensee prior to the passage of the resolution. A Public Hearing affording due process shall be held by the council, with adequate prior notice being given to the licensee.

**8.3.13 Location of Property of Licensee**

A. Any wires, cable lines, conduits or other properties of the licensee to be constructed or installed in the streets, alleys or other rights-of-way shall be constructed or installed in such manner as shall be approved by the City acting in the exercise of its reasonable discretion, and any existing cable system shall be subject to review by the City acting in the exercise of its reasonable discretion.

B. In those areas and portions of the City where both the distribution facilities of the utility providing telephone service and those of the utility providing electric service are underground or hereafter are placed underground, the licensee shall likewise in those same portions and areas of the City construct, operate and maintain all of its distribution facilities or other means of distributing signals underground. The City shall not in any manner be responsible for any costs incurred by the licensee in placing licensee's facilities underground, and licensee shall, prior to placing any facilities underground, consult with and obtain the permission of the City.

C. For all new residential structures erected in the areas described in subsection B of this section, the subdivider must provide licensee, at the subdivider's own expense, with trenches and backfill necessary for under grounding the cable distribution facilities. All subdividers must permit, upon licensee's request, the pre-wiring of their structures for cable television service.

**8.3.14 Installation of Distribution System**

The entire distribution system of the licensee, including wires, cables, appurtenances and facilities, shall be located or relocated and so erected as not to unreasonably interfere with travel over, in, on or under any public way and with reasonable ingress and egress to the abutting property.

**8.3.15 Removal or Abandonment of License Property**

A. In the event that (1) the use of any license property is discontinued for any reason for a continuous period of twelve months; (2) license property has been installed in a street or other dedicated public right-of-way without complying with the requirements of this article; or (3) the license has been terminated, canceled or has expired, licensee at its expense shall, at the demand of the City, remove promptly from the street or other dedicated public right-of-way, all license property other than any which the City may permit to be abandoned in place. In the event of any such removal, the licensee
shall promptly restore to a condition as nearly as possible to its prior condition the street or other public places in the City from which license property has been removed.

B. License property to be abandoned in place shall be abandoned in the manner prescribed by the City. Upon permanent abandonment of any license property in place, licensee shall deliver to the clerk an instrument transferring to the City the ownership of the license property abandoned.

**8.3.16 Changes Required by Public Improvements**

Licensee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from any street, alley or public place, any license property when required by the City by reason of traffic conditions, public safety, street vacation, freeway grade, installation of sewers, drains and

tracts or any other type of structures or improvements including, but not limited to, placing such structures and improvements underground by governmental agencies when acting in a governmental or proprietary capacity; provided, however, that licensee shall in all such cases have the privilege and be subject to the obligations to abandon license property in place, as provided in Section 8.3.15.

**8.3.17 Failure to Perform Street Work**

Upon failure of the licensee to commence, pursue or complete any work required by law and by the provisions of this article to be done in any street, within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, cause such work to be done, and the licensee shall pay to the City the costs thereof in the itemized amounts reported by the City to the licensee, within thirty days after receipt of such itemized report.

**8.3.18 License Fee**

A. The licensee shall pay to the City a reasonable license fee, to be established in the resolution granting the license, and not less than an amount equal to two percent of the gross subscriber receipts commencing on the effective date of the license, which license fee shall be levied as a tax upon the licensee in lieu of all other license fees and sales taxes.

B. The licensee shall furnish the City, upon reasonable request, such data as needed in accordance with generally accepted accounting principles.

C. The City shall have the right to inspect the licensee's records during normal business hours showing the gross receipts from which its license payments are computed and the right of audit and the re-computation of any and all amounts paid under this license.

D. Any willful neglect, omission or refusal of the licensee to pay said percentage in full, at the time or in the manner hereinbefore provided, which willful neglect, omission or refusal shall continue for more than thirty days following written notice thereof to the licensee from the City shall be grounds for the termination of this license as provided for in Section 8.3.21.

**8.3.19 Liability and Indemnification**

A. The licensee shall pay all damages and penalties which the City may legally be required to pay as a result of passage of this article, whether by way of judgment or settlement and compromise.

B. The licensee shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned above, provided that the council promptly notified licensee of the pendency of such damages, claims, actions or causes of action without limitation. The expenses shall include all out-of-pocket expenses including reasonable attorney fees. The fact that the licensee tenders and provides a legal defense, including attorneys, for the defense of the City, shall not preclude the City from recovering any other out- of-pocket expenses, including a reasonable attorney's fee.

C. The licensee shall maintain and pay for sufficient liability insurance to satisfy the deductible requirement of the City's liability insurance coverage, such insurance to insure the City and the licensee with regard to all damages charged against the City or the licensee resulting from the installation, development, maintenance or expansion of the cable system authorized by this article in not less than the following amounts:

    1. One million dollars for bodily injury or death to any one person, with an aggregate limit for any one occurrence of one million dollars for bodily injury or death.

2. One hundred thousand dollars property damage resulting from any one accident.
3. Fifty thousand dollars for all other types of liability.

**8.3.20 Inspection of Property**

At all reasonable times, licensee shall permit examination by any duly authorized representative of the City of all license property, together with any appurtenant property of licensee situated within or without the City.

**8.3.21 Termination**

A. The City may terminate the license hereby granted in the event of the willful failure, refusal or neglect by the licensee to do or comply with any material requirement or limitation contained in this article or in the resolution granting the license.
B. The City Clerk may make written demand that the licensee do or comply with any such requirement, limitation, term, condition, rule or regulation. If the willful failure, refusal or neglect of the licensee continues for a period of thirty days following such written demand, the City may cause a request for termination of the license to be heard at a regular or special meeting of the council. The City Clerk or his duly authorized agent shall cause to be served upon the licensee, at least ten days prior to the date of such council meeting, a written notice of the intent to request such termination and the time and place of the meeting.
C. The Council shall consider the request of the City and shall hear any persons interested therein and shall determine whether or not any willful failure, refusal or neglect by the licensee was with just cause.
D. If such willful failure, refusal or neglect by the licensee was with just cause, the Council may direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.
E. If the Council shall determine such willful failure, refusal or neglect by the licensee was without just cause, then the council may pass its resolution declaring that the license of such licensee shall be terminated and forfeited unless there be compliance by the licensee within such reasonable period as the Council may prescribe.
F. The termination and forfeiture of any license shall in no way affect any of the rights of the City under the license or any provision of law.

**8.3.22 New Developments**

It shall be the policy of the City liberally to amend the license, upon application of the licensee, when necessary to enable the licensee to take advantage of any developments in the field of distribution of communications signals which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers.

**8.3.23 Costs of Publication**

The licensee or proposed applicant thereto shall assume the cost of publication of any legal documents necessary to the granting of the license, as such publication is required by law, and these costs shall be payable upon the licensee filing an acceptance of any license granted under this article.

**8.3.24 Compliance with Federal Communications Commission**

Within one year from the date the Federal Communications Commission amends or modifies Chapter 1 of Title 47 of the Code of Federal Regulations, Subpart C of Part 76 thereof, this article shall be amended to be made consistent with such amendment or modification. Licensee shall comply with the standards for local licenses set forth in Section 76.31 of the Federal Communication Commission's Rules and Regulations. Licensee will

undertake any obligations arising from modifications of the provisions of said Section 76.31 within one year of adoption of the modifications, or at the time the license is renewed, whichever occurs first.

**8.3.25 Violations**

A. It is unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed cable system within the City for the purpose of enabling himself or others to receive any television signals, radio signals, picture, program or sound, without payment to the owner of said cable system.
B. It is unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable wires or equipment used for distribution of television signals, radio signals, pictures, programs or sounds.

**8.3.26 Cable Modem Internet Access**

A licensee's cable system shall include a high quality and high performance hybrid fiber optic coaxial network or equivalent technology using components and equipment of high quality and reliability, such that licensee's system is capable of providing high speed cable modem Internet access.

**8.3.27 Periodic Reviews**

A. When, and if, the City deems it advisable, but no more often than every three (3) years during the term of a license, the City shall give notice to the licensee that it is commencing an evaluation of the licensee's performance under its license. The results of this evaluation shall be reported at a public City Council meeting. The primary purpose of this evaluation shall be to consider whether the licensee has substantially complied with, or made all reasonable efforts to comply with, all substantive requirements of its license and policies, especially the consumer service standards.
B. Notice of all evaluation sessions shall be published in the same way as a legal notice of any public meeting.
C. If an evaluation proceeding has revealed deficiencies in the licensee's performance under its license or policies, the City shall notify the licensee and request that the deficiencies be corrected within a reasonable time. If the deficiencies involve substantial non-compliance with the license and are not or cannot be, corrected within a reasonable period of time, the City may initiate an action under Article 8.3.21 to terminate the license or other appropriate action.

**8.3.28 Annual Performance Report**

A. On or before March 1 of each year, the licensee shall file a report with the City Clerk covering system activity in the prior calendar year. The report shall include:
    1. Changes in programming and rates;
    2. Changes in other services;
    3. Capital investments in the system, which impact services in the City, during the year;
    4. A current list of officers and directors;
    5. Proposed changes for the coming year; and
    6. The Results of any subscriber survey.

B. At the City's request, the licensee through its primary regional executive shall attend a City Council meeting for the purpose of presenting the annual performance report and addressing comments and questions from the City Council and members of the public.
C. To assist in its reviews and evaluations, the City may enlist, at its cost, an independent consultant to conduct an analysis of the cable and information system and its performance and to submit a report of such analysis to the City. Topics which may be addressed include, but shall not be limited to: license fees, services, application of new technologies, cable and information system technical performance, and related facilities and equipment, subscriber complaints, privacy, amendments to the City's cable code, legal developments, including judicial and Federal Communications Commission rulings and proceedings, and licensee or City rules or policies. During evaluations by the City, the licensee shall cooperate fully with the City and shall provide, without cost, such existing information and documents as the City may reasonably request. Nothing in this section shall be implied as reopening license negotiations or making modifications to an existing license.

## ARTICLE 8.4 CABLE TELEVISION; BASIC SERVICE TIER RATE REGULATION

### 8.4.1 Definitions

A. "AICPA" means American Institute of Certified Public Accountants
B. "Cable Act of 1992" means the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. sec. 521 et seq.).
C. "Citation" These Regulations may be cited as the "Basic Service Tier Rate Regulations".
D. "City" means the Mayor and Council of the City of Bisbee.
E. "Company" as used herein means any "Licensee" under City Code, Chapter 8, Business Regulations, Article 8.3, Cable Television (O-77-63) and anyone providing cable television services within the city limits of Bisbee.
F. "Customer" as used herein means any person or entity utilizing or desiring to utilize cable television services provided by the Company for consideration. "Customer" also means "customer(s)" and/or "subscriber(s)" as those terms are used in the Cable Act of 1992 and the FCC rules and regulations adopted there under.
G. "Effective Date" means the date the Basic Service Rate Regulations become effective as provided for 47 CFR § 76.910.
H. "FCC" means the Federal Communications Commission.

### 8.4.2 Incorporation of the Cable Act of 1992 and FCC Regulations Pursuant Thereto

A. Incorporation of the Cable Act of 1992. The City hereby incorporates by reference the provisions of the Cable Act of 1992 as part of these Regulations. Amendments to the Cable Act of 1992 made subsequent to the Effective Date of these Regulations shall also be incorporated by reference as part of these Regulations without further action on the part of the City.
B. Incorporation of FCC Rules and Regulations. The City hereby incorporates by reference the FCC rules and regulations implementing the Cable Act of 1992 as part of these Regulations, including but not limited to those rules and regulations regarding subscriber rate regulation as set forth in 47 CFR sections 76.900-76.985. Amendments to FCC rules and regulations implementing the Cable Act of 1992 made subsequent to the Effective Date of these Regulations shall also be incorporated by reference as part of these Regulations without further action on the part of the City.

C. Compliance with the Cable Act of 1992 and FCC Rules and Regulations. These Regulations shall at all times fully comply with the Cable Act of 1992, as amended and then-current FCC rules and regulations implementing the Cable Act of 1992. In the event any provision of these Regulations shall be invalidated for any reason or cause, any remaining portions shall be deemed severed there from and thereupon remain in full force and effect thereafter.

**8.4.3 Determination of Maximum Initial Permitted Rates for Regulated Cable Services and Actual Cost of Regulated Equipment (O-94-39)**

A. Materials to be Submitted by Company to the City. After the Company has submitted to the City a completed FCC Form 1200, or other such similar form as may be hereafter utilized by the FCC for determination of maximum initial permitted rates for regulated cable services and actual cost of regulated equipment, and/or any materials required by the Cable Act of 1992 and FCC rules and regulations implementing the Cable Act of 1992, the City may request and the Company shall supply such additional or supplemental information as the City believes is necessary to review the submission. In addition, the City may obtain the opinion of an independent certified public auditing firm to review the materials submitted by the Company. If such auditor's opinion determines that the Company must refund to subscribers an amount of more than $1.00 per subscriber per month, then the reasonable cost of the auditor's opinion shall be reimbursed by the Company to the City. This charge shall not be recoverable by the Company from the subscribers.

B. City's Power to Audit Company. Nothing contained in these Regulations shall abrogate the City's powers to conduct its own audit of the financial records of the Company.

**8.4.4 Refunds to Customers**

All refunds owing by Company to Customers pursuant to 47 CFR § 76.942 shall be paid by the Company to Customers by direct payment or credited to the Customer's bill pursuant to 47 CFR § 76.942 (d) (1) or (2) within ninety (90) days from the date of the implementation of a prospective rate reduction pursuant to 47 CFR § 76.942 (c) (1) or (2).

**8.4.5 Enforcement**

A. Informal Resolution. In the event that the Company shall fill, refuse or neglect to comply fully with the requirements of these Regulations, the City Manager shall, except in instances in which time is of the essence in obtaining the Company's compliance and/or the City Manager determines that such efforts would be futile, attempt informal resolution and rectification of the Company's non-compliance by informal meeting and/or telephone conference between the Company and the City staff. Said informal resolution efforts shall be initiated by the City Manager's general statement of the alleged violations under investigation and the general nature of the evidence then known to the City Manager. Notwithstanding the foregoing, the nature and extent of evidence which may be presented by the City
Manager in any subsequent Enforcement Hearing pursuant to section 8.4.5., subsection (D) shall not be limited or abridged by reason of the presentment or non-presentment or recitation of non-recitation of such evidence in the course of the informal resolution efforts.

B. City Preference for Cure. To the extent reasonably consistent with the goal of obtaining compliance with the Regulations, it shall be the policy of the City to notify the Company of a possible or alleged violation and, if said violation I s then curable, allow a reasonable time for the Company to cure the possible or alleged violation. If the Company does so cure, in the absence of aggravating circumstances, it shall be the preference of the City to abstain from further enforcement action.

C. Determination of Probable Cause for Enforcement Hearing. In the event that the informal efforts at resolution are ineffective or otherwise inappropriate:
   1. The City Manager may notice the Company to meet with the City Manager on not less than ten (10) days notice to determine whether or not probable cause exists to believe that the Company has failed, neglected or refused to comply with the provisions of these Regulations; or;
   2. In the sole discretion of the City Manager, the City Manager may notice the Company to meet with the City on not less than ten (10) days notice to determine whether or not probable cause exists to believe that the Company has failed, neglected or refused to comply with the provisions of these Regulations.

   In either event, the probable cause determination shall be initiated by the City Manager's general statement of the alleged violations under investigation and the general nature of the evidence then know to the City Manager and/or the City. Notwithstanding the foregoing, the nature and extent of evidence which may be presented by the City Manager in any subsequent Enforcement Hearing pursuant to section 8.4.5., subsection (D) shall not be limited or abridged by reason of the presentment or non-presentment or recitation or non-recitation of such evidence in the course of the probable cause determination.

D. Enforcement Hearing. Upon a determination of the City Manager pursuant to section 8.4.5., subsection(C) (1) above, or of the City pursuant to section 8.4.5., subsection (C) (2) above, that probable cause exists to believe that the Company has failed, neglected or refused to comply with the provisions of these Regulations, the City may hold such hearings, conduct such procedures and impose such remedies as are authorized by these Regulations.

E. Conduct of Enforcement Hearing. The hearing may be conducted either by the Mayor and City Council or, at the sole discretion of the City Council, by a hearing officer appointed by the Mayor and City Council to conduct the hearing, provided that, in the event that the cumulative monetary sanction(s) sought for any alleged violation(s) equal or exceed Fifteen Thousand Dollars ($15,000) in any single proceeding, the Company shall have the option to require the hearing be conducted by a hearing officer.

F. Selection of Hearing Officer. If the matter shall be referred to a hearing officer, the City Manager and the Company shall each exchange to the other party, not later than ten (10) business days after said order of referral by the Commission, the names of three (3) qualified, neutral and unaffiliated potential hearing officers. Thereupon, each party shall have ten (10) business days to strike two (2) of the other party's named potential hearing officers and the hearing officer shall be thereafter determined, as between the two remaining names, by lot. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of Arizona. The cost of providing quarters for the hearing, the compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne equally by the Company and the City and the City is hereby authorized to withdraw the Company's share of such costs from the Company's security deposit with the City.

   The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.

G. Burden of Proof at Enforcement Hearing. At any hearing conducted pursuant to section 8.4.5., subsection (E) above, the City Manager shall have the burden of establishing the violation of these Regulations to the satisfaction of the Mayor and City Council or the hearing officer by a preponderance of the evidence. The Company may present such evidence, consistent with section 8.4.5., subsection (H) below, as it may desire.

H. Conduct of the Enforcement Hearing. All witnesses testifying at the hearing shall be sworn. Witnesses shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil or criminal proceedings in the trail courts of this State shall apply to evidence adduced at the

hearing only to extent that such rules are reasonably necessary to the preservation of the probative nature of the evidence proffered. The hearing may be continued from time to time.

I. Recommended Decision of Hearing Officer. If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the City Clerk and mailed to the parties not later than thirty (30) calendar days after conclusion of the hearing. Upon receipt of such a recommended decision, the Mayor and City Council may, without a hearing except as otherwise required below, either:
   1. Adopt the recommended decision, including findings of fact and conclusion submitted by the hearing officer;
   2. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
   3. Based upon the record of the hearing, modify the findings of fact, conclusions or decision, and adopt the recommended decision as so revised; or
   4. Reject the recommended decision and conduct a new hearing before a hearing officer provided at the City's expense.

   If the City shall act under either (2), (3), or (4) of this section 8.4.5., subsection (I), the City set forth clearly its rationale and reasoning for so doing.

J. Findings by City. If the hearing is conducted by the Mayor and Council of the City, upon conclusion of the hearing, the Mayor and Council shall adopt a decision which includes findings of fact and conclusions.

**8.4.6 Remedies**
**(0-94-39)**

A. Monetary Sanctions. The City may impose monetary sanctions for a violation of an order of the City issued pursuant to these Regulations at the conclusion of a noticed hearing pursuant to section 8.4.5., subsection (D) above, as to each violation so found, not to exceed the amount(s) set forth for the violations of the applicable violation(s) as set forth below.

B. Conscious Violation. A Conscious Violation is any failure, neglect or refusal of the Company to materially comply with any order issued pursuant to these Regulations, under such circumstances as to indicate:
   1. A conscious policy of non-compliance with the requirements thereof; or
   2. A conscious lack of a policy of compliance with the requirements thereof.

   A prior find of a violation under subsections (C) or (D) below for substantially the same or similar conduct shall create a rebuttable presumption of conscious action or inaction on the part of the Company. For each such violation, the City may impose a monetary sanction in an amount not to exceed Five Thousand Dollars ($5,000.00) and in an additional like sum for each month or portion thereof during which the Company shall fail, neglect or refuse to rectify said violation beginning thirty (30) days after written notice thereof from the City to the Company.

C. Inadvertent Violation. An Inadvertent Violation is any failure, neglect or refusal of the Company to comply with the requirements of an Order issued under these Regulations as to its obligations hereunder in relation to one or more subscribers, including but not limited to refunding or crediting monies to subscribers pursuant to section 8.4.4., subsection (A) hereof and/or 47 CFR § 76.942(d)(1) or (2), under such circumstances as do not to indicate a pattern of behavior by the Company in derogation of the referenced requirement. For each such violation, the City may impose a monetary sanction:
   1. In an amount not to exceed One hundred Dollars ($100) for each such subscriber and Five Thousand Dollars ($5,000) in accumulation of the violations as to all such subscribers resulting from any substantially continuous behavior, act or omission; and

2. In an additional like sum for each month or portion thereof during which the Company shall fail, neglect or refuse to rectify said violation beginning thirty (30) days after written notice thereof from the City to the Company.

D. Inadvertent Company Violation. An Inadvertent Company Violation is any failure, neglect or refusal of the Company to materially comply with the requirements of an Order issued under these Regulations with respect to the Company in relation to the City. For each such violation, the City may impose a monetary sanction in an amount not to exceed Five Thousand Dollars ($5,000) and in an additional like sum for each month or portion thereof during which the Company shall fail, neglect or refuse to rectify said violation beginning thirty (30) days after written notice thereof from the Commission to the Company.

E. Alternative Remedies. Neither monetary sanctions imposed hereunder nor any order issued by the Commission related hereto shall be deemed to bar or otherwise limit the right of the City to obtain judicial enforcement of the Company's obligations by means of specific performance, injunctive relief, mandate or other remedies at law or in equity, other than monetary damages.

## ARTICLE 8.5 PAWNBROKERS, SECONDHAND AND JUNK DEALERS (O-94-34)

### 8.5.1 Definitions

In this article unless the context otherwise requires:

A. "Junk collector" means a person not having a fixed place of business in the City who goes from house to house and from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as "junk".

B. "Junk dealer" means a person having a fixed place of business within the City and engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, old rags, sacks, bottles, cans, papers, metal or other articles commonly known as "junk".

C. "Pawnbroker" means a person engaged in conducting, managing or carrying on the business of pawn broking, or the business of loaning money for himself or for any other person, receiving as security for the repayment thereof pawns or pledges of personal property or the business of purchasing personal property and selling or agreeing to resell such articles to vendors, their personal representatives or their assigns, at prices agreed upon at or before the time of such purchase, whether such business be the principal or sole business so carried on, managed or conducted, or merely incidental to, in connection with or a branch or department of some other business.

D. "Pawnshop" means any room, store or place in which a business as defined in subsection C of this section is engaged in, carried on or conducted.

E. "Secondhand dealer" means a person engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares, merchandise or articles, whether such business be the principal or sole business so carried on, managed or conducted, or be merely incidental to, in connection with or a branch or department of some other business.

### 8.5.2 Pawnbrokers Report

A. It is unlawful for any pawnbroker or any employee or agent of any pawnbroker within the City to fail, neglect or refuse to make out and deliver to the chief of police within twenty-four hours after the receipt thereof, a full, true and complete report of all goods, wares, merchandise or articles received on deposit in pawn or pledge, or by purchase.

B. Such report shall show the hour of the day and the date when each article was received on deposit, in pawn or pledge, or by purchase, and the true name and address, as nearly as the same is known or can be ascertained by such pawnbroker of such person by whom any such goods, wares, merchandise or article was left or deposited, pawned, pledged or sold. The report shall include a description of such person, which description shall show the style of dress, height, age, sex, complexion, color of hair, color of mustache or beard or both, if worn, and if not worn, such fact shall be noted. Such report shall also show the number of the pawn ticket, the amount loaned or paid thereon, the quantity or number purchased, including all distinguishing marks thereof.

