

## Chapter 12

### **DRAINAGE AND FLOOD CONTROL<sup>1</sup>**

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#### **ARTICLE I. IN GENERAL**

**Secs. 12-1—12-15. Reserved.**

#### **ARTICLE II. FLOODPLAIN MANAGEMENT<sup>2</sup>**

**Sec. 12-16. Purpose.**

(a) The flood hazard areas of Tempe are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(c) It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood-control projects;

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<sup>1</sup> **Cross references**—Buildings and building regulations, Ch. 8; Planning and development, Ch. 25.

**State law reference**—Authority to provide for floodplain regulations, A.R.S. §§ 45-2349, 45-2350.

<sup>2</sup> **Editors note**—Ord. No. 87.25, adopted Sept. 10, 1987, Ch. 12, Art. II, floodplain management, in its entirety to read as herein set out. The substantive provisions of former Art. II, §§ 12-16—12-22, were derived from Code 1967, §§ 15-1—15-7; and Ord. No. 828.3, §§ I—VI, adopted Sept. 27, 1984.

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- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (4) To minimize prolonged business interruptions;
  - (5) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, and streets and bridges, located in areas of special flood hazard;
  - (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding;
  - (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
  - (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
  - (9) To maintain eligibility for disaster relief.
- (Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-17. Methods of reducing flood losses.**

- (a) In order to accomplish its purposes, this article includes methods and provisions for:
    - (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
    - (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
    - (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;
    - (4) Controlling filling, grading, dredging and other development which may increase flood damage; and
    - (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.
  - (b) This article takes precedence over any less restrictive, conflicting local laws, ordinances and codes.
- (Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

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### Sec. 12-18. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application:

*Accessory structure* means a structure that is: (i) solely used for the parking of no more than two cars or limited storage (small, low cost sheds); and (ii) no more than four hundred (400) square feet in floor area.

*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this article.

*Area of shallow flooding* means a designated AO or AH Zone on Tempe's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Base flood or 100-year flood* means a flood having a one percent chance of being equaled or exceeded in any given year.

*Base flood elevation or BFE* means the elevation shown on the flood insurance rate map for Zones AE, AH, A1-30, VE, and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent or greater chance of being equaled or exceeded in any given year.

*Basement* means any area of the building having its floor subgrade (below ground level) on all sides.

*Development* means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*FEMA* means the Federal Emergency Management Agency.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood water; the unusual and rapid accumulation or runoff of surface waters from any source; or the collapse or subsidence of land along the shore of a body of water as a result of an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

*Flood boundary and floodway map or FBFM* means the official map on which FEMA or the Federal Insurance Administration has delineated both the areas of Special flood hazards and the floodway.

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*Flood insurance rate map (FIRM)* means the official map on which FEMA or the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to Tempe.

*Flood insurance study* means the official report provided by FEMA that includes flood profiles, the FIRM, the flood boundary and floodway maps, and the water surface elevation of the base flood.

*Floodplain or flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

*Floodplain administrator* means the city engineer of the city who is hereby authorized by the floodplain board to administer the provisions of this article.

*Floodplain board* means the city council of the city at such times as they are engaged in the enforcement of this article.

*Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood-control works and floodplain management regulations.

*Floodplain management regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such federal, state or local regulations in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

*Flood proofing* means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Flood-related erosion* means the collapse or subsidence of land along a body of water as a result of an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

*Floodway or regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than a designated height.

*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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*Historic structure* means a structure listed on the National Register of Historic Places or in a state or local inventory of historic places.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a Tempe's FIRM are referenced.

*New construction* means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by Tempe and includes any subsequent improvements to such structures.

*Person* means an individual or his agent, a firm, partnership, association or corporation or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

*Recreational vehicle* means a vehicle which is (1) built on a single chassis, (2) four hundred (400) square feet or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Regulatory flood-elevation* means an elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the director of the Arizona Department of Water Resources for all other watercourses.

*Riverine* means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*Special flood hazard area or area of special flood hazard* means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FBFM or FIRM as Zone A, AO, A1-A30, AE, A99 or AH.

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*Start of construction* includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

*Substantial improvement* means any repair, reconstruction, rehabilitation, addition or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

*Variance* means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

*Violation* means the failure of a structure or other development to be fully compliant with Tempe's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

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*Watercourse* means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which water flows at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-19. Compliance and jurisdiction of this article.**

(a) This article shall apply to all areas of special flood hazards within the corporate limits of Tempe. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(b) Within a delineated floodplain, the community development department shall not issue a building permit until receipt of notification from the floodplain administrator that all plans have been reviewed and approved for conformance with this article.

