

Chapter 1

GENERAL PROVISIONS

Sec. 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 Tempe, Arizona" and may be so cited. Such code may also be cited as "Tempe City Code".

(Code 1967, § 1-1)

Charter reference—Codification of ordinances, § 2.15.

State law reference—Adoption of codes by reference, A.R.S., 9-801—9-804.

Sec. 1-2. Definitions and rules of construction.

In the construction of this code and of all ordinances of the city, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context clearly requires otherwise:

City. The words "the city" or "this city" shall be construed as if followed by the words "of Tempe".

Code. The words "the Code" or "this Code" shall mean "The Code of the City of Tempe, Arizona".

Computation of time. Except as otherwise provided, the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded. In cases in which notice of a decision by the city must be given to a petitioner and in which the petitioner must file a notice of appeal of such decision within a time certain of less than ten (10) days, such time shall be computed starting with the day after the day during which the notice of decision is received by the petitioner by personal service or registered or certified mail.

State law reference—Similar provisions, A.R.S. § 1-243.

Council or city council. Whenever the words "council" or "city council" are used, they shall be construed to mean the city council of the City of Tempe, Arizona.

County. The words "the county" or "this county" shall mean the County of Maricopa in the State of Arizona.

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

Daytime is the period of time between sunrise and sunset.

State law reference—Similar provisions, A.R.S., § 1-215(6).

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.

Gender. The masculine gender includes the feminine and neuter.

State law reference—Similar provisions, A.R.S., § 1-214.

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.

State law references—Extraterritorial jurisdiction, A.R.S. §§ 9-240(B)(21), 9-276(A)(18), 9-402; application of municipal ordinance to municipally owned, leased, etc., property, A.R.S. § 9-401.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

State law reference—Similar provisions, A.R.S., § 1-216.

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

State law reference—Similar provisions, A.R.S., § 1-215(19).

Nighttime is the period between sunset and sunrise.

State law reference—Similar provisions, A.R.S. § 1-215(21).

Number. The singular number includes the plural, and the plural the singular.

State law reference—Similar provisions, A.R.S., § 1-214.

Oath. "Oath" includes affirmation or declaration.

State law reference—Similar provisions, A.R.S., § 1-215(22).

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

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

Person. "Person" includes any person, firm, association, organization, partnership, business trust, corporation or company.

State law reference—Similar provisions, A.R.S., § 1-215(24).

Personal property includes money, goods, chattels, dogs, things in action and evidences of debt.

State law reference—Similar provisions, A.R.S., § 1-215(25).

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

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

State law reference—Similar provisions, A.R.S., § 1-215(27).

Real property shall include lands, tenements and hereditaments.

State law reference—Similar provisions, A.R.S., § 1-215(28).

Shall, may. "Shall" is mandatory and "may" is permissive.

Signature or subscription by mark. "Signature" or "subscription" includes a mark when the signer or subscriber 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.

State law reference—Similar provisions, A.R.S., § 1-215(31).

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

Technical and nontechnical words. 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.

State law reference—Similar provisions, A.R.S., § 1-213.

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

State law reference—Similar provisions, A.R.S., § 1-214.

Week. A "week" consists of seven (7) consecutive days.

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.

Year. The word "year" shall mean a calendar year, except where otherwise provided.
(Code 1967, § 1-2)

Sec. 1-3. Ordinances not affected by code.

Nothing in this code or the ordinance adopting this code shall affect any ordinance:

- (1) Promising or guaranteeing the payment of money for the city or authorizing the issue of any bonds of the city or any evidence of the city's indebtedness or any contract or obligation assumed by the city;

- (2) Providing for the annual tax levy;
- (3) Granting a franchise;
- (4) Relating to the salaries of the city officers or employees;
- (5) Annexing territory to the city;
- (6) Naming, renaming, opening, accepting or vacating streets or alleys in the city;
- (7) Relating to zoning;
- (8) Relating to subdivision control;
- (9) Adopted for purposes which have been consummated;
- (10) Which is temporary, although general in effect; or
- (11) Special, although permanent in effect, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this code.

Sec. 1-4. Provisions considered as continuations of existing ordinances.

The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the effective date of the code, shall be considered as continuations thereof and not as new enactments.

(Code 1967, § 1-3)

Sec. 1-5. Code does not affect prior offenses, rights, etc.

Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

State law reference—Effect of adoption of state statutes on prior offenses and punishments, A.R.S. § 1-105.

Sec. 1-6. Catchlines of sections; history notes, etc.; references to code.

(a) The catchlines of the several sections of this code printed in boldface type are intended as mere catch words to indicate the contents of the section and shall not be deemed or taken to be titles of such section, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the convenience of the user of this code and have no legal effect.

(c) All references to chapters, articles or sections are to the chapters, articles and sections of this code unless otherwise specified.
(Code 1967, § 1-4)

State law reference—Similar provisions, A.R.S. § 1-212.

Sec. 1-7. General penalty; civil penalties; fees and collection; continuing violations.