**8.5.3 Secondhand, Junk Dealers Report**

A. It is unlawful for any secondhand dealer, junk dealer or junk collector within the City to fail, neglect or refuse to make out and deliver to the chief of police within one week after the receipt thereof, a full, true and complete report of all goods, wares, merchandise or articles received on deposit, in pawn or pledge, or by purchase.

B. Such report shall show the hour of the day and the date when each article was received on deposit, in pawn or pledge, or by purchase, and the true name and address, as nearly as the same is known or can be ascertained by such secondhand dealer, junk dealer or junk collector, of such person by whom any such goods, wares, merchandise or article was left or deposited, pawned, pledged or sold. The report shall include a description of such person, which description shall show the style of dress, height, age, sex, complexion, color of hair, color of mustache or beard, or both if same are worn, and if neither is worn, such fact shall be noted. Such report shall also show the amount loaned or paid thereon, the quantity or number purchased, and a complete description of each article so received, including all distinguishing marks thereof.

**8.5.4 Reports to be in English**

All reports required by the provisions of this article are to be made out and delivered to the chief of police and shall be written or printed in the English language in a clear and legible manner.

**8.5.5 Altering Merchandise**

It is unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector to deface, alter, change or destroy, part with, conceal, give away, sell or dispose of any goods, wares, merchandise or article before and until one week after making out and delivering to the chief of police the report required by this article.

**8.5.6 Failure to Comply**

A. Each failure, neglect or refusal to make out and deliver to the chief of police the report required by this article to be made out and delivered within the time required, and each defacement, alteration, change, destruction, parting with, concealment, gift, sale or disposition of any goods, wares, merchandise or article before or until one week after the making out and delivery of such report shall constitute a violation of this article.

B. The license of any pawnbroker, secondhand dealer, junk dealer or junk collector may be summarily revoked by the council for any violation of the provisions of this article, and upon any such revocation of license, all fees or taxes theretofore paid on account of such license shall be forfeited to the City.

**ARTICLE 8.6 AUCTIONS**

**(O-94-34)**

**8.6.1 Compliance Required**

A. It is unlawful for any person to sell, dispose of or offer for sale, at a public auction, within the corporate limits of the City, any goods, wares and merchandise, whether the same shall be their own property, or whether the sale of same shall be by and through agents, employees or others, without first complying with the provisions of this article and obtaining a license from the clerk.

B. This section shall not apply to judicial sales, to sales by executors, administrators, trustees or assignees under the terms of any instrument given to secure a bona fide indebtedness granting the power of sale, nor to sales of unclaimed freight or express, as provided by law, nor to sales by the City,sheriffs, constables or officers of the state or the United States, as provided by law, nor to any other kind of auction sale by the City or expressly authorized by the statutes of the state or the United States, or as may hereafter be authorized, nor to the sale of any livestock, agricultural products or farming tools, implements or equipment.

**8.6.2 Application for License**

A. Any person desiring to hold an auction sale for the sale of the goods described in Section 8.5.1 shall make application to the clerk and shall state in the application the residence of such person seeking to hold such auction sale for the twelve months next preceding the filing of such application and the period of days such person desires to hold the auction sale. The clerk shall issue to such person a license for the period of time, upon the compliance by such person with the terms of this article; provided, however, that no such license shall be issued for a period longer than one year.

B. Application for a license shall be in writing and sworn to, stating the name of the applicant, current residence and residences for the twelve months next preceding the filing of said application, the street and number of the proposed place of sale, the length of time for which the license is desired, whether or not the applicant has previously within the City or elsewhere engaged in a like or similar business, either with or without sales at auction and the places and length of time such sales were conducted.

**8.6.3 Inventory**

A. The application for license shall have attached to it a sworn inventory of the stock of merchandise or goods to be offered for sale, setting out the quality, quantity, kind or grade of each item. The inventory shall also designate the character of the merchandise offered for sale as new, salvage or used, according to the following definitions:
   1. The term "new" shall include all goods, wares and merchandise which shall have been purchased from manufacturers, jobbers or wholesalers by the person selling the same at auction, without having been exposed for sale to the public at retail.
   2. The term "salvage" shall include all goods, wares and merchandise however secured, when the same has been exposed for sale to the public at retail by any person, provided that property otherwise new shall not be classified as salvage by reason of having been offered for sale at retail by the person offering the same at auction.
   3. The term "used" shall include all goods, wares and merchandise that has at any time been sold at retail regardless of by whom.

B. To such inventory there shall be attached an affidavit that such inventory is in all respects true and correct, and in the case of an individual such affidavit shall be made by him; in case of a firm or association, it shall

be made by one of the partners or members, and in the case of a corporation it shall be made by its president, general manager, secretary or Treasurer.

C. Such inventory and affidavit when so made shall be kept on file in the office of the clerk, as a part of the public records. No merchandise shall be sold at such auction sale except that referred to and included in the inventory. The inventory and affidavit thereto is specifically made a part of the application for license.

D. Whenever any extension of time covered by any license granted pursuant to this article is sought and no new or additional merchandise is to be sold during such extension other than that covered by the inventory previously filed, such license shall be issued upon payment of the license fee, if any, provided herein for such period of time. If the licensee desires to sell any new or additional goods, wares or merchandise not included in the original inventory, such application shall be accompanied by an inventory covering such additional merchandise in the same manner and form as in the original application.

E. It is unlawful for any auctioneer to offer for sale, or to sell any article not shown in the inventory filed in the office of the clerk, and it is unlawful to expose for sale, or to offer to sell or otherwise dispose of at any place where an auction sale is being held, or authorized to be held, any such article, not shown in the inventory filed in the office of the Clerk.

**8.6.4 Bond Required**

A. The applicant shall before the issuance of a license tender a bond payable to the City. Such bond shall be signed by the applicant as principal and by some solvent surety company authorized to do surety bond business within the state as surety. The bond shall be in the penal sum of one thousand dollars, shall be approved by the mayor and shall be conditioned that the principal thereon shall pay all losses and damages which may be lawfully claimed against him on account of any material misrepresentation or material suppression of facts concerning the merchandise to be offered or auctioned at such sale, or caused by any violation of any of the provisions of the terms of this article. Such bond shall be made amenable to the claim or suit of any person who may sustain any loss or damage on account of any such misrepresentation or suppression and shall cover all auction sales of merchandise described in the inventory made and required to be filed in the office of the clerk.

B. Any person sustaining any loss or damage may bring suit in any court of competent jurisdiction to recover the same, and the provisions of said bond shall be construed liberally in favor of any such person on account of any loss or damage sustained by any such person, either directly or indirectly.

C. All remedies upon or under such bond shall be in addition to and cumulative of all other remedies the parties may have at law or in equity for recoupment of any such losses or damages. Successive recoveries may be had upon such bond without exhausting same, or in any manner discharging the same; provided, that when the penal amount of said bond shall be reduced by such recoveries below five hundred dollars, an additional bond shall be filed by the licensee in such amount as will provide a penal liability of one thousand dollars.

**8.6.5 Substitutions Prohibited**

No auctioneer after offering for sale and selling any articles in the manner prescribed by law, or under the provisions of this article, shall thereafter substitute any article in lieu of that offered for sale and purchased by the bidder.

**8.6.6 False Statements or Bids**

A. It is unlawful for any person acting as auctioneer to make any statements which are false in any particular or which have a tendency to mislead any person present, or to make any misrepresentation whatever, as

to the quality, quantity, character, present condition, value or cost, or general selling price or whether new, salvage or used, or partly so, of any property offered for disposal by auction sale.

B. It is unlawful for any person to act as a by-bidder, or what is commonly known as a "capper" or a "booster" at any such auction, or place where such auction is taking place, or to offer to make, or to make false bid to buy, or to pretend to buy any such article sold or offered for sale at any such auction.

**8.6.7 Violations**

Any person who shall violate any of the provisions of this article, or who shall fail to comply with all the requirements of this article, shall, upon conviction, be guilty of a misdemeanor.

**8.6.8 Revocation of License; Renewal**

A. After conviction for any offenses defined by this article, the council may, in its discretion, revoke the license granted under this article, provided, that upon revocation of any such license any license fee collected in excess of the license fee which would have been used for the period during which said auction had theretofore operated shall be refunded to such licensee.

B. If any person shall present an application for a license who has previously been the owner of a license which has been revoked by conviction of a misdemeanor under this article, said application shall be passed upon by the council, and the council shall, in its discretion, issue or deny such license for good cause shown.

**ARTICLE 8.7 OTHER**
**(O-94-34)**

**8.7.1 Copier Equipment and Fees**
**(O-91-40; O-09-06)**

The City Council of the City of Bisbee is authorized to regulate the use of City-owned copier equipment and to set fees for providing copies to the public, including paper copies, audio and video tapes, CD's and DVD's.

FEES: The copying fees shall be set as follows:

| | |
|---|---|
| 1. Standard sheet (8 ½" x 11") | $0.25 per side |
| 2. Legal sheet (8 ½" x 14") | $0.30 per side |
| 3. Other (e.g. 11" x 17") | $0.35 per side |
| 4. Copies for Commercial Purposes | $50.00 standard charge plus $0.50 per page for reproduction, plus any additional commercial value |
| 5. Audio tape | $ 5.00 |
| 6. Video tape | $10.00 |
| 7. CD copy | $ 5.00 |
| 8. DVD copy | $10.00 |
| 9. Photograph/color copy on copy machine | $ 1.00 |
| 10. Copies requiring outside equipment | Direct cost of copies |

The City Manager may, under special circumstances, set additional fees. These fees may be based on additional services required or other special conditions.

**8.7.2 Non-Sufficient Funds**
**(O-93-09)**

A service charge of $15.00 shall be charged for all checks made payable to the City and subsequently returned due to insufficient funds.

**ARTICLE 8.8 TELETRACKING**
**(O-03-04)**

**8.8.1 Applications for Approval of a Special Business License for an Off-Track Wagering Facility**

In any instance in which a person or entity has an Arizona race track permit for either greyhound racing or horse racing which would allow teletracking or off-track wagering at a facility within the corporate limits of the City of Bisbee, the race track permittee, or its authorized agent, shall complete and file with the City

Clerk an application for a special business license for consideration by the Mayor and Council of off-track wagering from any such facility in accordance with Arizona law. The special business license authorizes the race track operator to conduct teletracking activities from the off-track wagering facility within the City of Bisbee and is in addition to the regular business license the race track permittee needs in order to do business within the City of Bisbee. The special business license for teletracking shall be non-transferable.

**8.8.2 Contents of Application**

A teletracking application for a special business license for an off-track facility shall contain information reasonably required by the City Manager, including, but not limited to, the following:

1. The name and address of the race track permittee.
2. The name and address of the proposed off-track wagering facility.
3. The name and address of all owners and managers of the proposed off-track wagering facility.
4. A description of the anticipated business activities at the proposed off-track wagering facility.
5. Whether a liquor license exists at the proposed off-track wagering facility, or if a liquor license will be applied for, and what class of license exists or will be sought.
6. The names and addresses of all persons who will be involved, either directly or indirectly, in the proposed pari-mutual betting and/or any other authorized gaming activities at the off-track wagering facility, and the name and address of each person's employer.
7. A description of the training provided or to be required of all persons involved, either directly or indirectly, in the pari-mutual betting and/or any other authorized gaming activities at the off-track wagering facility, and the name and address of the person(s) providing the training.

**8.8.3 Application Fee**

The applicant shall submit with its initial application for a special business license for each off-track wagering facility a non-refundable fee in the amount of $500.00. Any application for a renewal license for each off-track wagering facility shall require a then current application and a non-refundable fee of $250.00.

**8.8.4 Inspections, Notices, and License Hearing**

A. . Upon receiving the completed application, the City Clerk shall immediately provide the City Manager, the City Attorney, the City Finance Director, the City Community Development Director, the City Chief of Police, the City Fire Chief, and the City Building Inspector with a copy of the application. The City Fire Chief and the City Building Inspector shall, no later than ten (10) days before the public hearing regarding the application, inspect the proposed off-track wagering facility for compliance with the City's fire code and building code, as the case may be, and shall provide their written comments to the City Clerk for consideration by the Mayor and Council.

B. At least ten (10) days before the public hearing to consider the initial application, the City Clerk shall cause to be published one (1) notice of the date, time, and place of the public hearing in the official newspaper of the City of Bisbee and shall cause to be posted one (1) notice of the date, time, and place of the public hearing at the proposed off-track wagering facility. The City Clerk shall also provide written notice of the date, time, and place of the public hearing by first class mail to all property owners within three hundred (300) feet of the proposed off-track wagering facility at least ten (10) days before the hearing to consider the application. Annual renewal licenses for off-track wagering facilities shall not be subject to the special notice provisions of this subsection but general public meeting notice requirements shall still apply.

C. The Public Hearing regarding the application shall take place before the Mayor and Council. The Mayor and Council shall consider the written comments of the City Fire Chief and the City Building Inspector, as well as the comments of other City staff, plus comments from City residents and the applicant and its agents and representatives. After hearing the Mayor and Council shall either approve or deny the application and special business license. The City Clerk shall report the Mayor and Council's action to the appropriate state racing or teletracking authorities.

D. Subject to Section 8.8.5, a special business license for operating an off-track wagering facility within the City of Bisbee shall be for one (1) year only. The Mayor and Council, in their sole discretion, may approve a renewal application and license, unless the applicant, or the off-track facility owner/lessee, has violated Section 8.8.5, or has been found by the Arizona Racing Department, or its successor, or a court of competent jurisdiction to have violated the laws, rules or regulations governing gaming or off-track wagering during the preceding twelve (12) months, or if any other good reason exists, including, but not limited to, complaints regarding the operation of a teletrack facility.

**8.8.5 Special Business License Revocation**

A. Any special business license for an off-track wagering facility may be revoked by the City Manager based on any of the following grounds:
   1. Revocation of any state racing, wagering or gaming license which is required for the race track operator or the off-track wagering facility.
   2. Conviction of any felony or crime of dishonesty, or a finding of any violation of law, rule or regulation related to racing, wagering, or gaming in any criminal, civil or administrative proceeding involving the race track operator, or the owner/lessee of the off-track facility, or any of their respective owners, directors, shareholders, members, officers, managers or employees.
   3. The race track operator or owner/lessee of the off-track wagering facility is delinquent in paying any privilege taxes, business license fees, or other fees, including, but not limited to, sewer and garbage fees, due to the City and has not, after reasonable notice, made payment, together with any applicable interest and penalties.
   4. The City Manager finds, based upon reasonable information and belief, that unlawful gambling by a minor or minors has occurred at the off-track wagering facility and the race track operator has failed to take adequate measures to prevent gambling by minors at the off-track wagering facility.
   5. The City Manager finds that the race track operator or its authorized agent has made any false statement on or in connection with its application.
   6. There is a change of control concerning the off-track wagering facility, or the owner/lessee of the off-track wagering facility has sold its assets or transferred, directly or indirectly, more than a ten (10) % interest in the off-track wagering facility, or the business conducted from the off-track wagering facility, to any third party.

B. The City Manager shall notify in writing the race track operator and the owner/lessee of the off-track wagering facility of the revocation of the special business license and reasons therefore. The race track operator, or the owner/lessee of the off-track wagering facility, may request a revocation hearing before the Mayor and Council in accordance with Section 8.8.5 by giving the City Clerk written notice of request for a hearing within ten (10) days of the date of the City Manager's revocation notice.

**8.8.6 Revocation Hearing**

As soon as practicable after receipt of a notice of request for hearing, the matter shall be considered by the Mayor and Council at a regular or special Council session. Upon receipt of the notice of request for hearing, the City Manager's revocation of the special business license shall be stayed until after the hearing and formal Council action. Formal rules of evidence shall not apply during any revocation hearing. The party or parties, or their representatives, requesting the hearing shall present their position by documentary evidence, if any, and argument. The City Manager and/or the Chief of Police shall present their position by documentary evidence, if any, and argument. The decision of the Mayor and Council shall be final.

## CHAPTER 8A TRANSACTION PRIVILEGE TAX

### ARTICLE 8A.1 ADOPTION OF CODE

That certain Code entitled the City Tax Code of the City of Bisbee adopted by Ordinance 87-200 is hereby made a part of this Code the same as though said Code was specifically set forth in full herein. At least three copies of said Code shall be kept on file in the Office of the City Clerk.

## CHAPTER 9 HEALTH AND SANITATION; AND CEMETERY

### ARTICLE 9.1 GENERAL PROVISIONS

**(O-17-07)**

**9.1.1 Definitions**

In this chapter unless the context otherwise requires:

A. "Account holder" means a property owner, a property owner's duly authorized agent, a tenant leasing property from an owner, or any other person or entity who has entered into a written service agreement with the City for sanitary sewer service.
B. "Construction and demolition waste" means all waste materials resulting from the repair, excavation, remodeling, demolition or construction of all buildings and structures.
C. "Container" means any approved receptacle used for the holding or storage of garbage.
D. "Garbage" means all putrescible wastes, except sewage and body wastes, including all organic wastes that have been prepared for, or intended to be used as, food or have resulted from the preparation of food, including all such substances from all public and private establishments and residences.
E. "Metal wastes" means vehicular bodies or any component thereof or any other metal waste not a normal item of household waste.
F. "Refuse" means non-putrescible solid wastes including ashes, combustible and noncombustible waste, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.
G. "Rubbish" means street or walkway cleanings, animal excreta, fencing material, large wooden boxes and crates, appliances, tree limbs or trunks over six feet in length, items of household furniture and other items of such size and shape as to not be readily containable.

H. "Special wastes" means any dangerous materials or substances, including but not limited to, poisons, acids, caustics, infected materials, radioactive materials, explosives and any empty or used container for such substances.

**9.1.2 Collection Agency**

The City, or other collectors authorized by the City, shall collect all garbage within the City. No person, except as provided in this chapter, shall collect or gather garbage within the City.

**9.1.3 Sanitation Director**

The Public Works Director shall be the Sanitation Director. The Sanitation Director, or his authorized representative, in order to protect the health and safety of the people of the City, is authorized and directed to implement and enforce the provisions of this article and Article 9.2 to control the storage, collection and disposal of refuse within the City as well as all other forms of waste as defined in Section 9.1.1.

**9.1.4 Rates**
**(O-90-18; O-91-32; O-94-03; O-94-12; O-99-07; O-06-14; O-07-08; O-08-15; O-10-10, O-11-10; O-17-04)**

It shall be the responsibility of the City Council to review all rates as referred to in this Section on an annual basis. The review shall commence not later than April 1 of each year and be completed by May 31 of the same year. Any change in rates will be subsequently reflected in the following year's annual budget beginning on July 1. The following service fees shall be assessed for garbage collections:

A. Residential Class, single family residence only, within the corporate limits of the City of Bisbee - $20.40 per month. A service fee shall apply to all inhabitable single family residential dwellings based upon the costs of making adequate services available to the dwelling, regardless of whether such service is used in any particular month. The frequency of garbage collections shall be determined by the City Manager, or designee.

B. Commercial class, including multi-family and industrial collection, within the corporate limits of the City of Bisbee. The service fee shall apply to all businesses based upon the costs of making adequate services available to the business regardless of whether such service is used in any particular month.

1. Where individual container(s) cannot be assigned to an individual commercial account, the per month service fee shall be:

a. Small Business. Examples include, but not limited to; small offices, home business. per month = $ 33.64

b. Small Intermediate businesses. Examples include, but are not limited to small cafes, duplex, triplex and four-plex housings, bed and breakfasts, hotels, motels with ten (10) or less units. per month = $ 57.20

c. Intermediate business. Examples include, but are not limited to restaurants, bars and apartment houses, bed and breakfasts, hotels and motels with more than ten, but less than twenty-six (26) units. per month = $ 163.85

d. Large business. Examples include, but are not limited to apartment complexes, bed and breakfasts, hotels and motels with more than twenty-five (25) units. per month = $ 323.67

e. Minimum Commercial. Examples include, but are not limited to part-time business located in commercial buildings not occupied more than thirty (30) hours per week, maximum of one (1) employee. per month = $ 22.43

2. Where individual container(s) can be assigned to an individual commercial account, the per month service fee shall be calculated by summing the following components:
   a. Disposal factor = $3.18 per cubic yard (Disposal factor) x (number of containers) x (size of containers in cubic yards) x (number of pickups per week x 52/12).
      (Containers: medium = 1.5 cy, large = 3.0 cy)
   b. Collection factor = $1.18 per pickup (collection factor) x (number of containers) x (number of pickups per week x 52/12).
   c. Administration factor = $ 4.01 per month.
   d. Example - Two (2) large containers picked-up four (4) times per week:

| | |
|---|---|
| Disposal = ($2.74) x (2) x (3.0 cy) x (4x52/12) | = $ 284.94 |
| + Collection = ($1.18) x (2) x (4x52/12) | = $ 41.06 |
| + Administration | = $ 4.01 |
| | = $ 330.01 |

3. Commercial pickup per week shall be a minimum of two (2).
4. The maximum weight of refuse allowed per container per pickup shall be 300 pounds for a large container and 150 pounds for a medium container. If more than one container is assigned to an account, the maximum weight allowed shall be the sum of the maximum weights.
5. In the event that an individual account's container(s) may contain more than the maximum weight allowed, the Public Works Director may initiate a random weight check of the refuse.
   a. The weight check shall consist of a minimum of two (2) weight checks within a thirty (30) calendar day period. If the weight check shows a violation of the maximum weights allowed, the Public Works Director shall cause an adjustment of the fee charged to the account.
   b. The fee shall be adjusted by determining the minimum number of containers and/or pickups per week required to adjust the account to eighty percent (80%) of the maximum weight allowed based upon the actual average weight check per container.
   c. The adjusted fee shall begin and be charged to the account beginning the first full month after the determination of violation of maximum weight allowed. Notice of change shall be sent to the account by regular and certified mail. The adjusted fee shall remain in effect for a minimum of three (3) months.
   d. The account may request, in writing, to the Public Works Director for a review of the basis for adjusted fee within thirty (30) calendar days after the date notifications are mailed to the account. If such a review is requested, the average actual weight check per container must be less than eighty percent (80%) of the maximum weights allowed to cause a readjustment of the fees.
   e. Example: The account has three (3) large containers picked up three (3) times per week. A weight check is made with an average weight of 1,200 pounds per pickup or 400 pounds per containers. Adjustment:
      400 lbs. X 3 containers X 3 pu/wk = 3,600 lbs.
      3,600 lbs./(300 lbs. x 80%) = 15 pu/wk
      15 pu/wk / 3 containers = 5 pu/wk

   The adjustment would be based on the same number of containers with pickups per week increased from three (3) to five (5).

C. Areas and Days of Yard Debris and Special Pickup Collection - The City has been divided into two (2) yard debris collection areas. Each collection area will be serviced every other Wednesday. During this day, City employees will collect, at no extra cost to the public, yard debris such as tree limbs, branches, dead plants,

and leaves. The branches and limbs must be cut into 3 foot or smaller lengths and tied into bundles not to exceed thirty-five pounds. The total amount of yard debris allowed per pickup is 2 cubic yards. All requests for yard debris pickup must be made to the Public Works Department by 5:00 pm on the Monday preceding the scheduled Wednesday pickup. Materials for pickup shall not be set out prior to the Saturday before the scheduled pickup.

The City will also provide special pickups for items other than yard debris such as refrigerators, washers and dryers, water heaters, furniture, and homeowner generated construction materials (from residential non-professional remodeling. A fee of THIRTY DOLLARS ($30.00) plus the per item fee for any special waste that will be charged by the Cochise Country Transfer Station, will be required for such special pickups. A maximum of two cubic yards or 750 pounds will be picked up for the initial fee of thirty dollars.