(c) Within a delineated floodplain, the community development department shall not issue a certificate of occupancy until receipt of notification from the floodplain administrator that all construction has been completed in conformance with this article.

(Ord. No. 87.25, 9-10-87; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10)

### **Sec. 12-20. Basis for establishing the areas of special flood hazard.**

The area of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for Maricopa County and Incorporated areas" dated July 19, 2001, with an accompanying flood insurance rate map and all subsequent amendments or revisions are adopted by reference and declared to be a part of this article. The flood insurance study and the flood insurance rate maps are on file at the city engineering office in the city hall complex located at 31 E. Fifth Street. The flood insurance study and the attendant mapping are the minimum area of applicability of this article and may be supplemented by studies for other areas which allow implementation of this article and which are recommended to the floodplain board by the floodplain administrator. The floodplain board, within its area of jurisdiction shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the director of water resources.

(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-21. Abrogation and greater restrictions.**

This article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-22. Interpretation.**

In the interpretation and application of this article, all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-23. Warning and disclaimer of liability.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city, any officer or employee thereof, the State of Arizona, or FEMA for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

**Sec. 12-24. Statutory exceptions.**

(a) In accordance with A.R.S. § 48-3609, nothing in this article shall:

- (1) Affect existing legal uses of property or the right to continuation of such legal use under conditions which existed on the effective date of this article;
- (2) Affect repair or alteration of property for the purposes for which such property was legally used on the effective date of this article; providing such repair or alteration does not exceed fifty percent (50%) of the value of the property prior to the repair or alteration; and provided the repair or alteration does not decrease the carrying capacity of the watercourse; or
- (3) Affect or apply to facilities constructed or installed pursuant to a certificate or environmental compatibility issued under the authority of Title 40, Chapter 2, Article 6.2 of the Arizona Revised Statutes.

(b) In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the floodplain board prohibit:

- (1) The construction of bridges, culverts, dikes and other structures necessary for the construction of public highways, roads and streets intersecting a watercourse;
- (2) The construction of structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard, or obstruct the natural channel of the watercourse, or dams for the conservation of floodwaters as permitted by Title 45, Chapter 6 of the Arizona Revised Statutes;

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- (3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse;
- (4) Any flood-control district, or other political subdivision, from exercising powers granted to it under Title 48, Chapter 21, Article 1, Arizona Revised Statutes;
- (5) The construction of streams, waterways, lakes, and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; or
- (6) The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

(c) Before any construction authorized by paragraph (b) above may begin, the responsible person must submit plans for the construction to the floodplain administrator for review and comment.

(d) These exemptions do not preclude any person from liability if that person's actions increase flood hazards to any other person or property.

(e) In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-25. Violations; declaration of public nuisance.**

(a) It is unlawful for a person to engage in any development or divert, retard or obstruct the flow of waters in any watercourse if it creates a hazard to life or property without securing the written authorization required by A.R.S. § 48-3613. Where the watercourse is a delineated floodplain it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by A.R.S. § 48-3613.

(b) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail or personally served, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article. Any persons

violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in § 1-7 of this code. Tempe may also enforce this article pursuant to A.R.S. § 9-461.03.

(c) If attempts to abate the violation are unsuccessful, the floodplain administrator shall submit to the administrator of Federal Insurance Administration a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to § 1316 of the National Flood Insurance Act of 1968, as amended.

(d) All development located or maintained within any area of special flood hazard after the effective date of this article, in violation of this article, is a public nuisance per se and may be abated, prevented or restrained by the city.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-26. Severability.**

The ordinance from which this article is derived, and the various parts thereof, are hereby declared to be severable. Should any section of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

(Ord. No. 87.25, 9-10-87)

### **Sec. 12-27. Establishment of floodplain permit.**

A floodplain permit shall be obtained before construction or development begins, including placement of manufactured homes, within any special flood hazard area. Application for a floodplain permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to, plans, in duplicate, drawn to scale, showing the nature, location, dimensions and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;
- (2) Proposed elevation, in relation to mean sea level, to which any non-residential structure will be floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 12-29(3);
- (4) Base flood elevation data for subdivision proposals or other developments greater than fifty (50) lots or five (5) acres; and
- (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

**Sec. 12-28. Designation, duties and responsibilities of the floodplain administrator.**

(a) *Designation.* The city engineer is hereby designated to administer, implement and enforce this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out its intent. He may adopt a fee schedule for review of applications for permits and variances from the requirements of this article.