(a) Whenever in this code, or in any ordinance of the city or in any order, rule or regulation issued or promulgated pursuant thereto, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this code or other ordinance of the city or such order, rule or regulation shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) plus applicable surcharges, or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

(b) Any person violating any of the provisions of this code which are designated as subject to civil sanction or penalty shall be punished by imposition of a civil sanction not to exceed five hundred dollars (\$500), unless another penalty is specified.

(c) If the court refers any delinquent fines, fees, sanctions, penalties or restitution for collection, any collection or attorney costs are recoverable from the defendant and may be added to any balance due from the defendant to the court.

(d) In the discretion of the sentencing judge or magistrate, persons convicted of any violation of this code, or any ordinance of the city or any order, rule or regulation promulgated pursuant thereto, may be sentenced to a term of probation not exceeding three (3) years subject to such terms and conditions, including but not limited to the imposition of a fine or incarceration, or both such fine and incarceration, as the judge or magistrate deems appropriate and in the best interests of justice.

(e) Every day a violation of this code or any ordinance of the city or such order, rule or regulation shall continue shall constitute a separate offense.
(Code 1967, § 1-7; Ord. No. 508.2, 4-12-84; Ord. No. 808.90-01, 2-8-90; Ord. No. 95.11, 4-13-95; Ord. No. 2002.35, 8-8-02)

Sec. 1-8. Commencement of civil action, citation, contents.

(a) Unless otherwise specified, all civil actions for violations of this code which are designated as subject to civil sanction or penalty shall be commenced by delivering a citation to the person responsible for the violation.

(b) The citation shall direct the defendant to appear in Tempe Municipal Court or pay the fine imposed within fourteen (14) days after issuance of the citation. The form shall contain a schedule of fines and penalties.

(c) The citation shall be served by delivering a copy to the defendant by any of the following means:

- (1) By service upon the defendant;
- (2) By first class mail, postage prepaid, addressed to the defendant at the last known address. Service by mail is deemed complete upon deposit in the U.S. mail;
- (3) By posting the citation on the property where the violation has occurred; or
- (4) By any of the methods described in rules 4, 4.1 or 4.2, Arizona Rules of Civil Procedure.

(d) The citation shall contain the date and location of the violation, reference to the Tempe City Code provision or ordinance violated, and notice that within fourteen (14) days from the date on which the citation was issued the fine for the violation must be paid to and received by the Tempe Municipal Court or a request for a hearing be made to and received by the Tempe Municipal Court.

(e) The citation shall state that if the defendant fails to appear within the time specified, and either pay the fine for the violation or request a hearing, judgment by default will be entered in the amount of the fine designated on the citation for the violation charged plus a penalty amount as may be established by this code for the defendant's failure to appear.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-9. Appearance; payment by mail.

(a) The defendant shall, within fourteen (14) days of the issuance of the citation, appear in person or through his attorney in the Tempe Municipal Court, and shall either admit or deny the allegations contained in the citation, or defendant may proceed as provided in paragraph (b) below. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a date for a hearing of the matter.

(b) The defendant may admit the allegation in the citation and pay the fine indicated by mailing the citation together with a check or money order made payable to the Tempe Municipal Court. If admitting the allegation, the defendant may also pay the fine by credit card as prescribed by the court. If payment is not received by the court date provided on the citation, a default judgment will be entered.

(c) Any defendant who appears in the Tempe Municipal Court and denies the allegations as provided in subsection (a) above shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-10. Default judgment; collection of judgments.

(a) In addition to any civil sanction imposed, the city court shall assess a default fee of not less than fifty dollars (\$50), unless another amount is specified in the Code, for:

- (1) Each default judgment entered upon a failure of the defendant to appear for any civil violation, or for any civil traffic violation, unless such default judgment is set aside under Rule 28 of the Rules of Procedure in Civil Traffic Violation Cases; or
- (2) A failure to pay any civil sanction imposed by the court.

(b) A judge or hearing officer may waive all or part of the default fee if the payment of the fee would cause a financial hardship to the defendant.

(c) No judgment may be entered against a fictitiously identified defendant, unless the citation is amended to reflect the true identity of the defendant who received the citation.

(d) The court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. Any judgment for civil sanction pursuant to this article may be collected as any other civil judgment.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-11. Rules of procedure and appeal.

The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Tempe Municipal Court for civil citations issued pursuant to the Tempe City Code except as modified or where inconsistent with the provisions of the Tempe City Code or as modified or established for use by the Tempe Municipal Court or the Arizona Supreme Court.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-12. Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. 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.

(Code 1967, § 1-5; Ord. No. 2002.35, 8-8-02)

State law reference—Similar provisions, A.R.S. § 1-252.

Sec. 1-13. Severability of parts of code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

(Code 1967, § 1-6; Ord. No. 2002.35, 8-8-02)

Sec. 1-14. Supplementation of code—generally.

(a) By contract or by city personnel, supplemental to this code shall be prepared and printed whenever authorized or directed by the council. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this code, all portions of this code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this article", "this division", etc., as the case may be, or to "sections _____ to _____" inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code; and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

(Ord. No. 2002.35, 8-8-02)

Sec. 1-15. Same—exclusion of special or temporary ordinances.

Ordinances hereafter adopted which are not of a general or permanent nature shall not be prepared for insertion in this code.

(Ord. No. 2002.35, 8-8-02)