A Service fee, if in excess of the initial two yards or 750 pounds, shall be calculated by summing labor, equipment and disposal cost needed to do the collection:

| | |
|---|---|
| Large dump truck (greater than 5 cy) | = $ 25.00/hour |
| Small dump truck | = $ 15.00/hour |
| Pickup truck | = $ 10.00/hour |
| Loader | = $ 35.00/hour |
| Labor (per person) | = $ 15.00/hour |
| Disposal = | = Fee posted fee at Transfer Station |

The increment of time shall be by the quarter hour.

Requests for special pickup must be made to the Public Works Department by 5:00 pm, the Monday preceding the scheduled Wednesday pickup, and must be paid in full in advance. Materials shall not be set out prior to the Saturday before the scheduled pickup.

**D. ONE TIME DELINQUENT ACCOUNTS FORGIVENESS OPTION; COLLECTION ON DELINQUENT ACCOUNTS**

For a limited period of time and for one time only, the City will forgive all penalties and interest, and 50% of the remaining delinquent amount owed on garbage and sewer accounts upon the Account Holder's written agreement to pay the remaining balance due, as calculated by the City, within a six month period. To take advantage of this option, the Account Holder must enter into an agreement with the City by no later than the effective date of this Article. The Account Holder shall agree to enter into an agreement with the City in which the monthly payments for the remaining balance due are paid via direct debit from a bank account. Should the bank account contain insufficient funds when the City attempts to process a payment, the City will charge the account holder a $15.00 non-sufficient funds fee.

During the six month period in which the Account Holder is making payments, the City will waive the monthly penalty and interest accrual. Upon timely and full payment of the remaining balance due, any liens on the Account Holder's property shall be released by the City. The City will also remove the Account Holder from the Arizona debt setoff program upon timely and full payment of the remaining balance due. Should the Account Holder fail to pay the remaining balance due within the six month period, all penalties and interest shall be reinstated in full and a lien will be placed on the property for the full amount owed, if applicable. Likewise, the Account Holder may be referred to the Arizona debt setoff program and to a collection agency, at the City's option. For each property in which an Account Holder takes advantage of this option, as

described above, the City shall install a sewer shut-off valve at the serviced property if one does not already exist.

An Account Holder that elects to take advantage of this forgiveness option, may elect to immediately pay off the balance owed, as calculated by the City, via money order or cashier's check, and bypass the six-month repayment plan described above.

**9.1.5 Responsible Party, Exemptions, and Reductions**
**(O-91-32, O-94-03; O-94-12; O-99-07; O-06-14; O-07-08; O-08-15; O-11-10; O-17-07)**

A. Responsible Party - Real property owners, as recorded in the official Cochise County records shall be legally responsible for the payment of service fees imposed under Section 9.1.4 of this Code, unless the property receiving services is a residential property of four or fewer units. A.R.S. § 9-500.35 (2015).For a residential property of four or fewer units, the City may not require payment of garbage collection service rates and charges by anyone other than the person who has contracted with the City to provide the service, who physically resides or resided at the property and who receives or received the service. The property owner, an immediate family member of the person who does not reside at the property or any other entity, at their sole discretion, may establish service in their name with the City and shall be responsible for payment pursuant to A.R.S. § 9-500.35.

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B. Exemption for Unoccupied Property - Residential or commercial properties which are unoccupied or vacant for a period of time exceeding one month shall be charged a fee of Thirteen Dollars and Sixty-Six Cents ($14.07) for each month of vacancy following compliance with the provisions of this section. The reduced fee shall not be available retroactively. In order to be eligible for this reduced fee, the property owner must file an affidavit, on a form supplied by the City, stating under oath that the property has been unoccupied or vacant for a period of time exceeding one month. The affidavit shall also set forth the property owner's acknowledgment that payment of the reduced fee in any month shall be deemed to be a continuing representation that the property remains vacant or unoccupied. The form supplied by the City shall contain a statement warning the property owner that submission of a false affidavit or acknowledgement shall be considered a Class 6 felony pursuant to A.R.S. § 39-161. The property owner may be periodically required to reconfirm eligibility for the reduced fee.

In the event the property owner submits any false affidavit or payment, the property shall be charged the entire fee otherwise required by Section 9.1.4 for the entire period during which reduced fees were paid, retroactive to the month following the filing of the initial affidavit.

C. Reduction for Low Income Account Holders - A policy providing for discounts for low-income households, is hereby established.
   1. Account Holders shall pay a discounted garbage collection rate of $ 6.11 per month, upon application, provided income for the household is at or below fifty percent (50%) of the federal poverty guideline for a two-person household and the Account Holders provides proof of income.
   2. Account Holders shall pay a discounted garbage collection rate of $12.25 per month, upon application, provided income for the household is no more than one hundred percent (100%) of the federal poverty guideline for a two-person household and the householder provides proof of income.
   3. Proof of income shall consist of the householder's last federal income tax return or such other proof as may be satisfactory to the City. Proof of income shall be presented yearly.
   4. Notwithstanding the provisions of Sections C (1) and (2) above, the City Manager, Finance Director and Public Works Director are hereby jointly authorized to waive or reduce garbage collection rates for any designated, low-income Account Holder for any period of time up to six months where exigent

circumstances would cause higher rates to cause an undue hardship to the household. "Exigent circumstances" shall mean any one time or temporary emergency event or circumstance that severely limits or prevents the payment of existing garbage collection rates. Adequate proof or documentation shall be presented in support of a request made under this section.

5. A low income Account Holder shall not be eligible for more than one discounted garbage collection rate, which shall be applicable to only one owner-occupied residential property.

D. The City Manager, Public Works Director, and Finance Director will jointly consider and determine, at their discretion, whether exceptional circumstances, including but not limited to those circumstances described in Section C above, require complete waiver or a reduction in service fees for a reasonable amount of time. They may also consider a change in an Account Holder's bill, including a complete waiver of the balance owed, if reasonable grounds exist. An Account Holder may request such consideration and determination by filling out an Application provided by the City. Adequate proof or documentation shall be presented in support of a request made under this section if requested by the City. A decision shall be made within 30 business days from the date the Account Holder submits an Application to the City, unless the City is waiting for proof or documentation to be supplied by the Account Holder. Should an Account Holder fail to provide requested documentation or proof within 10 business days of the City's request, the Application may be denied. A decision shall be made concerning an Application no later than 60 days from the date the Application is submitted to the City. Any decision made pursuant to this section shall be final and non-appealable.

### 9.1.6 Penalty for Nonpayment of Fees
**(O-87-201; O-89-18; O-91-04; O-97-24, O-98-20, O-11-10; O-17-07)**

Fees shall be paid on a monthly basis. All fees shall be due and payable as of the date of billing. A service charge shall be added to all accounts for which full payment (including prior penalties) is not received on or before the 25th day of the month. The service charge shall be Three Dollars ($3.00) for each month in which full payment is not received by the 25th day of the month. Interest at the rate of ten percent per annum, or at such other rate as may be prescribed by A.R.S. § 44-1201, shall be charged on a monthly basis on all delinquent amounts. The City may elect to refer an Account Holder to the Arizona debt setoff program pursuant to state law, in which case the Account Holder's state income tax refund or property tax credit or rental credit may be used to offset the debt owed to the City by the Account Holder. The City may also elect to refer the Account Holder to a debt collection agency.

## ARTICLE 9.2 COLLECTION REGULATIONS

### 9.2.1 Preparation of Solid Waste
**(0-93-02)**

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

A. In the areas of the City where mechanical pickup is used, the customer shall use the refuse containers provided by the City. To better serve the public and eliminate health hazards, the City has the right to place refuse containers where it deems necessary including, but not limited to, City right-of-way and/or on private property when authorization has been given.

B. In Tintown and Upper Bisbee, the customer shall furnish refuse containers for the accumulation, storage and collection of all solid waste. Such refuse containers shall be tightly covered and be of rust-resistant metal or plastic and shall have handles on the outside. The minimum capacity of each refuse container shall be six gallons and the maximum capacity of each refuse container shall not exceed thirty pounds in

weight. Such refuse containers shall be kept in good repair and in a sanitary condition. Refuse containers not maintained by the owner in a satisfactory condition will not be emptied by city sanitation personnel

**9.2.2 Lids and Covers**

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

**9.2.3 Use of Refuse Containers**
**(O-94-12; O-94-06; O-94-03; O-93-02; O-91-22; O-17-07**

A. It is unlawful for any person(s) to deposit, or cause to be deposited, solid waste in any refuse container that he does not own or for which City authorization to dispose has not been given.
B. It is unlawful for any person(s) to rummage into, ransack, plunder, search through and/or take items from, alter, paint, vandalize, move and/or remove from an assigned location any refuse container that he does not own or for which City authorization has not been given.
C. It shall be unlawful for any person(s) to dump or otherwise dispose of solid waste which results from residential, commercial, and/or industrial uses outside the City limits in any refuse container within the City limits or on any City-owned facility, way or place.
D. Any violation of this section shall considered a civil offense. A violation of this section shall result in a civil penalty of not less than Two Hundred Fifty Dollars ($250.00) per violation. The enforcement of this section shall comply with Article 5.4 of the City Code.

**9.2.4 Construction and Demolition Waste, Rubbish and Special Wastes**

A. Debris resulting from the construction, reconstruction, demolition or repair of premises shall not be placed with other garbage for collection but shall be disposed of directly by the contractor or by the person owning, occupying or leasing the premises wherein such debris is accumulated. All such wastes shall be removed promptly and shall not be stored in any location where it may be blown or otherwise dispersed beyond the construction site.
B. Rubbish shall be disposed of directly by the person owning, occupying or leasing the premises wherein such debris is accumulated. All such wastes shall be removed promptly and shall not be stored in any right-of-way or other location where it may be blown or otherwise dispersed.
C. Special wastes shall be stored, transported and disposed of at an approved toxic waste landfill.

**ARTICLE 9.3 ADDITIONAL REGULATIONS**

**9.3.1 Vehicles and Receptacles to be Spill Proof**

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

**9.3.2 Spilled Refuse**

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

**9.3.3 Dumping Refuse**

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

## ARTICLE 9.4 REMOVAL OF LITTER (O-06-20)

### 9.4.1 Definition

A. "Litter" and "junk" means any rubbish, trash, weeds, filth or debris which constitute a hazard to public health and safety and shall include all putrescible and non-putrescible solid wastes including garbage, trash, ashes, street cleanings, dead animals and solid market and industrial waste; batteries; any deposit, accumulation, pile or heap of brush, grass, debris, or weeds other than compost piles; cans, cloth, paper, wood, rubbish or other unsightly or unsanitary matter of any kind whatsoever; and any growth of weeds, brush, grass or other vegetable growth to a height of over six inches, (or over twelve inches during the growing season), other than in maintained gardens or landscaping or in native desert conditions.

B. "Private premises" means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps or vestibules belonging or appurtenant to such dwelling, house, building or other structures.

C. "Public place" means any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.

D. "Dilapidated building" means any building or structure that has any or all of the conditions or defects described in paragraphs 4 through 18 of Section 302- "Dangerous Building" of the Uniform Code for the Abatement of Dangerous Buildings, 1997 edition, as previously adopted by the City of Bisbee.

### 9.4.2. Littering and Maintaining Junk

No person shall throw or deposit litter or junk on any public place or private premises owned by another person within the City, except that the owner or person in control of private premises may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place. No person shall maintain litter or junk on any public or private property except as authorized in connection with the operation of a lawful junkyard, waste transfer station, recycling operation, or similar licensed business or except as expressly allowed under the City of Bisbee Zoning Regulations and provided that all such materials are maintained in a manner that does not constitute a hazard to public health and safety.

### 9.4.3. Owner to Maintain Premises

The owner and the person in control of any private premises shall at all times maintain the premises free of litter and junk, except as expressly allowed herein. The owner or manager of the property shall remove any dilapidated buildings or structures from any private property.

### 9.4.4. Violation and Penalty (O-01-06; O-06-20)

A. Prior to any enforcement action under this Article, written notice of any violation shall be provided to the owner, the owner's authorized agent or the owner's statutory agent and to the occupant or lessee by the Code Enforcement Officer. The notice shall be served either by personal service or by certified mail. If notice is served by certified mail, the notice shall be mailed to the last known address of the owner, the owner's authorized agent or the owner's statutory agent and to the address to which the tax bill for the

property was last mailed. The notice shall be given not less than thirty (30) days before the day set for compliance and shall include the legal description of the property and the estimated cost of such removal to the city or town if the owner, occupant or lessee does not comply. The owner shall be given not less than thirty (30) days to comply. The city or town may record the notice in the County Recorder's Office in the county in which the property is located. If the notice is recorded and compliance with the notice is subsequently satisfied, the city or town shall record a release of the notice.

B. The recipient of any such notice shall have the right to appeal the notice of violation to the Board of Adjustment of the City of Bisbee within fifteen (15) days of the date of receipt of the notice. A notice of appeal shall be delivered to the Code Enforcement Office in writing. The Board of Adjustment, at a duly noticed hearing on any such appeal, shall have the authority to affirm, reverse or modify any issue that is brought to it for review. If the recipient of any such notice does not file a timely notice of appeal, the notice of violation shall constitute a final administrative determination of all issues included within the notice of violation.

C. Any person who fails to remove any litter, a junk or dilapidated building as required in any final notice of violation is guilty of a violation of this Article. Any such violation may be prosecuted as a civil violation under the City Code and any responsible party shall be subject to a civil penalty of five hundred dollars ($500.00). In addition to any fine or penalty that may be imposed, the responsible party may be subject to an injunction or an abatement order and shall also be liable for all costs which may be assessed pursuant to the Article for removing, abating or enjoining any such violation.

D. If a person fails to remove any litter, junk or dilapidated buildings, after notice as required above, and fails to abate the condition that constitutes a hazard to public health and safety, as required in any final notice of violation, the City, its officers, agents or contractors, may remove, abate, or cause their removal without further notice.

E. If the City performs any such action to abate or cause the removal of litter, junk or dilapidated buildings, the City may assess the subject property for the actual costs of the removal or abatement, including the actual costs of any additional inspection and other incidental connected costs, including all legal costs. Prior to assessing any such costs against the subject property, the City shall provide the owner and any other party with an interest in the property with a written notice of the proposed amount of the assessment. This notice shall also include notice of the right to appeal this determination. The owner or other interested party shall have the right to appeal the amount of the assessment to the Board of Adjustment within fifteen (15) days of the date of the notice. On appeal, the Board of Adjustment may affirm or modify the amount of the proposed assessment. If the notice of assessment is not appealed within the time period allowed it shall constitute a final administrative determination of the amount of the assessment.

F. The City may record the final assessment in the Cochise County Recorder's Office, including the date and amount of the assessment, the legal description of the property and the name of the City. Any assessment recorded after July 15, 1996, is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes. A sale of the property to satisfy an assessment obtained under the provisions of this section shall be made upon judgment of foreclosure and order of sale. The City shall have the right to bring an action to enforce the assessment in the Superior Court of Cochise\County at any time after the recording of the assessment, but failure to enforce the assessment by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited in the assessment and of the regularity of all proceedings prior to the recording of the assessment.

G. Assessments that are imposed under subsection F of this section run against the property until paid and are due and payable in equal annual installments as follows:

1. Assessments of less than five hundred dollars shall be paid within one year after the assessment is recorded.
2. Assessments of five hundred dollars or more but less than one thousand dollars shall be paid within two years after the assessment is recorded.
3. Assessments of one thousand dollars or more but less than five thousand dollars shall be paid within three years after the assessment is recorded.
4. Assessments of five thousand dollars or more but less than ten thousand dollars shall be paid within six years after the assessment is recorded.
5. Assessments of ten thousand dollars or more shall be paid within ten years after the assessment is recorded.

H. An assessment that is past due accrues interest at the rate of ten percent, or such other rate as may be prescribed by A.R.S.§ 44-1201.

**A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract of land may be enforced in the same action.**

## ARTICLE 9.5 FLUORIDE IN CITY WATER SYSTEM

All persons, corporations or other entities operating a water utility in the City, for purposes of providing drinking water to the residents thereof, are hereby authorized and directed not to provide any fluoride to water being distributed in the water supply system.

## ARTICLE 9.6 CEMETERY

**(O-91-08; 0-98-30; O-01-07; O-09-09)**

A. Supervision. The Director of Public Works shall manage, operate and maintain the municipal cemetery. These responsibilities shall include road maintenance, mowing, pruning, watering, landscaping, removal of plant material, removal of waste and rubbish from the grounds, pest control, and leveling of the plots, subject to the availability of resources which are provided for these purposes.

B. Rules and Regulations.
   1. The Public Works Director shall be responsible for laying out the cemetery to determine the location of the lots, the capacity of each lot and the location of all grave sites. The Public Works Director shall be responsible for the maintenance of the existing records of the cemetery and for maintaining a permanent record, from this date forward, of the location and occupant of each interment.
   2. The cemetery hours will be posted on the entrance gates. It is unlawful for any person to be present in the cemetery during the period from sundown to sunrise, without specific permission from the Public Works Director or his designee, and any person found in the cemetery during this time may be subject to prosecution for trespass.
   3. There are no specific limitations on the nature and types of monuments and memorials that may be placed in the cemetery. Prior to any construction of any nature in the cemetery, however, detailed plans must be approved in writing by the Public Works Director after a determination that the proposed monument, memorial or improvements will be properly located and will not present a conflict with any other improvements or usage of the cemetery.

4. The Public Works Director may establish a list of the types of vegetation that are appropriate for use in the cemetery and a list of the vegetation that is prohibited. Any person who plants any permanent trees or other vegetation within the cemetery shall use drought tolerant plants, shall comply with the direction provided by the Public Works Director and shall remain responsible for the care and maintenance of any such plants.
5. All persons must observe proper decorum during their visit to the cemetery, with due respect to sanctity of this area. Visitors must use the paths and roadways that are provided for access and refrain from walking across gravesites. No person shall dispose of any rubbish, trash or waste materials within the cemetery, except within the containers provided for this purpose. No person shall interfere with the conduct of any funeral, graveside service, burial or other similar proceeding that is being conducted at the cemetery. No person shall desecrate, vandalize, deface, remove or damage any plot, grave, monument, memorial or decorations, flags, flowers or other tokens of remembrance that may be placed in the cemetery. No pets are allowed within the cemetery.

C. Interment. No deceased person shall be interred in the cemetery until it is found:
1. That a death certificate has been obtained in accordance with state law.
2. That the lot in which burial is to be made has been fully paid for.
3. That the person arranging for such burial has the right to use such lot.
4. That such lot is not used beyond its capacity.
5. That persons wishing to conduct funeral operations or exhumations at the Bisbee Evergreen Cemetery shall notify City officials at least two (2) working days (excluding weekends and official City holidays) in advance of the services to be conducted.

**SCHEDULE**

| DAY OF NOTIFICATION (8:00 a.m. - 3:00 p.m.) | EARLIEST DAY OF SERVICES* |
|---|---|
| Monday | Wednesday |
| Tuesday | Thursday |
| Wednesday | Friday |
| Thursday | Monday |
| Friday | Tuesday |

*Additional day is required for intervening holiday.

D. Removal of Excess Dirt. After a burial or any maintenance activity has been completed, all excess dirt and debris shall be immediately removed from the cemetery so that it is left in a clean and orderly condition.

E. Fees. (O-98-30; O-09-09)

Regular Fees:

**Plot Fees:**

| | |
|---|---|
| Single grave | $500.00 |
| Cremains site | $150.00 |
| Future use certificate, resident | Additional 20% |
| Non-resident, current use | Additional 20% |
| Non-resident, future use | Additional 20% more than the resident future price |
| Maintenance Fund fee | $100.00 |

**Opening and Closing Fees**:

| | |
|---|---|
| Open/Close Fee by Machine | $300.00 |

| | |
|---|---|
| Open/Close Fee by Hand Digging | $600.00 |

For burial of a baby, half the price of burying an adult.
For burial of cremains, half the price of a regular burial.
For opening only for cremains, half the price of full opening and closing for cremains.

**Other Fees (Added to Regular Fees)**

| | |
|---|---|
| Deep Digging (for two) | $100.00 Extra |
| Weekend & Holiday Work | $100.00 Extra |
| Early Burial (less than two day notice) | $100.00 per day |

F. Purchase of Burial Rights

1. The City Manager, or designee, is authorized to issue a Certificate of Burial Right to any person, or in the name of any decedent, upon the payment of all fees and charges required for the purchase of any such right.
2. A Certificate of Burial Right entitles the owner or beneficiary of the certificate to use the designated space as a place of burial, provided that the purchaser does not violate the regulations applicable to any such certificate. This certificate constitutes a right of use of the designated cemetery plot for interment, subject to all applicable rules and regulations, and does not constitute a sale or transfer of the ownership of the associated real property.
3. Any person may purchase a Certificate of Burial Right in his or her name or in the name of any family member, living companion or friend, prior to the time of need. The purchase price of a certificate that is purchased for use by a City resident prior to the time of need shall be twenty percent (20%) greater than the regular plot fee applicable at that time.
4. A Certificate of Burial Right may be purchased by or for a non-resident of the City of Bisbee, subject to the same terms and conditions stated above. The fee for a deceased non-resident shall be twenty percent (20%) greater than the regular plot fee applicable at that time. The fee for the future use by a non-resident shall be an additional twenty percent (20%) more than the resident future fee.
5. A Certificate of Burial Right may be transferred by gift, devise or descent. Certificates may not be sold to third parties and may not be purchased by funeral directors or others for purposes of resale. Any transfer of a certificate should be reported to the City's Public Works Director for proper record keeping. Any change of address of the owner of record should also be reported to the Public Works Director. Any violation of these restrictions on transfer shall terminate the rights and privileges associated with that certificate.
6. A Certificate of Burial Right that is not used within fifty (50) years of the date of purchase shall revert to the City unless the owner provides a written re-confirmation of his or her intent to use the burial right prior to the end of this time period, and each ten (10) years thereafter. Prior to any reversion, the City shall send a notice by first class mail (or reasonable alternative means available at such time) to the owner of record. This notice shall be sent to the owner's last known address, based upon a reasonable effort to identify this address. If no response is received within thirty (30) days, the certificate shall revert to the City without further notice or action by the City.

G. Maintenance Fund.

1. The Finance Director is authorized to establish a permanent maintenance fund that will be used for the on-going maintenance and care of the cemetery. If suitable arrangements can be made, this fund may be combined and jointly administered with the Bisbee Evergreen Cemetery R.I.P. Fund that has been established by the Bisbee Foundation. The fund shall be maintained as a permanent fund and the annual distributions from this endowment shall be used to pay, in part, for the maintenance and care of the cemetery.

2. An additional sum of one hundred dollars ($100.00) for deposit into this permanent maintenance fund shall be charged in connection with the sale of each Certificate of Burial Right.
3. All of the additional surcharges (additional 20%) that are charged for each Certificate of Burial Right purchased by a resident prior to the time of need or by or for a non-resident for current or future use shall also be deposited into this permanent maintenance fund.

H. Dual Use Plots. Due to the limited number of available spaces remaining in the cemetery, the voluntary dual use of plots by family members and friends will be encouraged in those areas where soil conditions will permit the excavation of a deeper grave, as necessary for such use.

I. Indigent burials. In any case in which the County is required by Arizona Revised Statutes § 36-831 (B) and 11-251 (27) to bury an indigent who was a resident of the City of Bisbee at the time death, the City shall charge the County seventy-five (75%) of the total amount of the fees and charges that would be charged to a non-indigent resident.