(b) *Duties and responsibilities.* Duties of the floodplain administrator or his designee shall include, but not be limited to:

- (1) Review all floodplain permits to determine that:
  - a. The permit requirements of this article have been satisfied;
  - b. All other required state and federal permits relating to floodplains and floodways have been obtained;
  - c. The site is reasonably safe from flooding; and
  - d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this article, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development within Tempe, will not increase the water surface elevation of the base flood more than one foot at any point.
- (2) *Use of other base flood data.* When base flood elevation data has not been provided in accordance with § 12-20, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer this article. Any such information shall be consistent with the requirements of FEMA and the director of the Arizona Department of Water Resources and shall be submitted to the floodplain board for adoption.
- (3) Obtain and maintain for public inspection and make available as needed for flood insurance policies:
  - a. The certified regulatory flood elevation required in § 12-29(3)(a);
  - b. The floodproofing certification required in § 12-29(3)(b);
  - c. The flood vent certification required in § 12-29(3)(c);
  - d. The certified elevation required in § 12-32(b);
  - e. The floodway encroachment certification required in § 12-34(1);

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- f. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA; and
  - g. Obtain and maintain substantial improvement calculations.
- (4) Whenever a watercourse is to be altered or relocated:
- a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration; and
  - b. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.
- (5) Develop substantial improvement and substantial damage procedures:
- a. Using FEMA Publication FEMA 123, "Answers to Questions about Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "market value."
  - b. Assure procedures are coordinated with other departments and divisions and implemented by Tempe's staff.
- (6) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the city floodplain administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44 of the Code of Federal Regulations, § 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- (7) Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of the development plans included with all applications for floodplain use permits to develop land in a floodplain or floodway within one mile of the corporate limits of the city. Also, advise the Flood Control District of Maricopa County in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses within the district's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the district no later than three (3) working days after having been received by the floodplain administrator.
- (8) Make interpretations where needed as to the exact location of the boundaries of special flood hazard areas (for example, where there appears to be a conflict

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between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 12-35.

- (9) Take actions on violations of this article as required in § 12-25 herein.
- (10) Notify FEMA and the Arizona Department of Water resources of acquisition by means of annexation, incorporation, or otherwise of additional areas of jurisdiction.

(c) Within one hundred twenty (120) days after completion of construction of any flood control protective works which change the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of the Department of Water Resources of the State of Arizona.

(Ord. No. 87.25, 9-10-87; Ord. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

### **Sec. 12-29. Standards of construction.**

In all areas of special flood hazards the following standards are required:

(1) *Anchoring:*

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and
- b. All manufactured homes shall meet the anchoring standards of § 12-33(a).

(2) *Construction materials and methods:*

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
- c. All new construction, substantial improvement, and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
- d. Within zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

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### (3) *Elevation and floodproofing:*

- a. *Residential construction.* Residential construction, new or substantial improvement, shall have the lowest floor, including basement:
  - i. In an AO zone, elevated to or above the regulatory flood elevation, or elevated at least two (2) feet above the highest adjacent grade if no depth number is specified;
  - ii. In an A zone where a BFE has not been determined, elevated to or above the regulatory flood elevation or be elevated in accordance with the criteria developed by the director of the Arizona Department of Water Resources; or
  - iii. In zones AE, AH and A1-30, elevated to or above the regulatory flood elevation.

Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by Tempe's building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

- b. *Nonresidential construction.* Nonresidential construction, new or substantial improvement, shall either be elevated to conform with paragraph (c)(1) of this section or together with attendant utility and sanitary facilities:
  - i. Be floodproofed below the elevation recommended under subsection (c)(1) of this section so that the structure is watertight with walls substantially impermeable to the passage of water;
  - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - iii. Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the floodplain administrator.
- c. *Flood openings.* All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following criteria:
  - i. Have a minimum of two (2) openings, on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be

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equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater; or