## ARTICLE 9.7 REGULATION OF DISPOSABLE CARRYOUT BAGS (O-13-14;O-11-21)

### 9.7.1 Findings and Purpose

The Mayor and Council of the City of Bisbee hereby find that:

A. The widespread practice by retail stores of supplying disposable carryout bags to their customers results in a significant amount of waste material and creates additional burdens on the City's solid waste collection system, resulting in more costs to the City and its citizens.

B. Plastic carryout bags in particular result in a significant amount of wind-blown litter throughout our high desert landscape, resulting in visual blight and adverse impacts upon this environment. The fact that these plastic bags do not decompose, but only break down into smaller particles, results in the potential for their chemical components to be ingested or taken up by other organisms, with potentially harmful effects to the natural environment.

C. Carryout bags that are not properly disposed of can result in clogged sewer lines and otherwise adversely impact the City's sanitary sewer systems and give rise to costly repairs and maintenance of public infrastructure.

D. The production and delivery of disposable carryout bags consumes a large amount of both renewable and non-renewable resources on an annual basis, and even though, these account for only a small percentage of our total national use of oil and natural gas, this usage still constitutes a significant amount of total energy expended on what is essentially waste material.

E. The amount of waste material being produced, the amount of energy being consumed, and the amount of litter in our local environment will all be reduced if the use of disposable carryout bags in our community is reduced and the use of reusable carryout bags is encouraged.

F. For that reason, the Mayor and Council enacted Ordinance O-13-14, effective on Earth Day, 2014, prohibiting retailers from providing customers with single-use plastic bags.

G. Ordinance O-13-14 proved very effective for the purposes intended.

H. Notwithstanding the effectiveness of the Ordinance, the Legislature enacted A.R.S. § 9-500.38, which prohibits cities from enacting and maintaining such ordinances.

I. The Legislature also enacted SB1487, allowing a single legislator to file a complaint with the Attorney General, which initiates and investigation by the Attorney General to determine if a local law violated State law; and in the event that the Attorney General makes such a determination, the result is that a city will lose its State shared revenue if it does bring its challenged law into compliance.

J. On September 28, 2017, Senator Warren Petersen (Mesa) filed a request with the Attorney General to investigate Ordinance O-13-14 to determine its validity.
K. On October 10, 2017, the City Attorney submitted a response to the Attorney General, defending the validity of Ordinance O-13-14.
L. On October 24, 2017, the Attorney General rendered its opinion, determining that Bisbee's plastic bag ban ordinance violates State law.
M. Accordingly, in order to avoid losing its State shared revenue, the Mayor and Council have determined to eliminate the mandatory nature of the plastic bag ban and instead make it voluntary, meaning that the City of Bisbee will take no adverse action (whether zoning, licensing or otherwise) against any person or entity that chooses to not voluntarily follow these revised provisions.

**9.7.2 Definitions**

A. **"Exempt single-use bags"** include bags made available to consumers inside stores, prior to their arrival at the checkout counter, to be used to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; to be used to contain or wrap frozen or fresh foods, meat or fish, whether prepackaged or not; to be used to separate flowers or potted plants, or other damp items that may need to be separated from other purchases; to be used to protect or separate prepared foods or bakery goods; to be used by pharmacists to contain prescription drugs; newspaper bags; clothing bags provided by dry cleaners; bags to be used to protect a purchased item from damaging or contaminating other purchased items, when placed in a reusable carryout bag or recycled paper bag; and bags sold in packages containing multiple bags and intended for use outside of the store to contain garbage, pet waste, yard waste or other materials.

B. **"Recycled paper bag"** means a paper carryout bag provided by a retail establishment to a customer at the point of sale that meets all of the following requirements:
1. The bag contains a minimum of forty percent (40%) postconsumer recycled material; or if the bag is rated at eight pounds or less, twenty percent (20%) postconsumer recycled material.
2. The bag is capable of composting, consistent with the time limits and specifications of the American Society of Testing and Material (ASTM) Standard D6400.
3. The bag has printed on the bag the name of the manufacturer, the country were it was manufactured, and the minimum percentage of post-consumer content.

C. **"Retail establishment"** means a licensed business located within the City of Bisbee that provides one or more consumer items to its customers intended for off-site use or consumption. For purposes of this Article, any restrictions imposed upon a "retail establishment" shall be equally applicable to the employees, managers, owners, contractors, and agents of that retail establishment.

D. **"Reusable carryout bag"** means a bag with handles that is specifically designed and manufactured for multiple reuse; is either made of cloth, fiber, or other machine washable fabric, or made of durable plastic material that is at least 2.25 millimeters thick; and does not contain lead, cadmium, or any other heavy metals in toxic amounts.

E. **"Single-use carryout bag"** means a bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale or checkout counter to carry purchases from the store and that does not

meet the requirements of a "reusable carryout bag" as defined in this Article and that is not classified as an "exempt single use bag" in this Article.

F. **"Single-use plastic carryout bag"** means a "single use carryout bag" made from plastic or bioplastic, including such materials marketed or labeled as "biodegradable" or "compostable," and that is not a reusable carryout bag, a recycled paper bag, or an exempt single-use bag, as those terms are defined in this Article.

**9.7.3 Carryout Bag Restrictions**

A. On and after November 20, 2017, a retail establishment may, at its option, choose not to provide a single use carry-out bag to a customer at the point of sale.
B. On and after November 20, 2017, a retail establishment in the City of Bisbee may, at its option, choose not to provide a single use plastic carryout bag to a customer.
C. A retail establishment in the City of Bisbee may provide reusable carryout bags to customers at no cost or for a fee.
D. On and after November 20, 2017, a retail establishment may provide a customer with one or more recycled paper bags upon request by the customer, and may, if it so chooses, make such bags available at a reasonable fee as determined by the retail establishment, charges to the customer and collect by the retail establishment, unless that customer is exempt from this fee, pursuant to this Article.
E. Customers who are making purchases as participants in the supplemental food program for Women, Infants, and Children, ("WIC") or who are making purchases as participants in the Supplemental Nutrition Assistance Program ("food stamps" or SNAP), or any similar successor low income food assistance programs, shall be exempt from the bag fee for recycled paper bags.

A.7.4 **Establishment of a Fee for the Use of Disposable Carryout Bags**

A. On and after April 22, 2014, a fee of not less than Five Cents ($0.05) per recycled paper bag shall be collected from consumers who make purchases from a retail establishment that is subject to these regulations and who accept a recycled paper bag or bags from that establishment. This per bag fee is subject to the following conditions:

1. Fees must be paid by the consumer at the time of purchase.
2. Retail establishments may not pay the fee on behalf of consumers.
3. All Retail Establishments shall indicate on the consumer transaction receipt the number of recycled paper bags provided to that customer and the total amount of the fee that was charged for them.

B. The fee of Five Cents per bag shall be distributed as follows:
1. The retail establishment may retain its cost of each recycled paper bag, together with the administrative costs and all direct and indirect costs incurred by the retail establishment in implementing this program.
2. The retail establishment shall remit to the City of Bisbee, Finance Department, the remainder of the fee collected for each bag, over and above the amount of its authorized costs and expenses, if any, to be deposited into the City of Bisbee Environmental Fund.

C. The fees are to be distributed to the City of Bisbee Finance Department by each retail establishment subject to these fees, on a monthly basis, on or before the fifteenth (15th) day of the subsequent month, if the amount of the fees equals or exceeds Two Hundred and Fifty Dollars ($250.00) per month; and on a quarterly basis, on or before the fifteenth (15th) day of the subsequent quarter, (Jan., April, July, Oct.) if the amount of the fees is less than that on a monthly basis. Each submittal to the City of Bisbee shall include an itemization of the number of disposable carryout bags provided during that period and a signed verification that this accounting is true and correct, to the best of the knowledge and information of the submitter. The Finance Director may provide forms for this purpose. If there are no excess proceeds collected from these fees, the retail establishment shall provide the Finance Director with an itemized statement which confirms these expenses and shall thereafter have no obligation to provide either monthly or quarterly reports, unless that situation changes.

### 9.7.5 The City of Bisbee Environmental Fund

The City of Bisbee Environmental Fund is a special revenue fund, established and maintained by the Finance Director, for the deposits of the City's portion of the per bag fee and such other revenue as may be dedicated or donated to this Fund. The City of Bisbee Environmental Fund shall be used for the following purposes, as specifically allocated by the Mayor and Council in each annual budget:

A. Providing reusable carryout bags to City residents, with a priority of assisting seniors, the disabled and low-income members of this community.
B. Purchasing additional equipment, vehicles and supplies to enhance the recycling program of the City of Bisbee.
C. Promoting and supporting conservation, clean-up and recycling programs within this community.
D. Promoting and supporting education programs for the general public and school groups, regarding recycling, reduction and reuse of materials and protection of the local environment.
E. Paying for the administration of these regulations and the collection of the fees.

### 9.7.6 Violations, Penalties and Enforcement

The failure of any retail establishment that is subject to these regulations to comply with these restrictions, to fail to remit any sum to the City of Bisbee, if required, shall be a civil violation, subject to the following penalties:

A. For a first violation, a written warning and notice of violation shall be issued to the manager or owner of the retail establishment. No fine shall be assessed for a first violation.
B. For a second violation, a civil penalty of One Hundred Dollars ($100.00).
C. For a third violation, a civil penalty of Two Hundred Dollars ($200.00).
D. For each subsequent violation, a civil penalty of Five Hundred Dollars ($500.00).

No more than one violation shall be issued to a retail establishment within any seven (7) day period. A violation that occurs more than twelve (12) months after a prior violation by the same establishment shall be treated as a "first violation." If the retail establishment is incorporated or otherwise constituted as a separate legal entity, the violation notice shall be issued to that legal entity. If the retail establishment is operated as a sole proprietorship or by one or more individual partners, the violation notice shall be issued to one or more of the individual owners.

If the retail establishment has violated these regulations repeatedly and been subject to more than one Five Hundred Dollar civil penalty, that retail establishment may be subject to an injunction, ordering it to cease doing business in the City of Bisbee unless and until it complies with these regulations and terminating its existing business license, ending its authorization it to conduct business in the City of Bisbee, pending such compliance.

The City Manager is authorized to designate City staff to implement this program, inspect retail establishments for compliance, initiate enforcement actions and to pursue any necessary judicial actions to collect unpaid penalties and enforce these provisions.

## ARTICLE 9.8 DISTRACTED DRIVING PROHIBITED USE OF HANDHELD MOBILE TELEPHONE OR PORTABLE ELECTRONIC DEVICE (O-18-13)

### 9.8.1 Prohibited Conduct

No person shall, except as otherwise provided in this ordinance, use a mobile telephone or portable electronic device while operating a motor vehicle upon a street or highway, unless that device is specifically designed or configured to allow hands-free listening and talking and used in that manner while operating a motor vehicle.

### 9.8.2 Definitions

A. "Hands-free use" means the use of a mobile telephone or portable electronic device without the use of either hand by employing an internal feature of, or an attachment to, the device.

B. "Operating" means being in actual physical control of a motor vehicle on a highway or street and included being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but excludes operating a motor vehicle when the vehicle has pulled over to the side of the road or off an an active roadway and has stopped at a location in which it can safely remain stationary.

C. "Handheld mobile telephone" and "portable electronic device" means a wireless communication device that is designed to engage in calls, receive and transmit text, image messages, and data and requires being held in one hand.

### 9.8.3 Exemptions

This section shall not apply to:

(1) the use of a mobile telephone or portable electronic device for the sole purpose of communicating with any of the following regarding an immediate emergency situation:

(a) An emergency response operator;
(b) An ambulance company;
(c) Fire district and rescue service personnel;
(d) Law enforcement or emergency personnel;
(e) A hospital; or
(f) A physician's office or health clinic.

(2) the activation or deactivation of hands-free use, as long as the mobile telephone or portable electronic device is securely configured and attached to the vehicle or integrated into the vehicle.

(3) First responder exception:
This section does not apply to an emergency service professional using a mobile telephone or portable electronic device while operating an emergency vehicle in the course and scope of his or her duties.

**9.8.4 Penalty**

A. A violation of article 9.8 is a civil traffic violation.

B. A person who violates article 9.8 and is not involved in a motor vehicle collision is subject to a civil penalty of $150 for the first violation, $200 for the second violation and $300 for the third violation.

C. A person who violates article 9.8 and is involved in a motor vehicle collision is subject to a civil penalty of a minimum amount of $350.

**CHAPTER 10 OFFENSES**
**ARTICLE 10.1 OFFENSES**
**10.1.1 Curfew**
**(O-87-211)**

A. Swimming Pool. It is unlawful for any person of any age, other than police, fire or public safety personnel, or persons in the employ or acting as agents of a governmental entity in the performance of their official duties, to enter, trespass or remain within the fenced portion or buildings of the Bisbee swimming pool facility during those times when a duly authorized attendant is not on duty at said swimming pool.
B. Cemetery. It is unlawful for any person of any age, other than police, fire or public safety personnel, or persons in the employ or acting as agents of a governmental entity in the performance of their official duties, to enter, trespass or remain within the boundaries of the Bisbee cemetery during the hours of darkness from one hour after sunset, until sunrise.
C. Loitering of Minors Prohibited. It shall be unlawful for any minor under the age of eighteen (18) years to loiter, idle, wander, stroll or play in or upon the public streets, alleys, parks, playgrounds, public places, vacant lots or other unsupervised places, at any time between the hours of 10:00 P.M. and 5:00 A.M. of the following day; provided however, that the provisions of this Section do not apply to a minor accompanied by his parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parent or guardian. Each violation of the provisions of this Section shall constitute a separate offense.
D. Responsibility of Parents. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such minors to loiter, idle, stroll or play in or upon the public places described in Section 10.1.1.C. at any time between the hours of 10:00 P.M. and 5:00 A.M. of the following day, unless such minor is accompanied by his parent or guardian. Each violation of the provisions of this Section shall constitute a separate offense.

**10.1.2 Dangerous Constructions**

It is unlawful for any person to maintain or allow any signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.

**10.1.3 Excavations to be Covered**

A. It is unlawful for any person to make any excavation or dig any hole, drain or ditch in any highway or thoroughfare in the City without providing a sufficient light at night and a temporary fence or suitable obstruction around such excavation to protect the public during the day.
B. It is unlawful for any person to maintain a well, cellar, pit or other excavation of more than two feet in depth on any unenclosed lot, without substantial curbing, covering or protection.

**10.1.4 Explosives**

It is unlawful for any person within the limits of the City to blast or use powder, fireworks or other explosives without a permit from the fire chief in writing.

**10.1.5 Fences - Barbed Wire and Electric (O-01-18)**

It is unlawful for any person to erect or maintain within the City any electric fence. Barbed wire or any wire similar in nature is not allowed within Residential, Commercial Mixed Use or Manufactured/Mobile Home Residential zoning districts. Barbed wire is allowed in Commercial and Manufacturing zoning districts. Barbed wire cannot be within six feet of the ground or higher than eight feet.

**10.1.6 Junk - Restrictions on Storage**

It is unlawful for any person to store or keep any old articles or materials which may be classified as junk adjacent to or in close proximity to any school house, church, public park, public grounds, business buildings or residences without first providing proper and tight buildings for the storage of the junk.

**10.1.7 Sound Amplification Systems in Vehicles; Limitations on Use (O-94-04)**

A. Except as authorized by law, no person shall operate or permit the operation of any sound amplification system in or on a vehicle which: can be heard outside the vehicle from fifty (50) or more feet and annoys or disturbs the quiet, comfort or repose of any person in the vicinity; unless the system is being operated to request assistance of an emergency nature or to warn of a hazardous situation.
   Subsection A of this section shall not apply to:
   1. an authorized emergency vehicle;
   2. a vehicle operated by a gas, electric, communications or water utility company, or governmental entity; or
   3. a vehicle used for advertising in a parade or in a political or other special event permitted by the City.
B. For the purpose of this section, "sound amplification system" means any device, instrument or system, whether electrical or mechanical or otherwise, for amplifying sound or for producing or reproducing sound, including but not limited to any radio, stereo, musical instrument, phonograph, or sound or musical recorder or player.
C. Penalties - It shall be unlawful for any person to violate any provision of this section of the City Code and any such violation shall constitute a Class 3 misdemeanor to be punishable by a fine of not more than Five Hundred Dollars ($500.00) or thirty (30) days of incarceration or both.

**10.1.8 Nuisance**

A. Anything which is injurious to the health or morals, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any person, or which unlawfully obstructs the free passage or use, in the customary manner, of any public park, square, alley, sidewalk, street or highway, is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal.
B. It is unlawful for any person to maintain or commit a public nuisance, or to willfully omit to perform any legal duty relating to the removal of a public nuisance.
C. A public nuisance may be abated by order of the City Court.

**10.1.9 Obstruction of Sidewalks**
**(O-91-05)**

A. Any owner or occupant of any real property shall maintain all hedges and shrubbery adjacent to public sidewalks so that no part of said hedges or shrubbery shall extend over any part of a public sidewalk in the City.
B. No business articles of merchandise for sale or display or convenience, shall be allowed on a public sidewalk in any manner where such articles interfere with pedestrian traffic. A three (3) foot minimum clearance extending from back of curb onto sidewalk is required on all sidewalks where such articles are placed.

**10.1.10 Obstruction of Streets**

A. It is unlawful for any person owning or occupying any building abutting on any sidewalk or street in the City to erect, hang or place any sign, advertisement or business notice across or over any street, or have the same extend upon or over the street in any manner, or to build or place any bay window, shelving, sign or object of any kind projecting over the property line on, to or over any street, or to make any opening in any sidewalk for trap doors or any other purpose.
B. All awnings or shades upon buildings abutting upon any sidewalks in the City which now exist, or may be hereafter erected, shall be placed at least nine feet in height from the sidewalk or street.
C. Any obstruction, including hedges and shrubbery, upon, over-hanging or extending across any street shall be removed within ten days after notice to remove same is given to the owner by the Chief of Police.

**10.1.11 Obstruction of View**

It is unlawful for any person to maintain or allow any tree, hedge, billboard or other obstruction which prevent persons driving vehicles on public streets, alleys or highways or pedestrians from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

**10.1.12 Prostitution**

It is unlawful for any person to practice prostitution, to patronize a prostitute or to solicit any person to visit or patronize a prostitute or place of prostitution. (A.R.S. Sections 13-3201 - 13-3214).

**10.1.13 Spitting and Urinating**

It is unlawful for any person to spit or urinate upon any of the public sidewalks, streets, alleys or doorways in the City or upon the floor of any public building or room used for public assemblies in the City.

**10.1.14 Trespassing**

A. It is unlawful for any person to take down any fence or to let down any bars or to open any gate in or on the property of another, or to enter, remain or trespass in any building, dwelling, mobile home, school, office, store or motor vehicle which is the property of another without the consent of the owner, occupant or person in charge thereof.

B. It is unlawful for any person of any age, other than police, fire or public safety personnel, or persons in the employ or acting as agents of a governmental entity in the performance of their official duties, to enter, trespass or remain within the boundaries of those premises used or designated by the City as reservoirs or water storage facilities.

C. A.R.S. Sections 13-1502 through 13-1504 relating to trespass shall apply in addition to the provisions of subsections A and B of this section.

**10.1.15 Water - Flow upon Streets Prohibited**

It is unlawful for any person to willfully or negligently permit or cause the escape or flow of water in such quantity as to cause flooding, or to impede vehicular or pedestrian traffic, to create a hazardous condition to such traffic or to cause damage to the public streets of the City.

**10.1.16 Use of Skateboards and Roller Skates**
**(O-02-22; O-02-13; O-01-14; O-93-21; O-89-28)**

A. It shall be unlawful for any person to ride a skateboard or roller skates upon any right-of-way in a business/commercial district or on a pedestrian walkway in a public park.

B. The words and phrases of this article shall have the meanings ascribed to them as follows:
   1. Right-of-way: shall mean land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility or pedestrian walkway.
   2. Commercial or business district: shall be those areas designated on the currently adopted Zoning Map.

C. Notwithstanding the provisions of A and B above, skateboards, coasters, roller skates, in-line skates and similar devices are allowed in any other locations in the City designated by the Mayor and City Council as approved skateboard use areas.

D. Rules for the use of the designated Skateboard Park located at 119 Arizona Street are as follows:
   1. The skate park is not supervised. Skaters may use this park at their own risk. The City of Bisbee assumes no liability for this activity.
   2. Skaters 8 years and younger must be accompanied by an adult.
   3. Skateboarding is a dangerous activity. Skaters are strongly encouraged to wear appropriate safety equipment, including helmet, wrist guards, elbow and kneepads.
   4. Do not use this facility if a hazardous condition exists. Report any damage or hazardous condition to the Bisbee Police Department (432-2261) or the City of Bisbee Parks and Recreation Department (432-6002.)
   5. The use of amplified music is prohibited.
   6. Bikes are not allowed within the skate park facility.
   7. Glass containers are not allowed within the skate park facility.
   8. Smoking and consumption of alcoholic beverages are prohibited.
   9. Experienced skaters shall provide those less experienced with a fair chance to use the facility.

10. Hours of operation are to be set by the City Manager.

**10.1.17 Firearms; Definitions, Possession, and Penalties (O-93-29)**

A. Definitions
   1. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include a firearm in permanently inoperable condition.
   2. "Air gun" means any loaded or unloaded pistol, revolver, rifle, BB gun or pellet gun which will or is designed to or may readily be converted to expel a projectile by the action of compressed air or other gasses, except that it does not include an air gun in permanently inoperable condition.

B. Possession; Penalties
   1. An un-emancipated person who is under eighteen years of age and who is unaccompanied by a parent, grandparent or guardian, or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the un-emancipated person's parent or guardian shall not knowingly carry or possess on his person, within his immediate control, or in or on any means of transportation a firearm or air gun in any place that is open to the public or on any street or highway or on any private property except private property owned or leased by the minor or the minor's parent, grandparent or guardian.
   2. If the minor is in possession of a firearm or air gun and unaccompanied as required by subsection B.1. of this section, a peace officer may seize the firearm or air gun and hold it until the agency returns the firearm to the parent or guardian or initiates forfeiture proceedings pursuant to Chapter 39 of A.R.S. Title 13.
   3. A person who violates subsection B.1of this section is an incorrigible child and shall be subject to a fine of not more than five hundred dollars and the court may order the suspension or revocation of the person's driver's license.
   4. If the firearm or air gun is not returned to the parent or guardian pursuant to subsection B.2. of this section it shall be held by the law enforcement agency responsible for the seizure until the charges have been adjudicated or otherwise disposed of and until the conclusion of any forfeiture proceedings. Upon adjudication of a person for a violation of this section, the court in accordance with Chapter 39 of A.R.S. Title 13 shall order the firearm or air gun forfeited and sold, destroyed or disposed of otherwise.
   5. If the court finds that the parent or guardian of a minor found responsible for violating this section knew of the minor's unlawful conduct and made no effort to prohibit it, the parent or guardian is jointly and severally responsible for any fine imposed pursuant to this section.
   6. This section is supplemental to any other law imposing a criminal penalty for the use or exhibition of a deadly weapon. A minor who violates this section may be prosecuted and convicted for any other criminal conduct involving the use or exhibition of the deadly weapon.

**10.1.18 Incarceration Fees (O-98-32)**

A. Any person found guilty of a criminal violation in the Municipal Court of the City of Bisbee shall be assessed an incarceration fee for each day that person is incarcerated for that violation whether before or after trial. Said incarceration fee shall be in addition to any other fine, fee or assessment required by law.

B. The incarceration fee shall be based upon the daily rate assessed to the City of Bisbee by the County of Cochise for the incarceration of that person. Provided, however, that in no event shall the incarceration fee exceed the actual total amount assessed to the City of Bisbee by the County of Cochise for the incarceration of that person in the case in which the incarceration fee is imposed.

**10.1.19 Disorderly Conduct**
**(O-98-37)**

A. It is unlawful for any person, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, to:
   1. Engage in fighting, violent or seriously disruptive behavior; or
   2. Make unreasonable noise; or
   3. Use abusive or offensive language or gestures to any person in a manner likely to provoke immediate physical retaliation by such person; or
   4. Make any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
   5. Refuse to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency.

B. Any person committing disorderly conduct shall be guilty of a Class 1misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed two thousand, five hundred dollars, plus statutory assessments, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.

**10.1.20 Graffiti**

A. Definitions
   1. "Graffiti" means any unauthorized inscription, word, figure, marking, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property and that was not specifically authorized in advance by the owner or occupant of the property, or despite advance authorization, is otherwise a public nuisance due to the failure to comply with sign regulations or other generally applicable laws.
   2. "Graffiti implement" means an aerosol paint container, a broad-tipped marker (with a tip greater than one quarter of one inch in width, gum label, paint stick or graffiti stick, etching equipment, brush or other device capable of scarring or leaving a visible mark on any natural or manmade surface.

B. Defacement - It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any property, real or personal, whether owned by the city or by any private party or other public entity.

C. Possession of Graffiti Implements in Designated Public Places - It shall be unlawful for any person to possess any graffiti implement while in or upon any public park, playground, swimming pool, recreational facility, or other public building or structure, including school facilities after the hours of regularly scheduled school events, and including any underpass, bridge abutment, storm drain, or similar types of infrastructure unless otherwise authorized by the owner of such property.

D. Graffiti as Nuisance - The existence of graffiti on public or private property is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified below. It is the duty of both the owner of the property and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

E. Removal of Graffiti:

1. Removal by the Perpetrator - Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or to pay for the removal shall constitute an additional violation of this Ordinance. Where graffiti is applied by an un-emancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.
2. Property Owner Responsibility - If graffiti is not removed by the perpetrator, it is unlawful for any person who is the owner or who has primary responsibility for control of the property or for repair or maintenance of the property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:
   a. The street address or legal description of the property sufficient for identification of the property.
   b. A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding.
   c. A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance and pursue the additional remedies provided by law.
   d. An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.
   e. Property Owner Exemptions. The property owner shall not be criminally liable for the failure to remove any such graffiti if the property owner lacks the physical and financial ability to remove or cause the removal of the graffiti. The property owner shall also be exempt from prosecution if the property owner, promptly upon receipt of any notice of defacement, provides a written consent allowing the City, its employees and any available graffiti removal volunteers, to have legal access to the property for the purposes of removing the graffiti immediately.

F. Fines and Penalties
1. Fines - A violation of these graffiti prevention laws shall be a Class One misdemeanor. Any person violating any of these graffiti regulations shall be punished by a fine of two hundred and fifty dollars ($250.00) for the first offense; five hundred dollars ($500.00) for the second offense; and one-thousand dollars ($1,000.00) for each subsequent offense. In addition, any person found guilty of applying graffiti to any property shall be punished by a term of not less than forty-eight (48) hours in jail.
2. Restitution - In addition to any other specified punishment, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make the restitution.
3. Order of Abatement - The court may also order any defendant property owner to remove any remaining graffiti from the property. If the property owner fails to remove any such graffiti within the time required, the court may authorize the City, its employees, officers and agents, to enter the property and abate any such violation. Upon the completion of any such abatement action, the City may make application for an award of the costs of abatement, and following a hearing on any such application, the court may award to the City the costs incurred for any such action in the form of judgment against the property owner.

## CHAPTER 11 PARKS AND RECREATION; LIBRARY
**(O-00-23) Repealed Article 11.3 Golf Course**

## ARTICLE 11.1 PARKS AND RECREATION COMMITTEE
**(O-89-01; O-88-16 Repealed; O-08-03; O-90-20; O-10-08)**

### 11.1.1 Appointment of the Parks and Recreation Committee
The Mayor, with the consent of the Council, shall appoint five (5) citizens of the City to serve as the Parks and Recreation Committee. The term of each member on the Committee shall be for a period of two (2) years. The Committee may establish its own by-laws and procedures for the meetings and operations of the Committee, provided that these are consistent with the applicable laws of this state.

### 11.1.2 Powers and Duties of the Parks and Recreation Committee
The Parks and Recreation Committee shall have the following duties and responsibilities:

A. To solicit and evaluate public input regarding the use of and needs for public parks and recreational programs.
B. To offer advice and recommendations to the Mayor and Council regarding the needs of the public for parks and recreational activities.
C. To review the status of the existing park and recreational facilities within this community and to make recommendations for addressing future needs for facilities and programs.
D. To assist in the development and revision of the City of Bisbee's Master Plan for Parks and Recreational Facilities.
E. To solicit volunteers for the maintenance and improvement of City parks.
F. To prepare and submit an Annual Report to the Mayor and Council, on or before the end of March of each year, regarding the status of park and recreational activities, programs and needs.
G. To respond to any specific requests for assistance submitted by the Mayor and Council or City Manager regarding park and recreational activities.

## ARTICLE 11.2 CITY PARK RESTRICTIONS

### 11.2.1 Entry to Parks
All public parks of the City of Bisbee shall be open for the use, enjoyment and benefit of the general public.

### 11.2.2 Curfew
**(O-88-05)**

The parks designated in Section 11.2.1.shall be closed to all members of the general public from 10:00 p.m. to 5:00 a.m. each day unless otherwise designated by the Mayor and Council. This section shall not apply to fire and law enforcement officials.

### 11.2.3 Animals
No animals shall be allowed upon the City Park whether on a leash or not, except for seeing-eye dogs.

### 11.2.4 Vehicles

No motorcycles or other motorized vehicles, whether of two or four wheels, shall be allowed in the parks, except with approval of the council for special events, at any time. This section shall not apply to City parks personnel.

**11.2.5 Metal Detectors**

No digging, sod removal or any other deleterious action to the plant life of grounds shall be allowed in the parks at any time.

**11.2.6 Consumption of Alcoholic Beverages (O-92-34)**

A. It is unlawful and a misdemeanor for any person to consume spirituous liquor in a public place, the right-of-way or gathering
   1. This paragraph shall not apply to the consumption or possession by those persons or groups who have first obtained a permit from the City of Bisbee authorizing them to consume or possess such beverage.
   2. This paragraph shall not apply to a person consuming or possessing spirituous beverages within the confines of areas designated by staff, and with the approval of Council, in conjunction with City approved Independence Day and Labor Day events.
B. For purposing this section, "spirituous liquor" includes beer, wine, hard liquor, any mixture containing alcohol and any liquid mixture or preparation, whether patented of otherwise, which produces intoxication.

**11.2.7 Mayor or Council Empowered to Issue Permits**

The mayor or council are empowered to issue permits authorizing the consumption and possession of alcoholic beverages as provided in this chapter, and to adopt rules and procedures for the issuance of such permits. Fees for such permits shall be established by resolution of the Council.

**11.2.8 Glass Containers Prohibited**

A. Definitions. In this section unless the context otherwise requires:
   1. "Glass beverage container" means any bottle, glass, tumbler, jug, jar, mug, cup or other vessel or container made of glass and designed or used to contain liquid beverages for drinking purposes.
   2. "Intentionally" means, with respect to a result or to conduct described by an ordinance or this code defining an offense, that a person's objective is to cause that result or to engage in that conduct.
   3. "Knowingly" means, with respect to conduct or to a circumstance described by an ordinance or this code defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act.
   4. "Recklessly" means, with respect to a result or to a circumstance described by an ordinance or this code defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is aware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
B. Glass Prohibited. No person while in any municipal park shall have a glass beverage container in his or her possession.

C. Throwing or Breaking Glass. No person while in any municipal park shall throw, toss or otherwise propel, or either intentionally, knowingly or recklessly break any glass object.
D. Posting Required. The chief of police shall have the responsibility for posting and maintaining proper notices in conspicuous locations within municipal parks advising park patrons of the provisions of this article and the penalties for violation thereof.

**11.2.9 Park and Facility Use**
**(O-06-06; O-93-15; O-10-09; O-10-11; O-12-16)**

Any person or group of persons may use any park, recreation facility, public property, or public right-of-way of the City of Bisbee for any recreational purpose or other event not prohibited herein, provided such park, facility, public property or public right-of-way is appropriate for such use, has not been reserved by the City or another user for a scheduled group activity, and is subject to the conditions listed below.

A. A written permit shall be obtained from the City, issued by the Public Works Director or his designee, whenever any person or group desires to reserve a park, recreational facility, public property or public right-of-way for any of the following activities:
   1. Picnics, outings or political, religious or social gatherings involving fifty (50) or more persons.
   2. Contests, exhibits, performances, spectacles, fairs, circuses, shows, fund-raising events or any similar events open to the general public.
   3. The reservation or use of any park, facility, or public right-of-way to the exclusion of others.
B. The following factors will be considered in issuing a permit:
   1. The size of the group, extent of the activity and proposed use of the park or facility.
   2. The availability of the facility.
   3. The compatibility with surrounding areas and potential obstruction of traffic or public access.
   4. The effect of the proposed activity on the public's ability to use and enjoy the park or facility.
   5. Whether the proposed activity and use will unreasonably interfere with or detract from the promotion of public health, safety, welfare and recreation.
C. An Operation Plan for the event shall be prepared, in conjunction with the applicant and City departments that will be involved with the event, for those proposed events that will require the closure of any City streets for any substantial period of time; the use of City public safety personnel in connection with the event; or the appropriate coordination of this event with on-going public functions. The Operation Plan shall include, at a minimum, a diagram of the location of the event and all areas of public property to be used; a specific description of the time and nature of participation required by all City staff, personnel and equipment; a description of how all public safety, traffic control, parking and sanitation impacts will be addressed; and a schedule for the set up, dismantling and cleaning of the subject site. For permits requiring such plans, the applicant must approve and sign the Operation Plan prior to the issuance of a permit and compliance with the Operation Plan shall be a condition of the permit for each event which requires such a plan.
D. Prior approval by the Mayor and Council of the permit and Operation Plan shall be required for those events which will impose a significant obligation upon City staff, may have the potential to cause significant impacts beyond the boundaries of an existing public park, and will require an approved Operation Plan for the proper coordination of this event with existing public functions and the protection of public health, safety and welfare. Such events would include, but not be limited to, parades; running, coaster and similar competitions; music festivals, fairs and circuses; car shows; events which will require a liquor license; and other events that will cause substantial disruptions in the use of public rights-of-way.

E. Any permittee using a park, recreational facility, public property or public right-of-way shall be required to indemnify and hold harmless the City of Bisbee from any and all liabilities for damages to persons or property.
   1. Individuals, businesses or organizations wishing to use a park, recreational facility, or public right-of-way for events and activities that are excluded from the City's insurance coverage are required to provide proof of insurance in an amount no less than one million dollars ($1,000,000). The following activities, and other high risk functions, must provide a policy that expressly identifies the City of Bisbee as an additional insured:
      a) motor vehicle races/events and stair climb events
      b) stunts
      c) demolition derbies
      d) mechanically-operated amusement devices
      e) rodeos
      f) liquor and beer sales
      g) fireworks and pyrotechnic displays
   2. A Hold Harmless Agreement shall be completed and signed as a part of the application and permit process.
   3. No additional certificate of insurance will be required if the City co-sponsors an event.

F. Continuous or repeated use of parks, facilities, public property or public rights-of-way shall be limited to City-sponsored activities or those events which have been specifically approved by the Mayor and Council as having special community benefits, such as the Farmers' Market. Continuous use shall be interpreted as meaning any regularly scheduled or reoccurring activity.

G. All permitted use of parks, recreational facilities, public property or public rights-of-way must be under competent adult supervision.

H. No apparatus, furniture or equipment shall be moved into a park, recreational facility, public property or public rights-of-way without permission. All such equipment may be subject to inspection by City staff to determine if it could present any hazards to the public and shall be removed at the completion of the activity or event.

I. All facility users shall be responsible for returning the park, recreational facility, public property or public rights-of-way to the same condition in which it existed prior to the beginning of such use. If this responsibility is not met, the user will be charged for the actual costs of all necessary clean-up and repairs.

J. If control or security personnel or other special services are necessary, the permittee shall be responsible for the full costs of all such personnel, including all expenses for any required City staff members. The City reserves the right to require the use of such personnel as a condition for any permit.

K. Permits may be revoked at any time by the City Manager or his designee upon finding a violation of the City Code, or other applicable law, or the failure to comply with the conditions of the permit.

L. It is the applicant's responsibility to submit the application for a permit to use a park, recreational facility, public property, or public right-of-way with the City with sufficient time prior to the proposed event to allow for the required planning and approval process.

M. Fees for park and facility use shall be as follows:

| | |
|---|---|
| Permit Fee/Non-Commercial | $25 per permit<br>*(example: birthday parties, family reunions)* |
| Permit Fee/Commercial | $50 per permit |

*(example: public events, fundraisers, for profit/non-profit)*

| | |
|---|---|
| Refundable Deposit | $50 per permit |
| Beer Permit | $10 per permit |
| | *(for non-commercial permits only)* |
| Water access-Parks | $10 per park, per day |
| Electricity access-Parks | $10 per park, per day |
| Electricity access-Band Shell (City Park) | $50 per day |
| Pool Building Rental (restrooms/change rooms) | $37.50 per day |
| Personnel Facility Prep/Cleaning-Pool Building | 3 personnel hours |
| | *(includes opening and closing facility during normal business hours)* |
| City Park Office rental | $25 per day |
| | *(for event use only, if available)* |
| Parks/Public Works Personnel | $20 per hr, per person |
| | *(outside of personnel work hours, unless otherwise stated)* |
| Police Officer/Personnel | $25 per hr, per person |
| Police Unit | $30 per car, per day |
| Dumpster | $15 per dumpster, per day |
| | *(includes drop off and pick up; may be required for large events)* |
| Dumpster pick up after hours | $125 each |
| Dumpster pick up holidays and Sundays | $30 each |
| | *(must be prearranged)* |
| Trash Barrel Rental *(6 is minimum charge, includes drop off,* | $40 for first 6 and |
| *(pick up, and tipping fees. Liners not included, but required)* | $10 each additional |
| Barricades-deposit | $25 per permit |
| Barricade-rental, if available | $2 per barricade |
| Bleachers | $180 per trailer load |
| | *(2 sets of bleachers per trailer maximum)* |
| "No Parking" Signs | $1.50 per sign |
| | *(City issued signs, must be used for approved "No Parking" areas)* |
| Vendor Fees | $4 per vendor, per day |
| Operation Plans | $100.00, minimum |

(For Operation Plans requiring more than 4 hours of total staff time, the permittee will be required to pay the additional costs at the hourly rate of pay for the participating staff as a condition for the use of the permit.)

**11.2.10 Penalties; Enforcement**
**(O-93-15)**

A. Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than fifty dollars or more than five hundred dollars.
B. Charges resulting from violations of any provision of this article shall be filed by police officers utilizing the Arizona traffic ticket and complaint form as provided by Arizona Revised Statutes.

**11.2.11 Suspension of Rules**
**(O-93-15)**

The Mayor and Council, within its sound discretion, may suspend any of the provisions of this article by council action for special events.

### 11.2.12 Use of Public Property for the Exercise of Constitutional Rights (O-07-16)

The City of Bisbee supports the rights to free speech, public assembly and the free exercise of religion in those public areas which have been traditionally recognized as appropriate locations for a public forum, including but not limited to public parks, streets and sidewalks. Public parks, public rights-of-way and recreational facilities may be used for such purposes pursuant to a facility use permit issued in the same manner as specified at Section 11.2.9 for other types of gatherings, subject to the following provisions:

A. No application or specific permit shall be required for a public gathering of less than fifty (50) people if no apparatus, equipment, including sound amplification devices, or chairs are to be brought into the public space for the gathering and no reservation of the space, to the exclusion of its use for other types of gatherings or purposes, is requested. No user of a public space for these purposes shall be authorized to exclude other members of the public from any such public space.
B. In granting a permit for any such use, the City may impose reasonable restrictions upon the time, place and manner of such use, provided that the restrictions are justified without reference to the content of the speech or the nature of beliefs of the participants, any such restrictions are narrowly tailored to serve a significant governmental interest, and they leave open ample alternative channels for the communication of information.
C. The City of Bisbee maintains a significant governmental interest in protecting the well-being and tranquility of the occupants of surrounding homes and businesses in this community; in guarding the health and safety of all users of the public ways; and in maintaining the condition of the subject public property for subsequent uses. Any person participating in a public gathering upon the public property of the City of Bisbee, whether by permit or by right shall not unreasonably interfere with or unduly infringe upon these significant governmental interests.
D. If due to the nature or timing of a particular political or religious event, the applicant for a facility use permit is not able to submit an application in sufficient time to allow for its consideration by the Mayor and Council at a regularly scheduled meeting prior to the event, the City Manager may issue a permit upon these same terms and conditions. A copy of any such permit shall be provided immediately to the Mayor and the members of the Council.
E. In connection with any permit for a public gathering, the City shall only charge for the estimated actual costs of the services, including personnel costs that the City may be required to provide for the event. No application fee shall be required.
F. Except as otherwise provided herein, the terms and conditions of Section 11.2.9, Park and Facility Use, shall be applicable to all such public gatherings.

## ARTICLE 11.3 LIBRARY

### 11.3.1 Established

The City shall maintain a public library for use of the general public. The council shall include in the annual budget an amount sufficient to provide for the staff, operation and maintenance of the library during the fiscal year unless the library accumulates sufficient revenues for these purposes through the collection and accumulation of fines.

**11.3.2 Appointment of Library Advisory Board (O-05-11; O-02-14; O-89-22)**

The Mayor, with the consent of the City Council, shall appoint seven residents of the City as the Library Advisory Board. Members of the board shall hold office for four years. The office of board member shall be honorary and without compensation.

Eligibility for Library Cards; Limits on Usage

A. All permanent residents of Cochise County are eligible to obtain a City of Bisbee Library Card free of charge, upon the submission of a completed application and presentation of evidence of their permanent residence in Cochise County.
B. Non-residents of Cochise County may obtain a Temporary Use Library Card upon the submission of a completed application and the payment of a Twenty-five Dollar ($25.00) administrative fee. This Temporary Use Card will be valid for a period of up to twelve months. The holder of any such card is entitled to a refund of Ten Dollars ($10.00), if that user has no outstanding fines and no unreturned books or materials from the Library. Temporary Use Cards are non-transferable.
C. No books or other materials may be borrowed from the Bisbee City Library without a valid library card authorizing such use.

**11.3.3 Powers and Duties of Library Advisory Board (O-90-27; O-89-22)**

A. The Library Advisory Board shall meet once a month, and at such other times as they shall appoint, at a place to be provided for this purpose. They may elect from their body a president and secretary and may adopt an official seal. The secretary shall keep a record of proceedings of the board and submit copies to the Mayor and Council. All meetings of the Library Advisory Board shall be held in conformance with Arizona Statutes concerning public meetings including executive sessions. A quorum is necessary to hold meetings and make decisions. A quorum is defined as a simple majority of members currently serving on the board.
B. The board shall be advisory to the librarian and to the City Council. With the interest of serving the public with adequate quality library service, the board may make recommendations concerning:
    1. Such rules, regulations, policies, or procedures governing the operation of the library.
    2. Cooperative agreements with other library service providers.
    3. Proposed expenditure or improvement of library facilities.
    4. The development of such long-range plans for the enhancement of the library service as it deems appropriate.

**11.3.4 Fines and Collection Policies (O-04-13; O-94-29)**

A. Fines policies for overdue materials shall be as follows:
    1. A fine of $0.10 per day accrues beginning on the first overdue date for all items, except Interlibrary Loan materials. The charge for overdue Interlibrary Loan materials is $1.00 per day. All fines are assessed per overdue item.
    2. A maximum fine of $5.00 per item applies to all items except damaged materials, materials with missing pages, or lost materials.

3. Materials returned within three days of the due date are exempt from fine levies. Materials returned after this three day period will be assessed for the entire overdue period.
4. Any items, including out-of-print items that are damaged beyond repair, missing pages or lost shall be replaced with equivalent copies or paid for in full by the borrower in accordance with the following fee schedule:

| | |
|---|---|
| Hardback books | $30.00 |
| Paperback books | $10.00 |
| Children's hardback books | $20.00 |
| Audio books | $75.00 |
| Videos | $35.00 |

A processing fee of $3.50 per item shall also be paid by the borrower or patron.

5. Printouts shall be charged at $.10 per page. Lost or damaged library cards shall be replaced for a fee of $3.00.
6. Upon the approval of the Mayor and Council, the Bisbee Public Library may collect food cans in lies of U.S. currency as required in Article 11.3.4(A)(1). Mayor and Council shall set forth the beginning and end dated for the collection of cans in lieu of U.S. currency. One food can is equivalent to $1.00. The donation of food cans equivalent to the amount owed after rounding up or down to the nearest dollar will be sufficient to pay off a fine owed on a late item.

   For example, if a patron owes $3.20 on a late item, the patron may pay off the fine by donating three cans of food to the library, which after rounding is equivalent to $3.00. If a patron owes $3.50 on a late item, the patron may pay off the fine by donating four cans of food to the library, which after rounding is equivalent to $4.00.
7. Article 11.3.4(A)(6), permitting the collection of cans in lieu of U.S. currency, shall not apply to fines incurred on damaged materials, materials with missing pages, or lost materials. For damaged materials, materials with missing pages or lost materials, Article 11.3.4(A)(4) shall apply.
8. Article 11.3.4(A)(6), permitting the collection of cans in lieu of U.S. currency, shall not apply to patrons that have received more than two notices regarding an overdue item. Patrons who have received more than two notices regarding a overdue item will be required to pay the fine at the U.S. currency rates in subsections A(1) and/or A(4) above.

B. Collection policies for overdue materials shall include the following:
   1. Four notices will be sent to patrons with overdue materials.
   2. If, after two months and four notices, a patron does not return overdue materials, the overdue materials shall be declared lost and the patron shall pay the full replacement cost of the overdue materials in accordance with the fee schedule specified in Article 11.3.4 (A) (4).
   3. The library shall exhaust, within reason, all possible avenues to recover severely overdue materials.

**11.3.5 Annual Report**
**(O-94-29)**

The Librarian, on or before the first Monday of July of each year, shall make a report to the governing body of the City containing:

A. A full statement of all property and money received, where derived and how used and expended.
B. The number of books, journals and other publications on hand, the number added by gift, purchase or otherwise during the year, the number lost or missing and the number and kind of those loaned.

C. Such other statistics, information and suggestions as may be of general interest.

**11.3.6 Violations**
**(O-94-29)**

It is unlawful for any person to injure, harm, destroy, burn, deface or steal any library property or books.

**ARTICLE 11.4 SWIMMING POOL**
**(0-89-07; O-13-06)**

**11.4.1 Established**

A. The Mayor and City Council shall maintain a swimming pool for the use of the general public.
B. The Mayor and City Council shall, from time to time, adopt ordinances setting forth the regulations and fees to be charged for use of the Bisbee swimming pool facility.