- ii. If it is not feasible or desirable to meet the openings criteria stated above, a registered engineer or architect may design and certify the openings.
- d. *Manufactured homes.* Manufactured homes shall also meet the standards in § 12-33(a).
- e. *Attached garages and low cost accessory structures.*
  - i. A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry of flood waters. See paragraph (3)(c) of this section. Areas of the garage below the regulatory flood elevation must be constructed with flood resistant materials. See paragraph (2) of this section; and
  - ii. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed.
- f. *Detached garages and accessory structures.* "Accessory structure" used solely for parking (two (2) car detached garages or smaller) or limited storage (small, low-cost sheds), may be constructed such that its floor is below the regulatory flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
  - i. Use of the accessory structure must be limited to parking or limited storage;
  - ii. The portions of the accessory structure located below the regulatory flood elevation must be built using flood-resistant materials;
  - iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
  - iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;
  - v. The accessory structure must comply with floodway encroachment provisions in § 12-34;
  - vi. The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with paragraph (3)(c) of this section; and
  - vii. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in this section.

(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

**Sec. 12-30. Standards for storage of materials and equipment within special flood hazard areas.**

(a) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(b) Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-31. Standards for utilities within special flood hazard areas.**

The following standards shall apply to utilities within flood hazard areas:

- (1) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.
- (2) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (3) Waste disposal systems shall not be installed wholly or partially in a floodway.
- (4) Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-32. Standards for subdivisions.**

The following standards shall apply to subdivisions:

- (1) All new preliminary subdivision plats and other proposed development (including proposals for manufactured home parks and subdivisions), greater than fifty (50) lots or five (5) acres, whichever is lesser, shall identify the special flood hazard area and the elevation of the base flood;
- (2) All final subdivision plans will provide the elevation of proposed structure(s) and pads. The final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator; and
- (3) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage. All subdivision proposals and other proposed development shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

**Sec. 12-33. Standards for manufactured homes and recreational vehicles.**

(a) All new and replacement manufactured homes and all substantial improvements to manufactured homes within special flood hazard areas shall:

- (1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at the regulatory flood elevation; and
- (2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b) All recreational vehicles placed on site will either:

- (1) Be on site for fewer than one hundred eighty (180) consecutive days;
- (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanent attached additions; or
- (3) Meet the permit requirements of § 12-27 and the elevation and anchoring requirements for manufactured homes in subsection (a) of this section.

(Ord. No. 87.25, 9-10-87; Ord. No. 2005.67, 9-29-05; Ord. No. 2013.52, 10-3-13)

**Sec. 12-34. Floodways.**

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge; and
- (2) If subsection (a) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of §§ 12-29 through 12-33.

(Ord. No. 87.25, 9-10-87)

**Sec. 12-35. Variances and the right of appeal.**

(a) The floodplain administrator may grant variances from the requirements of this article.

- (1) A variance shall be granted only for a parcel with physical characteristics so unusual that complying with this article would create an exceptional hardship to the applicant or surrounding property owners.
- (2) Those physical characteristics must be unique to that property and not shared by adjacent parcels and pertain to the land, not to any structure, its inhabitants or the property owners.

(b) The floodplain board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this article.

(c) In passing upon such applications, consideration shall be given all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to Tempe;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

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(d) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing §§ 12-28 and 12-29 and items (c)(1) through (10) above have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(e) Upon consideration of the factors of items (c)(1) through (10) above and the purposes of this article, the floodplain administrator may attach such conditions to the granting of variances as he deems necessary to further the purposes of this article.

(f) The floodplain administrator shall maintain the records of all variance actions, including justification for their issuance, and report any variances to the FEMA upon request.

(g) Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(j) Variances shall only be issued upon:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(k) Any applicant to whom a variance is granted shall be given written notice over the signature of a Tempe official that:

- (1) The issuance of a variance to construct the structure below the regulatory flood elevation will result in an increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage and will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by Title 26, Chapter 2, Article 2, Arizona Revised Statutes. A copy of the notice shall be recorded by the floodplain board in the office of the Maricopa County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Ord. No. 87.25, 9-10-87; Ord. No. 2013.52, 10-3-13)

**ARTICLE III. SALT RIVER FLOOD CHANNEL**

**Sec. 12-36. Dumping in flood channel; permit required.**

No person, other than the United States government, the state or its governmental subdivisions shall dump or place dirt, sand, gravel, garbage, junk or refuse in the Salt River floodway or floodway fringe which lies within the city, unless such person has first procured a permit for such dumping or placing from the city council.