**11.4.2 Regulations & Fees**
**(O-91-10; O-94-21; O-96-19; O-06-06; O-10-08, O-11-06, O-13-06)**

A. Any person under the age of 8, and any juvenile non-swimmer, must be accompanied by an adult for admission to the pool.
B. Children using the baby pool must be supervised by a parent or adult guardian at all times.
C. Swimming Pool Facility Rental for Private Pool Parties:
    1. Private pool parties will be allowed on a scheduled basis via a Facility Rental/Use Permit issued by the Pool Manager.
    2. The pool can be rented Sunday through Saturday, based on availability, for private pool parties excluding the public; or during open swim on a nonexclusive basis.

D. Fees for the use of the swimming pool are as follows:

**SWIMMING POOL FEE SCHEDULE**

| | | |
|---|---|---|
| Open Swim Admission: | | |
| | Children (5–17 yrs old) (admission rates apply to baby pool) | $1.25 |
| | Adults (18-64 yrs old) | $4.00 |
| | Seniors (65 and older) | $3.00 |
| Programs: | | |
| | Night Swim, per Session | $5.00 |
| | Lap Swim, per Session | $4.00 |
| | Swim Lessons, per Session | $35.00 |
| | Swim Team, per Season | $50.00 |
| Rental: | | |
| | Facility, per Hour, 2 hour minimum | $30.00 per hour |
| | Employee, per Hour, 2 guard minimum | $15.00 per hour |
| | Open Swim Group Access, per Hour | $ 25.00 |

Open Swim/Lap Swim Advance Purchase Discounts:

10 Visits for the price of 8.
20 Visits for the price of 15.

Specific group rates for educational and organized community groups may be determined by
The Pool Manager, based on the size of the group, the resources required and the amount of oversight that the group leaders will be able to provide.

**ARTICLE 11.5 SENIOR CENTER**
**(O-91-37)**

The City Council of the City of Bisbee is authorized to regulate the use of the Senior Citizen Center and to set fees for the use of this Center.

**11.5.1 Fees**

A. Hall Rental:

| | |
|---|---|
| First Hour | $25/hour |
| Additional Hours | $15/hour |
| Deposit | $50 |

B. Kitchen Rental:

| | |
|---|---|
| First Hour | $25/hour |
| Additional Hours | $15/hour |
| Deposit | $150 |

C. Kitchen and Hall Rental:

| | |
|---|---|
| First Hour | $50/hour |
| Additional Hours | $30/hour |
| Deposit | $200 |

D. Labor $7.50/hour

E. Other

The City Manager may, under special circumstances set rates. These rates may be based on additional service to the user or other special conditions.

**11.5.2 Stipulations**

A. Complete the User Application form including pre and post event inspection of the premises.
B. The deposit required will be refunded if the user meets the terms of the Agreement. However, the entire deposit or a portion thereof will not be refunded if the premises are not left in the condition as specified by the User Agreement.
C. The deposit will be refunded if user notifies of cancellation at least two weeks in advance of the scheduled event.
D. The entire deposit will be non-refundable, if no notice of cancellations is made less than two weeks before the scheduled event.

**11.5.3 Spirituous Liquor**

A. Definition: Includes alcohol, beer, malt liquor, malt beverages, or compound or mixture of any of them, or any liquid mixture or preparation which produces intoxication.
B. Consumption and possession of spirituous liquor is permitted at the Bisbee Senior Center facility and premise only for persons above the legal drinking age who are part of a recognized group conducting or

participating in a Special Event outside the usual and customary operating hours of the facility. Possession or consumption of spirituous liquor should be for complimentary refreshment only. Sale of spirituous liquor shall be by State permit only.

# CHAPTER 12 TRAFFIC

## ARTICLE 12.1 ADMINISTRATION

### 12.1.1 Duty of Police Department

It shall be the duty of the police department under the direction of the police chief to provide for the enforcement of the street traffic regulations of the City and all of the state vehicle laws applicable to street traffic in the City, to make arrests for traffic violations, to investigate accidents and to assist in developing ways and means to improve traffic conditions and to carry out all duties specially imposed upon the police department by this chapter.

### 12.1.2 Records of Traffic Violations

The police department under the direction of the police chief shall keep a record of all violations of the traffic laws of the City or of the state vehicle laws of which any person has been charged within the City, together with a record of the final disposition of all such alleged offenses. Such record shall be maintained as prescribed by state law. All forms for records of violations and notices shall be serially numbered.

### 12.1.3 Police Department to Investigate Accidents

It shall be the duty of the police department to investigate traffic accidents and to arrest and assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents.

### 12.1.4 Traffic Accident Reports

A. The police department shall maintain a suitable system of filing traffic accident reports.
B. All such accident reports made by drivers shall be for the confidential use of the City. No such report shall be admissible in any civil or criminal proceeding other than upon request of any person making such report or upon request of the court having jurisdiction, to prove compliance with the laws requiring the making of any such report.

## ARTICLE 12.2 TRAFFIC CONTROL

### 12.2.1 Obedience to Traffic Regulations

A. It is unlawful, except as otherwise provided in this code, for any person to do any act forbidden or fail to perform any act required by this chapter or willfully fail or refuse to comply with any lawful order or direction of a police officer or of any Fire Department official.
B. Officers of the Fire Department, when at the scene of a fire, may direct or assist the Police Chief in directing traffic thereat or in the immediate vicinity.

### 12.2.2 Traffic Control Devices

A. The Chief of Police, on approval by City Council, shall authorize the placement and maintenance of traffic, control devices including, but not limited to: signs; signals; markers; buttons; lines and other indications and to designate crosswalks, through and one-way streets and intersections and to establish safety zones and speed limits.

B. The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the traffic regulations of the city unless otherwise directed by a police or traffic officer subject to the exceptions granted in this chapter or by state law.
C. No provisions of this chapter for which signs are required shall be enforced against alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. When a particular section does not state that signs are required, that section shall be effective even though no signs are erected or in place.

**12.2.3 Limitations on Turning Around**

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

**12.2.4 Driver to Obey Signs**

Whenever traffic signs are erected as provided in this chapter, every driver of a vehicle shall obey such signs unless directed to proceed by the police chief or a traffic control signal. No driver shall drive upon or through any private property such as an oil station, vacant lot or similar property to avoid obedience to any regulation included in this chapter.

**12.2.5 Processions**
**(O-07-16)**

A. Except as provided in Section 11.2.12 of this Code, no procession or parade, except funeral processions, shall be held without first securing a permit from the Mayor and Council, and all such requests for permits shall state the time, place of formation, proposed line of march and destination.
B. A funeral procession composed of a procession of vehicles shall be identifies by such methods as may be determined and designated by the Police Chief.
C. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated. This provision shall not apply at intersections where traffic is controlled by traffic control signals or the Police Chief.
D. Each driver in a funeral or other procession shall drive as near to the right hand of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe.

**12.2.6 Unattended Motor Vehicles**

A. No person driving or in charge of a motor vehicle shall permit it to stand unattended in any public place, or any used or new car lot, without first stopping the engine, locking the ignition, removing the ignition key from the vehicle, effectively setting the brake thereon, and, when standing upon any grade, turning the front wheels to the curb or side of the highway.
B. Whenever any police officer shall find a motor vehicle standing unattended in any public place, or any used or new car lot, in violation of this section, such police officer is authorized to remove such key from such vehicle and deliver such key to the Police Department.

C. The registered owner of the vehicle found in violation of this section shall be held prima facie responsible for any such violation.

**ARTICLE 12.3 PARKING**

**(O-92-35; O-88-03)**

**12.3.1 Definitions**

In this article unless the context otherwise requires:

A. "Color code" means the color scheme whereby the chief of police, in concurrence with the council, shall regulate the parking of vehicles upon the streets of the City as follows:
   1. All areas or parking places which are marked in the color red in such a fashion as to provide reasonable notice to the public shall designate the no-parking area.
   2. All areas or parking places which are marked in the color green in such a fashion as to provide adequate public notice shall designate an area of short term parking not to exceed thirty continuous minutes.
   3. All areas or parking places which are marked in the color white in such a fashion as to reasonably provide adequate public notice shall mean one hour, two hour, four hour or all day parking.
   4. All areas and parking places which are marked in the color yellow in such a fashion as to reasonably provide adequate public notice shall mean a loading area.

B. "Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading.

C. "Street" means the entire width between the boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular travel.

D. "Vehicle" means a device in, upon or by which a person or property is or may be transported or drawn upon a public highway, including, but not limited to, any self-propelled vehicle.

**12.3.2 Effect of Color Code**

A. No vehicle shall be parked in any area or parking place marked in the color red.

B. No vehicle shall be parked in any area or parking place marked in the color green in excess of thirty continuous minutes.

C. No vehicle shall be parked in any area or parking place marked in the color white in excess of the time designated upon the area.

D. No vehicle shall be parked in any area or parking place marked in the color yellow except for the purposes of loading or unloading the vehicle and for no longer than necessary for the loading or unloading of such vehicle.

**12.3.3 General Provisions**

A. The parking of all vehicles upon all streets and public parking areas located within the corporate limits of the City is hereby authorized, except where such parking of a vehicle is restricted, regulated, limited or prohibited as provided by the Mayor and Council or by the police chief.

B. City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this article. Any peace officer or duly authorized agent of the City may stop and detain a person as is reasonably necessary to investigate an actual or suspected noncompliance with this article or to serve a copy of the traffic citation for any alleged civil noncompliance.

**12.3.4 Blocking Traffic**

A. No vehicle shall be parked upon any street or public parking area within the corporate limits of the City in such a fashion or manner as to obstruct the flow of traffic upon any street or public parking area.

B. No vehicle shall be parked upon the street or public parking area of the City in such a fashion or manner as to constitute a nuisance or to obstruct traffic or any and all emergency vehicles such as those of the fire and police departments.

**12.3.5 Maximum Time; Intersections; Driveways (O-92-22; O-91-20)**

A. No vehicle shall be parked upon any street, public parking area, or public right-of-way located within the corporate limits of the City for a continuous period of time in excess of forty-eight hours.
B. No vehicle shall be parked within any intersection of streets of the City.
C. No vehicle shall be parked so as to obstruct any private driveway.

**12.3.6 Authority of Chief of Police**

A. The Chief of Police, on approval of City Council, is hereby authorized to change all parking signs, color codes, marks, strips or other parking indicators within the corporate limits of the City for the purposes of regulating the parking of vehicles upon streets located within the corporate limits of the City.
B. The Police Chief, on approval of City Council, is also authorized to change the parking signs, marks, strips or other parking indicators to regulate the parking of vehicles upon public parking areas within the City, in any reasonable manner designed to provide adequate public notice of such restrictions or regulations.
C. The Police Chief, on approval of City Council, is also authorized to post signs or other parking indicators on any areas, curbs, walls or other places reasonably designed to provide adequate public notice to restrict and regulate the parking of vehicles upon the public parking areas located within the corporate limits of the city.

**12.3.7 Restricted Parking Areas for the Physically Disabled; Identification (O-94-11)**

A. No person shall park any motor vehicle, other than one displaying a distinguishing insignia or numbered plate bearing the international wheelchair symbol issued pursuant to Section 28-881, Arizona Revised Statutes, in a parking space, whether on public or privately owned property available for public use, when such space is designated as described in Subsection B of this section.
B. Parking spaces subject to the provisions of this section shall be clearly and conspicuously designated as being reserved for the physically disabled. Such designation shall include a standard symbolic disabled parking sign designated as R7-8 in the 1978 Manual on Uniform Traffic Control for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration, Section 2B-24 and placement as approved by the Chief of Police. The posting of such sign shall authorize police and police assistants to enforce the provisions of this section and shall thereby constitute a waiver of any objection by the owner of the property to enforcement of this section by the Police Department.

**12.3.8 Failure to Comply with Regulations; Liability for Noncompliance**

Failure to comply with any City ordinance or provision of the City Code which regulates the time, place or method of parking is a civil infraction, punishable by civil penalty only.

**12.3.9 Hearing Officers**

The magistrate shall be responsible for assessing penalties imposed by this article for noncompliance parking. He also may appoint one or more magistrates with the approval of the council who shall:

A. Schedule and conduct hearings of contested parking citations and make findings, assessments and dispositions thereof.
B. Forward to the City prosecutor's office notices of appeal filed together with copies of the citation and the findings and assessment from which appeal is taken.
C. Perform such additional duties with respect to noncompliance parking as may be required by this article.

**12.3.10 Citations**

A. Issuance.
    1. In an action involving noncompliance parking, a copy of the citation need not be personally served upon the owner or operator of the vehicle but may be served by attaching a copy to the vehicle.
    2. The citation shall include the date, time and location of the noncompliance, the state license number of the vehicle unlawfully parked, reference to the City ordinance or code provision violated and notice that within seven working days from the day on which the citation was issued the penalty for the noncompliance must be paid to and received by the City or a request made to and received by the magistrate for a hearing to contest the citation.
B. Response. Within seven working days from the day on which the citation was issued, the owner or operator of the vehicle involved in the noncompliance shall respond to the citation by one of the following methods:
    1. By appearing in person, by representation or by mail received by the City within said seven-day period, admitting responsibility for the noncompliance and paying the penalty prescribed.
    2. By contacting the magistrate in person, by mail received within said seven-day period, by phone or by representation and requesting a hearing to contest the citation.
C. Failure to Respond.
    1. If the owner or operator of the vehicle involved in the noncompliance fails to respond by one of the methods prescribed within seven working days from the day the citation was issued, the penalty for the violation shall automatically double.
    2. The magistrate shall send written notice to the owner or operator informing him of the noncompliance and of the increased penalty, and giving notice that failure to pay the penalty, or to request a hearing to contest the citation, within ten working days of the date of the notice may result in civil action in the City court for collection of the fine plus costs.
    3. If the magistrate receives no response by one of the methods prescribed within ten working days of the date of the notice, he shall without hearing or further notice enter a finding of responsibility and assessment of the increased penalty. The penalty shall thereupon be immediately due and payable, and the City Clerk/Treasurer, without notice, may start a civil action in City court for the recovery of the fine plus costs.
D. Hearing; Finding and Assessment of Penalty.
    1. Hearings of contested parking citations may be conducted by the Magistrate. Hearings shall be scheduled as the Magistrate may direct.
    2. A parking citation may be contested, in person or through an attorney, only by an owner of the vehicle described in the citation or by the person who parked the subject vehicle at the place described in the citation. If it appears from the evidence that the contestant is liable for the noncompliance described in the citation, the magistrate shall enter such finding in writing and assess the penalty prescribed, which penalty shall be due and payable immediately.

3. If a contestant fails to appear for a duly scheduled hearing, the magistrate shall enter a finding and assessment by default and notify the City clerk/Treasurer, who, without further notice, may start a civil action in City court for collection thereof plus costs.
4. If a response to a parking citation is received by the City clerk/Treasurer or magistrate within seven working days from the date the citation was issued, but a finding of responsibility and assessment of penalty thereon are not entered until more than seven days after such date, the amount of the fine assessed shall be that imposed as the original penalty for such noncompliance. If such a response is not received within the seven-day period the penalty assessed shall be the increased amount.

E. Appeal to Superior Court.
1. In a contested parking citation matter, a party against whom the magistrate has entered a finding of liability and assessment of penalty, by default or otherwise, may, if the assessed penalty has been paid, appeal to the Superior Court of Cochise County in the same manner as the rules promulgated by the Supreme Court.
2. Upon receipt of timely notice of appeal, the magistrate shall forward the notice, together with a copy of the citation and a copy of the finding and assessment, to the clerk of the superior court, and a copy of the same to the City prosecutor's office.
3. On appeal the matter shall be resolved as a civil action, except that no formal complaint need be filed nor summons issued. The filing of the notice of appeal shall constitute a submission by the appellant to the jurisdiction of the court and to all notices and orders issued by the court during appeal, and to final judgment of the court on resolution of the appeal.

**12.3.11 Parking Prohibited**

No person shall park a vehicle at any time that is prohibited by official signs, where there are red curb markings or by order of a police officer.

**12.3.12 Restricted Parking**

No person shall park a vehicle of any kind in excess of time limits specified by official sign or curb or colored markings between the hours of 8:00 a.m. and 6:00 p.m. excepting Sundays and holidays, and except for loading and unloading purposes.

**12.3.13 Vehicle Overhaul, Repair or Servicing**

No person shall use any public parking lot, public street, highway or alley, or any part of said highway, street or alley right-of-way, or any part of the roadway adjacent to a public parking lot, public street, highway or alley in the City for the purpose of servicing, overhauling, repairing or in any manner tearing down or rebuilding any motor vehicle of any nature whatsoever, except that this section shall not be construed to prevent or forbid emergency repairs or measures. When any police officer finds a vehicle standing in violation of this section, he may, in addition to citing the owner thereof, report the vehicle to the police department, and the police department shall employ a towing service to tow said vehicle away and store it, and the owner thereof shall be responsible for the costs of towing and storage.

**12.3.14 Inoperable Vehicles**
**(O-93-28)**

The following conditions are specifically declared public nuisances, and a danger to the public health:

A. Parking, storing or leaving on public property any vehicle of any kind, which is inoperative for more than forty-eight consecutive hours upon jacks, blocks or similar equipment, or deflated tires, or on which the

chassis, engine or wheels or tires have been removed, or without valid or current registration or which has been dismantled in any fashion. The presence of such vehicle on public property is hereby declared to be a public nuisance. This section shall not apply to any vehicles held in connection with an auto repair enterprise or similar business, lawfully licensed by the City and properly operated in the appropriate business zone, pursuant to the zoning laws of the City.

B. Any person who maintains or commits a public nuisance as governed by provisions of this section, or who willfully omits to perform any legal duty related to the removal of a public nuisance, is guilty of a Class I misdemeanor. Each day that a violation is willfully permitted to exist shall constitute a separate offense. The imposition of any sentence shall not exempt the offender from compliance with requirements of this section.

**12.3.15 Parking Violation Fines**
**(O-94-11)**

A. The fine schedule for noncompliance of any section of this article is as follows:

| | |
|---|---|
| 1. Overtime parking | $10.00 |
| 2. Double parking | $10.00 |
| 3. Prohibited parking | $10.00 |
| 4. Improper parking | $10.00 |
| 5. Loading zone | $10.00 |
| 6. Bus zone | $10.00 |
| 7. Blocking traffic | $20.00 |
| 8. Parking at a fireplug | $50.00 |
| 9. Handicap Only parking | $50.00 |

## CHAPTER 13 SEWER

### ARTICLE 13.1 DEFINITIONS
**(O-17-08)**

In this Chapter unless the context otherwise requires:

A. “Account Holder” means a property owner, a property owner’s duly authorized agent, a tenant leasing property from an owner, or any other person or entity who has entered into a written service agreement with the City for sanitary sewer service.

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

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

D. "Building sewer" or "house sewer" means the extension from the building drain to the building connection or other place of disposal.

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

F. "Industrial wastes" means the liquid wastes from industrial processes as distinct from sanitary sewage.

G. "Natural outlet" means any outlet into a watercourse, ditch or other body of surface or ground water.

H. "Ph" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

I. "Properly shredded garbage" means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than one-fourth inch in any dimension.
J. "Public sewer" means a sewer controlled by public authority.
K. "Resides" means that a person is physically present in a habitation, at least periodically, but does not require that this be the person's permanent legal residence.
L. "Sanitary sewer" means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.
M. "Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments together with such ground, surface and storm waters as may be present.
N. "Sewage treatment plant" means any arrangement of devices and structures used for treating sewage.
O. "Sewage works" means all facilities for collecting, pumping, treating and disposing of sewage.
P. "Sewer" means a pipe or conduit for carrying sewage.
Q. "Sewer connection" means the connection to the public sewer and the extension therefrom of the sewer to the property line at the alley or the curb line of the street, whichever is applicable, depending on the location of the public sewer.
R. "Suspended solids" means solids that either float on the surface of, or are in suspension in, water, sewage or other liquids and which are removable by laboratory filtering.

## ARTICLE 13.2 CONNECTION FEES; RATE; RESPONSIBLE PARTY; EXEMPTION & APPEALS

### 13.2.1 Application for Service (O-10-18; O-11-08)

No new sewer connection connecting the City sanitary sewer system to any premises shall be made by any person or the City except upon a written service agreement between the City and the owner of the premises to which sanitary sewer service is to be furnished or the duly authorized agent of such owner and an approved sewer connection permit.

### 13.2.2 Rates, Fees and Service Charges. (O-98-20; O-97-28; O-97-24; O-91-33; O-91-15; O-91-04; O-90-36; O-90-35; O-89-17; O-88-19; O-00-18; O-01-09; O-02-15; O-03-17; O-04-14; O-06-21; O-07-12; O-08-14; O-09-18; O-11-08; O-11-09; O-12-13; O-13-17; O-17-08)

A. Formula, Units of Contribution, Rates per Unit (O-07-12)
   1. Except as otherwise provided in this Article, each Account Holder who maintains a connection to the City's sanitary sewer system shall pay the monthly fees to the City to off-set the City's costs of providing this service. Except as otherwise specified below, the fees for these services are based on the costs of making adequate wastewater service available for each connected property and not on the amount of usage by that property for any particular month. For those uses for which a specific fee is not specified below, the following formula shall be used to calculate the user charges for wastewater systems for the City of Bisbee and its service area:

      $Cu = (Ct/Vt)\ Vu$

      Where:

      Ct = Total operation and maintenance (O&M) costs per unit of time.

      Cu = A user's charge for O&M per unit of time.

      Vu = Volume contribution from a user per unit of time.

Vt = Total volume contribution from all users per unit of time.

In the event biochemical oxygen demand (BOD), suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to the base charge (above) will be levied. The surcharge will be computed by the formula below:

$$Cs = (Bc\ (B) + Sc(S) + Pc\ (P))\ Vu$$

Where:

Cs = A surcharge for wastewater of excessive strength.
Bs = O&M cost for treatment of a unit of BOD.
B = Concentration of BOD from a user above a base level.
Sc = O&M cost for treatment of a unit of suspended solids (SS).
S = Concentration of SS from a user above a base level.
Pc = O&M cost for treatment of a unit of any pollutant
P = Concentration of any pollutant from a user above a base level.
Vu = Volume contribution from a user per unit of time.

2. Units of Contribution (O-07-12)

Based on an analysis of the users who are connected to the wastewater facilities, users shall be classified into:

a. Residences, including apartments, for which the rate shall be based on an average monthly presumptive use of 5,900 gallons per residence; and
b. Small non-residential uses including commercial, governmental and public facilities converted to an equivalent number of residential units by the following formula: Units = Non-Residential User Average Monthly Water Use, 5,900 gallons
c. Large commercial and industrial users rates shall be calculated based upon the formula in Section 13.2.2(A.1) and 13.2.2(A.2.(b)), as applies.

3. Rates, Fees and Service Charges

Rates for the following classes and types of property uses shall be assessed monthly and collected monthly, as of the date of the billing, in accordance with the following schedule stated below. Fees and charges for the additional designated services shall be charged as indicated.

a. Residential 1.000 unit = $ 47.60
b. Commercial (No residential occupancy) Classes:
   1) Small retail, professional and office business
      1.1294 units = $ 53.79
   2) Small restaurants, cafes, snack bars, etc. (less than 4 employees)
      1.9362 units = $ 92.07
   3) All bars, restaurants (more than 4 employees)
      3.2252 units = $153.59
   4) Hotels, motels, bed & breakfast, and all other transient lodging, including RV parks (based upon estimated average occupancy)
      .5999 units per room or space = $ 28.58
   5) Large retail (5 or more employees)
      5.000 units = $238.12

Mixed business and residential occupancy shall pay the sum of the applicable business rate plus the number of residential units. Mixed business occupancy shall pay the sum of applicable uses, except where all plumbing units are jointly used, where no separation of uses is applicable, and

no other and separate plumbing is available on the premises, in which case the greater rate shall solely apply.

c. A policy providing for discounts for low-income households, is hereby established:

1) Account Holder shall pay a discounted sewer rate of $14.28 per month, upon application provided income for the household is at or below fifty percent (50%) of the federal poverty guideline for a two-person household and the householder provides proof of income.
2) Account Holder shall pay a discounted sewer rate of $28.57 per month, upon application, provided income for the household is no more than one hundred percent (100%) of the federal poverty guideline for a two-person household and the Account Holder provide proof of income.
3) Proof of income shall consist of the Account Holder's last federal income tax return or such other proof as may be satisfactory to the City. Proof of income shall be presented yearly.
4) Notwithstanding the provisions of Section 13.2(C)(1) and (2) above, the City Manager, Finance Director and Public Works Director are hereby jointly authorized to waive or reduce sewer rates for any designated, low-income residential Account Holder for any period of time up to six months where exigent circumstances would cause higher rates to cause an undue hardship to the household. "Exigent circumstances" shall mean any one time or temporary emergency event or circumstance that severely limits or prevents the payment of existing sewer rates. Adequate proof or documentation shall be presented in support of a request made under this section.
5) A designated low income residential account holder shall not be eligible for more than one discounted sewer rate, which shall be applicable to only one owner-occupied residential property.

d. Fees and Service Charges

1) A new account and start-up fee of $25.00 will be charged to all new Account Holders who establish an account with the City.
2) A two-month refundable deposit shall be charged for setting up a new account. The deposit will be refundable if all payments are made on time and after full payment of the final bill for services. The Account Holder is responsible for notifying the City when a service agreement should be terminated.
3) An inspection fee of $100.00 will be charged to the Account Holder for the inspection of each prior service connection that is physically disconnected from the City's sewer system, as necessary to confirm that this disconnection has been completed in an appropriate manner. If any subsequent, additional inspection is required at the same site, the Account Holder shall be required to pay for all of the labor and equipment charges incurred by the City that are required for any such additional work.
4) An inspection fee of $100 will be charged for the inspection of the installation of each shut-off valve that is installed by the Account Holder, as necessary to confirm that any such valve has been properly installed. If any subsequent, additional inspection is required at the same site, the Account Holder shall be required to pay for all of the labor and equipment charges incurred by the City that are required for any such additional work.
5) An activation or de-activation fee of $25.00 shall be charged to the Account Holder for each time that a City employee is required to turn on or turn off a shut-off valve at a

particular location in connection with either re-establishing service or terminating service at that location.

6) An Account Holder shall be charged the labor and equipment costs incurred by the City, not to exceed $500.00 at each location where City employees physically disconnect the property from the City's sewer system, as may be authorized under these regulations. The Account Holder shall also be responsible for the actual costs of all parts and equipment that may be installed at each location.

e. The City Manager, Public Works Director, and Finance Director will jointly consider and determine, at their discretion, whether exceptional circumstances, including but not limited to those circumstances described in Section C(4) above, require complete waiver or a reduction in service fees for a reasonable amount of time. They may also consider a change in an Account Holder's bill, including a complete waiver of the balance owed, if reasonable grounds exist. An Account Holder may request such consideration and determination by filling out an Application provided by the City. Adequate proof or documentation shall be presented in support of a request made under this section if requested by the City. A decision shall be made within 30 business days from the date the Account Holder submits an Application to the City, unless the City is waiting for proof or documentation to be supplied by the Account Holder. Should an Account Holder fail to provide requested documentation or proof within 10 business days of the City's request, the Application may be denied. A decision shall be made concerning an Application no later than 60 days from the date the Application is submitted to the City. Any decision made pursuant to this section shall be final and non-appealable.

4. Discharge into Sewer System other than by Permanent Connection, Septic Tank Wastes, Permits Required.
   a. It shall be unlawful for any person to discharge any waste of any kind into the Bisbee City Sewer System other than through a permanent connection approved by the City for residential, commercial or industrial use, without obtaining a permit for such discharge from the Public Works Director.
   b. It shall be unlawful for any person to discharge any waste material pumped from any septic tank into the Bisbee City Sewer System without obtaining a permit for such discharge from the Public Works Director.
   c. Permits for the discharge of approved waste materials shall be issued upon the payment of $15.00 per each thousand gallons of such material.
   d. The Public Works Director is authorized to issue such other regulations for the issuance of permits as are necessary for the safe and lawful operation of the City's Sewer System.

B. Management of Revenue, Notification of Users, Prohibition of Inconsistent Agreements and Appeals Financial Management System - The City of Bisbee will maintain a Financial Management System that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the collection and treatment system. The City will establish a separate account in its existing computer accounting system to monitor, on a quarterly basis, both revenues generated and expenditures for the system.

   1. Notification of Property Owners (O-07-12) - Each property owner or customer who is connected to the City's sewer system will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the charges which are attributable to wastewater collection and treatment services.

2. Inconsistent Agreements (O-07-12) - These fees shall take precedence over any terms or conditions of agreements or contracts between the City of Bisbee and users (including industrial users, special districts, other municipalities or Federal agencies or installations) which are inconsistent with the requirements of 204(b)(1)(A) of the Clean Water Act or these regulations. No special rate may be applied to any user.
3. Wastewater Treatment By-Products (O-07-12) - All revenue from the sale of treatment-related by-products shall be used to offset the cost of operation and maintenance. Fees shall be proportionally reduced for all users. Total annual revenues received for the sale of a by-product shall be credited to the treatment works O&M cost no later than the fiscal year immediately following their receipt.
4. Appeal (O-07-12) - In the event a property owner connected to the City's sewer system, in any class, wishes to appeal his or her classification, the property owner may, at the property owner's sole expense and option, install and maintain a sewer line meter to record the flow of effluent. The City of Bisbee must be notified, in writing, of the property owner's intent to install a line meter for this purpose. One year after both, 1) written notification to the City and 2) installation of the sewer line meter, the property owner may appeal to the City Council, in writing, for an adjustment to the fee. Any appeal must be accompanied by certification of inspection of this meter, by the City for the full year. No adjustment may be made for any time period prior to initiation of this procedure and installation of the sewer line meter. Any adjustment must be based upon effluent flow as documented by the sewer line meter and inspected by the City and the average cost of making these services available to that property, less the demonstrated marginal costs saved by the City as a result of not having to treat an average amount of discharged waste from that property.

C. The Council shall regulate and change the rates, fees and service charges by ordinance and pursuant to state law as it becomes necessary to meet the obligations of the City for the municipal sewer system.

D. The Account Holder's fee shall be billed on a monthly basis. All fees shall be due and payable as of the date of billing. A service charge shall be added to all accounts for which full payment (including prior penalties) is not received on or before the 25th day of the month. The Service Charge shall be Three Dollars ($3.00) for each month in which full payment is not received by the 25th day of that month. Interest at the rate of ten percent per annum, or at such other rate as may be prescribed by A.R.S. § 44-1201 shall be charged on a monthly basis on all delinquent amounts. The City may elect to refer an Account Holder to the Arizona debt setoff program pursuant to state law, in which case the Account Holder's state income tax refund or property tax credit or rental credit may be used to offset the debt owed to the City by the Account Holder. The City may also elect to refer the Account Holder to a debt collection agency.

E. Except as otherwise provided in this Article, all Account Holders, of premises with a sewer connection to the City's Wastewater Collection System are legally responsible for the fees imposed under this Code.

F. The Finance Director, or his or her designee, shall monitor the status of the payments on all accounts. For any property that becomes 30 days delinquent in paying sewer service fees, the Finance Director, or his or her designee, will send out a notice to the Account Holder in writing that advises of the delinquency. The notice will provide the Account Holder with 45 days to bring the account current. If the account is not paid in full within 45 days from the date of the notice, the City will disconnect the property from the sewer system. Upon notification from the City, the water company will also disconnect the property from water service. Disconnection from sewer services will occur on the 46th day from the date of notice or as soon as reasonably possible thereafter. The Account Holder is solely

responsible for any disconnection and reconnection fees and costs associated with the sewer and water services. The Account Holder will be required to make a two month deposit before sewer reconnection will occur. Acceptable forms of payment to bring an account current, as well as associated fees and costs, shall be in the form of a money order or cashier's check only.

### 13.2.3 SPECIAL REGULATIONS FOR RESIDENTIAL PROPERTIES NOT OCCUPIED BY THE OWNER.

A. Pursuant to A.R.S. § 9-511.01 state law, for residential property of four or fewer units, the City is prohibited from requiring payment of unpaid wastewater service rates and charges by anyone other than the person who the municipality has contracted with to provide the service, who physically resides or resided at the property and who receives or received the service. Any such property owner or other person, at his or her sole discretion, may contract for wastewater service with the City and provide payment.

B. For rental residential property or four or fewer units for which the property owner elects to terminate any existing agreement for wastewater services under the applicable state law, the following provisions shall apply:

1. The Finance Director, or her designee, shall charge any prospective tenant a refundable deposit of two (2) times the applicable monthly sewer fee rate and shall require the payment of the first full month's sewer fee and all applicable new account and start-up fees as a condition for the issuance of a Service Agreement and the Residential Certificate of Service Agreement. This deposit shall be refunded at the conclusion of the tenant's occupancy, subject to any deductions for unpaid services and other applicable fees and expenses. It is the responsibility of the tenant to notify the City when the tenant wishes to terminate the service agreement.
2. Pursuant to state law, owners of residential properties are required to notify the Cochise County Assessor that their properties are being rented. The City will therefore determine which residential properties are being leased by periodically obtaining records from the Cochise County Assessor's Office.
3. Upon the City's determination that a residential property is being lease and the City is providing sewer service to the property, but payments are not being made for such service, the City will provide notice to the tenant and the property owner that the tenant must enter into a service agreement with the City within 15 days for sewer services. Should the tenant fail to enter into a service agreement with the City within 15 days, the City will disconnect the property from the sewer service and the water company will terminate the water service to the property. The property owner, an immediate family member of the tenant that does not reside at the property or any other entity, at their sole discretion, may enter into a service agreement with the City and shall be responsible for payment pursuant to state law.
4. The rates, fees, and service charges set forth in Chapter 13 shall apply to re-connect a residential rental property to sewer service should the tenant, property owner, or other person fail to enter into a service agreement with the City after the City has provided notice pursuant to this Article.

## ARTICLE 13.3 SEWER CONNECTION PERMITS AND FEES (R-87-396; O-89-14; O-93-13; O-06-13; O-11-08)

A sewer hook-up fee, as provided by resolution of the Council, shall be made for each hook-up.

A. Each person or entity that desires to connect a building or house sewer to the City's public sewer shall first obtain a Sewer Connection Permit from the Bisbee Director of Public Works. As a condition for issuing this permit, the applicant shall provide all of the information required by the Director of Public Works as

necessary to properly identify the owner, fully describe the intended occupancy to be connected and identify the nature and location of all work to be performed to complete this connection, including the size and type of the materials to be used. The Director of Public Works is authorized to develop a permit form for this purpose and to issue a Sewer Connection Permit provided that the applicant has provided all of the required information, paid the required connection fee and entered into a service agreement on a form provided by the Director of Finance.

B. Upon the issuance of a Sewer Connection Permit, the owner or agent of the owner of the property to be connected to the Bisbee sewer shall, at his or her own expense, bring the building or house sewer line to the point of connection to the City sewer main and shall complete all such construction in the manner required by all applicable regulations. A sewer shut-off valve, as approved by the Public Works Director, shall be installed at the connection with the City's sewer line.

C. The City of Bisbee shall charge a Sewer Connection Permit fee as necessary to recover the costs associated with providing this sewer service and the costs of maintaining and operating the sewage treatment plant. The fee for the Sewer Connection Permit will be determined as follows:
   1. For each single family residential unit, based upon an estimated sewerage demand of two hundred (200) gallons per day, a fee of two thousand dollars ($2,000) per connection.
   2. For each connection for all other types of uses at a single family residential unit, a fee of ten dollars ($10.00) for each gallon of daily sewerage demand associated with that particular occupancy. For purposes of determining the sewerage demand associated with any particular occupancy, the Director of Public Works will use Table 1, Unit Daily Design Flows, as included in the Arizona Administrative Code, R-18-9-E301, et seq, as adopted effective January 1, 2001, to make this determination.

D. The Mayor and Council may waive this connection fee, upon the recommendation of the City Manager and the Public Works Director, in those situations in which this is a necessary condition for the award of grant funding or other financial support for related improvements to the City's wastewater collection or treatment facilities and any such waiver would be in the best interests of the City of Bisbee.

## ARTICLE 13.4 CITY AND CONSUMER RESPONSIBILITIES (O-11-08)

### 13.4.1 City Responsibilities and Liabilities

A. The City shall not be responsible for the installation, maintenance or inspection of the consumer's service line, piping and apparatus or for any defects therein.

B. The City shall have the right to refuse service, unless the consumer's lines or piping are installed in such manner as to prevent cross connections or backflow.

C. Under normal conditions, the consumer shall be notified of any anticipated interruption of service.

D. The City shall not be responsible for the negligence of third persons or forces beyond the control of the City resulting in any interruption of service or damage to the property of the consumer.

E. The City may refuse service to any prospective consumer when the capacity of the sewer system will not permit additional loads being placed thereon.

### 13.4.2 Consumer Responsibilities and Obligations

A. Building or house sewer connections on the consumer's premises shall be so arranged as to provide service to one lot. If additional service is required, it will be considered as a separate and individual account.

B. The consumer's house or building service line, sewer connection and apparatus shall be installed and maintained by the consumer, at the consumer's expense, in a safe and efficient manner and in accordance with the City's rules and regulations and in full compliance with the regulations of the State Department of Health Services. Failure to comply with such regulations relieves the City of any and all liability from injury or damage proximately caused therefrom.
C. The consumer shall safeguard the City's property placed on the consumer's premises and shall permit access to it only by the authorized representatives of the City.
D. In the event that any loss or damage to the property of the City or any accident or injury to persons or property is caused by or results from the negligence or wrongful act of the consumer, his agents or employees, the cost of necessary repairs or replacements shall be paid by the consumer to the City and any liability otherwise resulting shall be assumed by the consumer. The amount of such loss or damage or the cost of repairs may be added to the consumer's bill.
E. The City may discontinue sewer service for the following additional reasons:
    1. To prevent fraud or abuse.
    2. The consumer's willful disregard of or refusal to comply with this article or other rules as may be adopted by the Council, including the obligation to pay for these services.
    3. To terminate service to a residential property that is not occupied by the owner and for which neither the owner nor the tenant has entered into a contract for sewer services.
F. When service to a consumer shall require the laying of any City sewer lines or the installation of any other City property on, under, across or over the consumer's property, the consumer will grant to the City an easement, right- of-way or license for such installation.
G. With the exception of residential rental properties of four or fewer units, when a property owner maintains a connection to the City sewer network and ultimately to the City's wastewater treatment facility for the disposal of wastewater, and the City continues to provide maintenance of its sewer mains and associated network and continues to operate its wastewater treatment facility, this exchange of benefits shall constitute a contract between the parties whereby the City agrees to continue to provide such services, subject to the continuing availability of its resources to do so, and the property owner agrees to pay the required fees for such services and to abide by the rules and regulations that are applicable to such services. This agreement may only be terminated as may be required by applicable state law, pursuant to the procedures specified in this Article.

**13.4.3 Interference with Employees of the City**

It is unlawful for any person:

A. To interfere in any way with the employees of the City in the discharge of any of their duties, either in the tapping of any sewer pipe, main or lateral belonging to the City or in the laying or connecting of such pipe, main or lateral.
B. To dig up or cause to be dug up any street or alley in the City for the purpose of connection with the sewer system of the City without first obtaining a permit from the City.
C. Who, having a permit, to dig up any portion of any street or alley of the City for the purpose of connecting with the sewer system of the City to fail or neglect to place the street or alley in its original condition under the superv

### 13.4.4 Unsanitary Disposal of Excrement Prohibited

A. It is unlawful for any person to deposit or permit to be deposited in an unsanitary manner upon public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement or other objectionable waste.
B. It is unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this chapter.

### 13.4.5 Private Sewage Systems

A. Compliance with Article. Except as provided in this article, it is unlawful to construct or maintain within the City any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
B. When Permitted; Sanitation. Where a public sanitary sewer is not adjacent to the premises, the building sewer shall be connected to a private sewage disposal system, which complies with the regulations of the State Department of Health Services. Such private sewage disposal system shall be constructed, maintained and operated at all times in a sanitary manner. Where circumstances of grade, terrain or similar condition prevent the ordinary hook-up to a public sanitary sewer adjacent to the premises, the Public Works Director and the Mayor may, in writing, waive the requirement to connect. In this event, all regulations regarding connection to a private sewage disposal system shall apply. (O-88-04)
C. Discontinuance. Within one year after a public sewer becomes available to a property served by a private sewage disposal system, a direct connection shall be made to the public sewer in accordance with the provisions of this chapter, and any septic tanks, cesspools and similar private sewage facilities shall be abandoned and filled with suitable material. The City shall notify all owners when service is available, and the one year time limit specified in this subsection shall run from the date of said notice.

### 13.4.6 Tampering with Equipment Prohibited

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage system.

### 13.4.7 Permit Required

A. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.
B. Upon issuance of a required permit to any person, each and every permit issued shall be presented by the person to the City and application made for the building connection.

### 13.4.8 Building Connections

A. No building sewer will be connected to the building connection until it has been inspected and approved by the City.
B. The City Clerk shall keep a record of all building connections made, the purpose for which they are to be used, together with the name of the owner of the property, his agent or representative.

## ARTICLE 13.5 USE OF PUBLIC SEWERS

### 3.5.1 Prohibited Substances

A. No person shall discharge or cause to be discharged any storm water, swimming pool water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters into any sanitary sewer.

B. Except as provided in this chapter no person shall discharge or cause to be discharged any of the following described waters or wastes into any public sewer:
   1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit.
   2. Any water or waste which may contain more than fifty parts per million by weight of fat, oil or grease.
   3. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
   4. Any garbage that has not been properly shredded.
   5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, grits such as brick, cement, onyx, carbide or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer works.
   6. Any waters or wastes having a Ph lower than five and one half or higher than nine or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
   7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewage treatment plant.
   8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
   9. Any noxious or malodorous gas or substance capable of creating a public nuisance.

### 13.5.2 Grease Interceptors Required (O-09-01)

A. Each user of the City's sanitary sewer system other than typical single family residential users and those other users expressly exempted below, shall install and properly maintain a grease interceptor, or interceptors, as specified in the Uniform Plumbing Code, 2006 edition, in connection with any new construction or remodeling of any kitchen facility that is intended, in whole or in part, for the preparation of food in any manner and that will result in the delivery of fats, oils or grease (FOG), either directly or indirectly, into the City's sanitary sewer system.

B. Those food preparation establishments which can demonstrate that a hydro mechanical grease interceptor (grease trap) will satisfactorily reduce the amount of fats, oils and grease to be discharged into the City's sewer system, due to the limited amounts of these materials that will be produced on site, may be permitted to install a hydro mechanical grease interceptor, as specified in the Uniform Plumbing Code, 2006 edition. These types of food preparation establishments will typically include delicatessens, sandwich shops, coffee shops, ice cream parlors and other similar types of facilities which do not fry, broil or grill the food that is produced on the premises.

C. All other food preparation establishments will be required to install a gravity grease interceptor, as specified in the Uniform Plumbing Code, 2006 edition, in connection with any new construction or remodeling of the food preparation facilities. These establishments will typically include restaurants, cafeterias, fast food outlets, and cafes. Schools, fraternal organizations, churches, hospitals, community centers, care facilities, and places of public assembly which include kitchens for the production of food will

also be required to install appropriate grease interceptors in connection with any new construction or remodeling of the kitchen or food preparation facilities associated with those operations.

D. Existing food preparation establishments are not required to install grease interceptors unless or until any remodeling or reconstruction is initiated in the kitchen area. All existing food preparation establishments shall adopt "best management practices" for their operating procedures that will limit, to the greatest extent possible, the discharge of fats, oils and grease into the City's sanitary sewer system. In the event that these operating procedures do not adequately limit the amount of fats, oils and grease that are discharged into the City's system, the City may adopt an ordinance requiring all food preparation establishments to install appropriate grease interceptors.

E. If any existing food preparation facility that is required to install a grease interceptor lacks the physical space for the type of device required by these regulations, the owner or operator of the property may request a variance, to be approved by the Public Works Director and the City Manager, to allow for the installation of an alternative form of grease interceptor. Any such alternative device or devices shall meet as closely as possible all of the applicable standards of the Uniform Plumbing Code, 2006 edition.

F. The following types of uses are exempt from the requirements for installing any type of grease interceptors:
   1. All single family residential occupancies except for those that are used as a home occupation involving the preparation of food.
   2. All other residential occupancies which do not include a common kitchen facility for the residents.
   3. Businesses or institutions that serve or provide only pre-cooked foodstuffs or uncooked foodstuffs or which only reheat any such foodstuffs on the premises.

   An exempt business or institution which obtains a building permit on or after March 1, 2009, for any construction or re-modeling in its kitchen and which subsequently alters its menu to include non-exempt foodstuffs shall be required to install an appropriate grease interceptor if the menu subsequently includes the preparation of non-exempt foodstuffs at that location.

G. When a grease interceptor is required by this Article, the proposed make, model and design and installation specifications shall be fully described in the accompanying building permit application. The Building Inspector will obtain the review and approval of the Public Works Director, or his or her designee, for any such interceptor prior to issuing a permit. The Building Inspector shall require that all such interceptors are installed in a manner that is consistent with the requirements of Chapter 10 of the 2006 Uniform Plumbing Code, as incorporated herein by reference, and the requirements of this Article as a condition for the building permit.

H. Each grease interceptor shall be maintained in the manner required for the proper elimination of fats, oils and grease. This maintenance shall be the responsibility of the property owner or operator. All of the contents that are removed from the interceptor must be properly disposed of off-site, in a manner that is fully in accordance with all City, County, State and Federal laws and regulations.

I. All interceptors shall be installed and connected in a manner that will make them easily accessible for purposes of inspection, cleaning and the removal of the collected fats, oils and grease. The Public Works Director and his or her designees are authorized to inspect the operations of all grease interceptors located within the City of Bisbee and to provide the property owner and operator with written notice of any failure to comply with any of these requirements. Any continuing failure to properly maintain, install or monitor a required grease interceptor is a violation of the City Code.

J. Each facility that includes a grease interceptor of any type shall maintain on site a logbook in which an accurate written record of all interceptor maintenance and cleaning is recorded. This logbook shall include the date, time and description of all maintenance or repair work to each interceptor; the date and time of all

cleaning or removal of fats, oils or grease from this equipment or the associated sewer lines; the name and address of the person who removed any such materials from the interceptor; and the name, address and phone number of the person who accepted custody of any such materials for disposal. This logbook shall be made available to City inspectors upon request, who may review it in connection with any on-site inspection.

**13.5.3 Authority for Review and Approval of Certain Discharges**

The admission into the public sewers of any waters or wastes having any of the following characteristics shall be subject to the review and approval of the City:

A. A five day biochemical oxygen demand (B.O.D.) greater than three hundred parts per million by weight.
B. Containing more than three hundred fifty parts per million by weight of suspended solids.
C. Containing any quantity of substance having the characteristics described in Section 13-5-1.
D. Having an average daily flow of greater than two percent of the average daily sewage flow of the City.

**13.5.4 Preliminary Treatment**

A. Required. Where necessary in the opinion of the City, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:
    1. Reduce the B.O.D. to three hundred parts per million and the suspended solids to three hundred fifty parts per million by weight.
    2. Reduce objectionable characteristics or constituents to within the maximum limits provided for in Section 13-5-3.
    3. Control the quantities and rates of discharge of such waters or wastes.
B. Approval. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval of the City and the Arizona State Department of Health Services. No construction of such facilities shall be commenced until such approvals are obtained in writing.
C. Maintenance of Facilities. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

**13.5.5 Manholes**

A. When required by the City, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation and sampling of wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.
B. All tests and analyses of the characteristics of waters and wastes, to which reference is made in this chapter shall be determined in accordance with "standard methods for the examination of water and sewage" and shall be determined at the control manhole provided for in this section or upon suitable samples taken at such control manhole.

**13.5.6 Special Agreements with Industrial Concerns**

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

**ARTICLE 13.6 REGULATIONS PART OF CONTRACT**

All regulations contained in this chapter shall be considered a part of the contract of every resident of the City taking sewer service from the City, and such resident taking sewer service shall be considered as having expressly consented to be bound thereby. Consumers outside the City limits shall, upon application for sewer service, be required to sign a statement agreeing to the regulations set forth in this chapter.

**ARTICLE 13.7 ACCEPTANCE OF SANITATION EASEMENTS (O-12-07)**

The Public Works Director, on behalf of the City of Bisbee, is authorized to accept and to record easements, rights-of-way, deeds or other conveyances of title, or any interest therein, that are granted to the City of Bisbee without any requirement for payment or exchange from the City of Bisbee and that may be necessary to document, perfect, or establish the right to maintain, repair, relocate or construct a sanitary sewer line or main within the City's present service area, within the corporate limits of the City of Bisbee. The Ordinance by which this Article has been adopted shall be deemed to be approval of the acceptance and approval of all such grants, in accordance with the requirements of the Charter of the City of Bisbee.

**ARTICLE 13.8 ACCEPTANCE OF SANITATION EASEMENTS (O-17-08)**

For a limited period of time and for one time only, the City will forgive all penalties and interest, and 50% of the remaining delinquent amount owed on garbage and sewer accounts upon the Account Holder's written agreement to pay the remaining balance due, as calculated by the City, within a six month period. To take advantage of this option, the Account Holder must enter into an agreement with the City between the following dates: August 31, 2017 through September 7, 2017. This will be the only opportunity to enter into an agreement with the City to take advantage of the forgiveness option. The Account Holder shall agree to enter into an agreement with the City in which the monthly payments for the remaining balance due are paid via direct debit from a bank account. Should the bank account contain insufficient funds when the City attempts to process a payment, the City will charge the account holder a $15.00 non-sufficient funds fee.

During the six month period in which the Account Holder is making payments, the City will waive the monthly penalty and interest accrual. Upon timely and full payment of the remaining balance due, any liens on the Account Holder's property shall be released by the City. The City will also remove the Account Holder from the Arizona debt setoff program upon timely and full payment of the remaining balance due. Should the Account Holder fail to pay the remaining balance due within the six month period, all penalties and interest shall be reinstated in full and a lien will be placed on the property for the full amount owed, if applicable. Likewise, the Account Holder may be referred to the Arizona debt setoff program and to a collection agency, at the City's option. For each property in which an Account Holder takes advantage of this option, as described above, the City shall install a sewer shut-off valve at the serviced property if one does not already exist.

An Account Holder that elects to take advantage of this forgiveness option, may elect to immediately pay off the balance owed, as calculated by the City, via money order or cashier's check, and bypass the six-month repayment plan described above.

# CHAPTER 14 BISBEE AVIATION CODE
(O-11-18)

## ARTICLE 14.1 GENERALLY
(O-00-11, repealing O-78-70)

### 14.1.1 Definitions.

The following words and phrases, whenever used in this chapter or documents promulgated hereunder, shall be construed as defined in this section unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly ascribed to the use of such words or phrases.

A. Airport means all of the city-owned and leased real and personal property comprising the Bisbee Airport as it now exists or as it may hereafter be expanded and developed. "Airport" includes all of the existing facilities and improvements as shown on the most current airport master plan.
B. Airport Advisory Commission means the Airport Advisory Commission, as appointed by the Mayor, with the consent of the Council.
C. Airport Manager_means the Director of Public Works or his designee, unless the City Council has specifically authorized another person to perform the functions in question.
D. Based means an aircraft:
    1. Which the owner physically locates at the airport or airpark with no present intention of definite and early removal and with the purpose to remain for an undetermined period;
    2. Which, whenever absent from the airport or airpark, its owner intends to return to the airport or airpark for permanent hangaring and whose presence in the airport or airpark is something other than merely transitory in nature.
E. Commercial activity means the conduct of any aspect of a business, concession or service in order to provide goods or services to any person for compensation. An activity may be_considered commercial activity regardless of whether the business entity is nonprofit, charitable, or tax-exempt.
F. Permission or permit means permission granted by the City, either by action of the City Council or through its designated representative.
G. Person means the State, County, a political subdivision of the State, other governmental entity, a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual. Person includes a trustee, receiver, assignee or similar representative.

### 14.1.2 General Conditions of Use

All uses of the Bisbee Airport, and any facilities included thereon, shall be subject to the conditions and restrictions imposed by this Chapter and all other applicable rules, regulations, standards and restrictions of the City of Bisbee, the State of Arizona, the County of Cochise and the federal agencies with jurisdiction over such matters.

### 14.1.3 Consent of City

Unless expressly provided otherwise, any consent or other permission of the City under this chapter must be obtained in advance in writing, following the approval of the City Council or Public Works Director, as more particularly specified in this Chapter.

### 14.1.4 Notices and applications

Unless expressly provided otherwise, any notice or application to the City must be given in writing to the Public Works Director or his designee.

**14.1.5 Appendices.**

The following publications, on file with the City Clerk, are hereby incorporated by reference as set out at length in this Chapter:

A. Airport Rules and Regulations and any amendments thereto as approved by the City Council.
B. Airport Minimum Operating Standards and any amendments thereto as approved by the City Council.
C. Airport Rates and Fees Schedule and any amendments thereto as approved by the City Council.

**14.1.6 Airport Advisory Commission**

There is created a Bisbee Airport Advisory Commission consisting of seven (7) members and with the Public Works Director, or his designee, serving as liaison to the City. Commission members shall be appointed by the Mayor with the consent of the City Council and shall each serve a four-year term.

A. The Airport Advisory Commission shall establish bylaws to govern its affairs. The bylaws shall designate:
    A. The Officers of the Commission, the time and manner of their election, the term of office and the powers and duty of each officer.
    B. The time, place and manner of notice of all regular and special meetings, in a manner that is consistent with applicable law.
    C. The manner of adoption, amendment and repeal of Airport Advisory Commission bylaws.
    D. Such other provisions as may be deemed necessary or desirable, from time to time, which are not contrary to the provisions of any ordinance or resolution, the charter or the laws of the state or the United States, to aid the Airport Advisory Commission in conducting its affairs.
B. The Airport Advisory Commission through the liaison shall, with the assistance of the City staff, advise the City Council as necessary on:
    1. The maintenance and operation of the airport and environs.
    2. Rules, regulations, and minimum operating standards under this chapter.
    3. The effects of airport operations and projects on the environment.
    4. Proposals for development at the airport.
    5. Fees imposed or proposed by the City in connection with the airport.
    6. Leases of City property at the airport.
    7. Land use policies at and surrounding the airport.
    8. The future role of the airport as part of the statewide air transportation system.
    9. Safety matters under the jurisdiction of the airport.
    10. Such other matters as the City Council may direct.
C. The Airport Advisory Commission shall report to the City Council as necessary, but not less than once a year, on activities of the airport.
D. The Airport Advisory Commission shall perform such other duties as are imposed on the Airport Advisory Commission by this chapter.
E. The City Council shall have the right and prerogative to initiate review of any decision of the Airport Advisory Commission and may uphold, modify, or overrule said decision.

**14.1.7 Effect of federal government agreements and regulations**

All lease agreements, licenses, permits and other contractual arrangements for the use of the airport or any facilities at the airport shall be subject to any existing or future requirements or obligations imposed by the United States, or any agencies thereof, upon the operation and maintenance of the airport.

**14.1.8 Conformance with federal, state and other rules, regulations and agreements**

A. No person shall navigate, land aircraft upon, or conduct any aircraft or other operations on or from the airport, nor shall any person engage in any other aviation activity at the airport or elsewhere within the City in a manner that violates any of the requirements of the Federal Aviation Administration and all other applicable federal, state, city laws, statutes, ordinances, rules, regulations and minimum operating standards.

B. Any use of the airport by any person constitutes that person's agreement to conform in all respects to the requirements of any grant agreements by the City with the State of Arizona, the United States, and any other governmental entity.

**14.1.9 Forms.**

The Public Works Director shall have authority to develop forms to be used for applications, permits, reports and other documents required under this chapter and to reject any documents not conforming to these forms.

**14.1.10 Payment of Fees and Charges.**
**(O-07-09)**

No person shall conduct any activity or use property for which a fee or charge is imposed under this chapter without first reporting the use or activity to the City, through the Public Works Director or his designee, and paying the appropriate fee to the City, as identified in the minimum operating standards and/or airport~~/~~rates and fees schedule.

Bisbee Municipal Airport
Rates and Fees Schedule

| | |
|---|---|
| Airport Access Fees | |
| Single Engine… | $ 8.00/ month |
| Twin Engine | $ 12.00/ month |
| Turbine/Jet Aircraft… | $ 15.00/ month |
| City Hangar…Small | $120.00/ month |
| Large | $300.00/ month |
| City Shade | $ 45.00/ month |
| Tie Down Fees | |
| Single Engine Aircraft | $ 15.00/ month |
| Twin Engine Aircraft | $ 20.00/ month |
| Turbine/Jet Aircraft | $ 50.00/ month |
| Single Rotor Helicopter <12,500 pounds | $ 15.00/ month |
| Single Rotor Helicopter >12,500 pounds | $ 20.00/ month |
| Twin Rotor Helicopter | $ 50.00/ month |
| Transient Parking Fees | |
| Single Engine | $ 6.00/ night |
| Twin Engine | $ 8.00/ night |
| Turbine/Jet Aircraft | $ 10.00/ night |
| Single Rotor Helicopter < 12,500 pounds | $ 6.00/ night |
| Single Rotor Helicopter > 12,500 pounds | $ 8.00/ night |
| Twin Rotor Helicopter | $ 10.00/ night |

No transient parking fee shall be charged for the first night of parking if the aircraft is fueled at the Bisbee Municipal Airport.

All fees shall be paid in advance. A late fee of $3.50 or 10% of the amount due, whichever is greater, will be added to any fee that has not been paid in full by the seventh (7th) day after any such fee is due. The use rights associated with these fees shall be in the nature of a license, subject to termination and amendment by the City, and shall not constitute a lease of any interest in real property unless the agreement is specifically designated as a "lease."

**14.1.11 Airport-Related Fee Administration and Collection**

The administration and collection of airport-related fees is vested in the Finance Department.

**14.1.12 Use of City-Owned Airport Property.**

The Public Works Director shall have the authority to issue a license, permit or other such use agreement for the use of any City-owned airport property, subject to the established Rates and Fees Schedule, for terms not to exceed one year in length. All such licenses, permits and use agreements shall be issued on forms previously approved by the City Manager and the City Attorney.

All leases and other permits or authorizations for the use of the airport or any portion thereof shall be subject to the specific approval of the City Council, following the review and recommendation of the Airport Advisory Commission.

**14.1.13 Runway Weight-Bearing Capacity**

No aircraft with a certificated maximum take-off weight in excess of thirty thousand (30,000) pounds shall be permitted to operate from the airport except in an emergency or pursuant to City consent specifying a particular aircraft operation on a particular date.

**14.1.14 Permit not transferable.**

No lease, license, permit or agreement shall be assigned, transferred or in any other manner set over to another person without the prior written consent of the City.

## CHAPTER 15 PLANNING AND ZONING

### ARTICLE 15.1 ZONING ORDINANCE

That certain document entitled Zoning Ordinance of Bisbee, Arizona, adopted by Ordinance 0-72-2 as amended and re-adopted by 0-84-138 and all amendments thereto, which has been declared as a public record by Resolution R-84-235 is hereby made a part of this code the same as though said zoning ordinance was specifically set forth in full herein. At least three copies of said zoning ordinance shall be kept on file in the office of the City Clerk.

### ARTICLE 15.2 FEES

**(O-06-05; O-09-05)**

All fees contained in the zoning ordinance or amendments thereto shall from time to time be amended or set by resolution of the Council.

The following fees are applicable to those actions authorized by the Zoning Code or to those matters to be considered by the Planning and Zoning Commission, the Board of Adjustment or the Design Review Board.

A. Applications/ Permits (includes mailing and publication cost)

| | |
|---|---|
| Site Plan Review Application | $500.00 plus professional fees |
| Special Use Permit | $300.00 |
| Abandonment/Purchase Application | $300.00 |
| Rezoning Application | $350.00 |
| Board of Adjustment Variance or Appeal | $ 75.00 |
| Annexation | $600.00 |
| Design Review Board Application | $ 25.00 |
| Design Review Board Application w/300 foot notice | $100.00 (total fee) |
| Proposed Amendment to the Zoning Code | $300.00 |

B. Sign Permit Fees (sign size in square feet)

| | |
|---|---|
| 0-50 | $ 34.50 |
| 51-75 | $ 46.00 |
| 76-100 | $ 57.50 |
| 101-150 | $ 74.75 |
| 151-200 | $ 92.00 |
| Over 200 | $126.50 |

## CHAPTER 16 QUEEN MINE, CITY AND LAVENDER PIT TOURS

### ARTICLE 16.1 GENERAL PROVISIONS

#### 16.1.1 Responsibility

A. The Mayor and City Council shall maintain the Queen Mine Tour, City Tour and Lavender Pit Tour for the use of the general public.

B. The Mayor and City Council shall, from time to time, adopt ordinances setting forth the regulations and fees to be charged for use of the Queen Mine Tour, the City Tour and the Lavender Pit Tour.

### ARTICLE 16.2 REGULATIONS AND FEES

**(O-05-23; O-02-18; O-97-21; O-92-30; O-92-05; O-91-09; O-90-21)**

#### 16.2.1 Admission Fees

A. Individuals

1. Queen Mine Underground Tour
   - a. Adults (16 years of age and over) $12.00
   - b. Youth (4 years to15 years of age) $ 5.00
   - c. Joint Enhanced Adult Ticket with Bisbee Mining & Historical Museum $16.00
2. Surface Tour
   All persons (under three years of age free) $10.00

B. Group Tours

Group rates shall be established for groups of ten (10) or more people making reservations at least seven (7) calendar days in advance as follows:

1. Queen Mine Underground Tour
   - a. Adults (16 years of age and over) $10.00
   - b. Youth (4 years to15 years of age) $ 5.00

c. School Group Tours (20 or more youth from schools) $ 4.00
d. Joint Enhanced Adult Ticket with Bisbee Mining & Historical Museum $13.00

2. Surface Tour
All persons (under three years of age free) $ 8.00

C. City Residents
All Bisbee City residents, accompanied by three (3) or more paying guests shall be admitted free to the underground mine tour.

D. City Employee Rates
City employees shall be charged 50% of the regular rates.

E. Other Rates
The City Manager may, under special circumstances, set group rates. These rates may be based on additional service to the group or other special conditions. The Queen Mine Manager, with the City Manager's approval, will set the rental rates for the window cases.

**16.2.2 Deposits; Cancellation**

Tour groups must comply with the following stipulations:

A. A deposit in the amount of twenty-five (25%) percent of the total computed tour price must be received a minimum of two weeks before scheduled tour.
B. One-half of the deposit will be refunded if tour notifies of cancellation at least one week in advance of tour.
C. The entire deposit will be non-refundable if no notice of cancellation is made or made less than one week before the scheduled tour.

## CHAPTER 17 CIVIL UNIONS

### ARTICLE 17.1 PURPOSE

The City of Bisbee supports the right of every person to enter into a lasting and meaningful personal relationship with the partner of his or her choice, regardless of the gender or sexual orientation of the parties to that relationship. The City of Bisbee exercises its inherent powers of self-government, as established under its City Charter, to attempt to lessen the impact of discriminatory practices upon all persons within the City of Bisbee, specifically including lesbian, gay, bisexual and transgender ("LGBT") persons. For that purpose, the City of Bisbee seeks to respect, support, and facilitate the rights of all persons to enter into contractual relationships and to designate agents, to the full extent permitted by the law, to manage their property, to make important life decisions, and otherwise to provide and care for loved ones within a meaningful and lasting personal relationship.

### ARTICLE 17.2 DEFINITIONS

In this Chapter, unless the context otherwise requires:

A. "City of Bisbee Certificate of Civil Union" means a document that certifies that the persons named on the certificate have registered a contractual relationship in the City of Bisbee, Arizona pursuant to this Chapter.
B. "Civil Union" is a contractual relationship established by two eligible persons and which has been registered pursuant to this Chapter.
C. "Party to a Civil Union" means a person who has registered a Civil Union with the City of Bisbee.

## ARTICLE 17.3 REQUIREMENTS FOR A VALID CIVIL UNION; FILING FEE

A. Two persons who meet all of the following requirements may enter into a Civil Union:

1. Are at least eighteen years of age.
2. Are not related by blood in a way that would disqualify them from marriage pursuant to A.R.S.§25-101.A.
3. Are not presently married pursuant to Arizona law.
4. Are competent to enter into a contract.
5. Are not party to any existing civil union, domestic partnership, marriage, or other legally-recognized domestic relationship with any third party.

B. A Civil Union is established by the following process:

1. Two eligible individuals seeking to register a Civil Union must complete and file a notarized affidavit, in a form to be prescribed by the City Clerk, declaring their intention to register a Civil Union. This form shall include the name, age, and address of each applicant; a statement that both parties are eligible to register this Civil Union; and a statement that it is the intent of each party to register this Civil Union.
2. With this affidavit declaring their intentions, the parties may also submit a statement of some or all of the contractual rights, obligations, and expectations they have agreed will govern their relationship. Such a statement shall not be required to register a Civil Union.
3. The City Clerk shall file the affidavit and any accompanying statement of contractual terms in the records of the City and shall issue a Civil Union Certificate, upon the payment of the required fee.
4. The fee for the registration of a Civil Union and the issuance of a Certificate is Seventy-five Dollars ($75.00).

## ARTICLE 17.4 RESPONSIBILITIES AND BENEFITS OF PARTIES TO A CIVIL UNION

A. Each party to a Civil Union shall have such rights, responsibilities, and obligations as provided in their contractual agreement or agreements, whether or not such terms are set forth in the affidavit filed pursuant to Article 17.3.

1. The City Clerk may provide the applicants with a form which will allow the applicants the option of designating and documenting certain rights and obligations that have been agreed to by the parties. Such form may also provide each applicant the option to make certain legal designations permitted by applicable law, which may include, but are not limited to the following:

    a. The designation of a party to serve as the health care representative of the other party.

b. The nomination of a party to be given preference for appointment as guardian or conservator of the other party.
c. The designation of a party to make any decisions concerning anatomical gifts, to provide for the disposition of the remains of the other party, and to make decisions concerning any funeral arrangements, upon the death of the other party.
d. The designation of the other party as a domestic partner and support person for purposes of hospital visitation.

2. The parties may also include such other agreements in their specific agreement as they may determine to be appropriate for their particular circumstances. These may include, but are not limited to agreements addressing the following matters:

a. Agreements between the parties regarding the management and ownership of their respective real and personal property.
b. Agreements between the parties regarding the obligations that either or both may have agreed to assume regarding the existing children or other family members of one or both of the parties.
c. Agreements between the parties regarding the obligations that either or both may have agreed to assume regarding prospective children of one or both of the parties
d. Agreements between the parties regarding the disposition of their property upon the death of either party.
e. A means for resolving any disputes that may arise should the relationship dissolve, through alternative dispute resolution procedures or otherwise.
f. Any other rights or obligations that may be legally exchanged by and between the parties.

Certain of these agreements may require additional documentation and other formalities in execution in order to effectuate this intent, pursuant to the laws of the State of Arizona. The City of Bisbee makes no warranty or guarantee regarding the legality or enforceability of any agreements or nominations of the parties.

B. The following rights of two people who have entered into a Civil Union will be recognized by the City of Bisbee:

1. The right of any party to a Civil Union who is an employee of the City of Bisbee to designate his or her Civil Union partner as a beneficiary of any of the benefits provided by the City of Bisbee to spouses of employees of the City, to the extent that the City is able to do so.

2. The right of parties to a Civil Union to be treated as family members for all purposes by the City of Bisbee, including for admission fees, cemetery operations, use of City facilities, all events sponsored by the City, and all other circumstances for which the City offers preferential terms or conditions to recognized family members.

## ARTICLE 17.5 MODIFICATION OF TERMS; TERMINATION OF DESIGNATION

A. The Parties to a Civil Union may amend the terms of their particular agreements, designations, and nominations, in whole or in part, in the same manner as such agreements, designations, and nominations may be modified under applicable law.

B. The City Clerk of the City of Bisbee shall include in the registration records for Civil Unions any amendments or modifications that are provided to the City Clerk as set forth above.

C. One or both parties may request that the City Clerk terminate the registration of the Civil Union for those parties by submitting a signed and notarized statement to the City Clerk. Upon the receipt of such a signed and notarized request, the City Clerk will terminate the registration of such Civil Union. Any such termination of registration shall not alter any remaining contractual obligations or legal designations that have been made by the respective parties or the ability of either party to enforce any contractual rights that may continue to be enforceable under applicable law.

D. A registered Bisbee Civil Union shall not prevent the parties to that status from entering into any other type of legal status between those two parties in another jurisdiction, including a marriage where the laws of such other jurisdiction permits them to enter that status. For any two parties who are married or in a civil union or domestic partnership under the laws of another jurisdiction, a Bisbee Civil Union may provide a means of effectuating portions of that relationship under the laws applicable within the City of Bisbee to the extent set forth herein.

## ARTICLE 17.6 FORMALIZATION; RIGHT OF NONPARTICIPATION

A. This Chapter of the City Code of the City of Bisbee does not require any religious organization or judicial officer to participate in formalizing a Civil Union.

B. The persons listed in A.R.S. § 25-124 are hereby authorized to solemnize a Civil Union.

C. A document affirming that a Civil Union has been solemnized may be submitted along with the Affidavit submitted to the City Clerk pursuant to Article 17.3(B)(1).

D. A formal solemnization ceremony may be performed at the sole option of the parties, and will have no effect on the validity of the registration of the Civil Union or on the contractual obligations, nominations, and designations made by the parties to the Civil Union.

## ARTICLE 17.7 PUBLIC RECORDS

A. The Certificate of Civil Union shall be treated as a public record pursuant to the laws of the State of Arizona and shall be subject to disclosure upon request.

B. The statement of contractual rights may contain private, privileged, or confidential information that is protected from disclosure under the laws of the State of Arizona. The parties to each Civil Union will have the opportunity to designate which, if any, of the components of this statement they intend to be subject to public disclosure. In the event that a third party may request information from this statement that has not been designated for disclosure, the parties to that Civil Union shall be advised of this request and offered the opportunity to assert their position regarding the disclosure of that information.