(Code 1967, § 15-18)

**Sec. 12-37. Permit application procedure.**

Applications for permits required by this article, along with a five-dollar application fee, which may not be returned, may be filed with the city engineer who shall thereupon make investigations concerning the application, and present the application along with a report concerning it and his recommendation for its approval or disapproval to the city council at a regular city council meeting, held not more than thirty (30) days after the date of filing of the application.

(Code 1967, § 15-19)

**Sec. 12-38. Approval or denial of permit; fee.**

The city council may grant or refuse a permit under this article and may in its discretion hold a public hearing to determine facts relevant to the application therefor. If the city council has not granted or refused a permit within sixty (60) days after filing of the application, the application shall be deemed approved. Upon approval of the application, the city engineer shall issue a permit upon payment of a five-dollar permit fee.

(Code 1967, § 15-20)

**Sec. 12-39. Permit conditions, renewal fee.**

The city engineer may impose reasonable conditions upon the use of the permits, and may formulate rules and regulations concerning their use, and in applying for and receiving a permit the applicant agrees to follow these conditions, rules and regulations which are in existence at the time of issuance of the permit, and all conditions, rules and regulations that may be adopted by the city engineer subsequent to the date of issuance. Such permits may be renewed by payment of an annual permit fee of five dollars (\$5).

(Code 1967, § 15-21)

**Sec. 12-40. Revocation of permit; appeal.**

The city engineer may at any time revoke a permit issued pursuant to this article for breach of any conditions, rules or regulations, but the permit holder may appeal such revocation to the city council where he shall be entitled to a public hearing.

(Code 1967, § 15-22)

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### **Sec. 12-41. Altering surface elevation.**

No person, other than the United States government, the state or its governmental subdivisions, shall raise or lower the elevation of the surface of the earth within that portion of the Salt River floodway or floodway fringe lying within the city so as to endanger or jeopardize public or private property lying within or without the Salt River floodway or floodway fringe, by increasing the flood danger to or increasing the probable extent of flood damage to such property.

(Code 1967, § 15-23)

**Secs. 12-42—12-55. Reserved.**

**ARTICLE IV. STORM WATER RETENTION**

**DIVISION 1. GENERALLY**

**Sec. 12-56. Purpose.**

The purpose of this article is to effectively manage storm water runoff within the city with the objectives of:

- (1) Supporting sustainable development and redevelopment;
- (2) Requiring on-site retention of storm water;
- (3) Limiting the need for new municipal storm water drainage infrastructure;
- (4) Safeguarding public and private property from storm water flows; and

(5) Minimizing the discharge of pollutants through the city's infrastructure and to waters of the United States.

(Code 1967, § 29A-1; Ord. No. 93.03, 2-11-93; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. 2012.45, 9-20-12)

**Sec. 12-57. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alternative retention criteria area* means the following areas:

- (1) The area bounded by the north right-of-way of the 202 freeway west of the Union Pacific Railroad and west of Mill Avenue (north of Washington/Curry Road) and by the city limits on the north and west.
- (2) On the south side of Tempe Town Lake, the area bounded by the north right-of-way of Rio Salado Parkway, the south bank of the Tempe Town Lake, the north prolongation of Hardy Drive, and the Karsten Golf Course at ASU. On the north side of Tempe Town Lake, the area bounded by the south right-of-way of the 202 freeway, the north bank of the Tempe Town Lake, and the southern prolongation of College Avenue.
- (3) The area bounded by the north right-of-way of University Drive, the Union Pacific Railroad, the south right-of-way of Rio Salado Parkway, the west right-of-way of College Avenue and wrapping around the Tempe Butte on the north and east side of the old railroad spur, and the property east of College Avenue known as the Arizona National Guard property.

*AZPDES permit* means an Arizona pollutant discharge elimination permit issued by the Arizona Department of Environmental Quality.

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*Best management practices* mean schedules of activities, prohibition of practices, structural and non-structural controls, operational and maintenance procedures, control techniques or systems, design and engineering methods, and other management practices to prevent or reduce the discharge of pollutants.

*Building floor elevation* means the finished floor elevation in feet above mean sea level of the lowest floor, including basement, of a building. Building floor elevations shall be related to the city datum.

*Building pad elevation* means the elevation in feet above mean sea level of the material on which the floor slab directly rests.

*Drainage plan* means that certain plan on which are shown the locations, dimensions and elevations of proposed storm water storage areas.

*First flush* means the first runoff from a storm up to the volume of a two-year storm.

*One-hundred-year storm* means a storm that has one percent (1%) chance of occurring, in accordance with criteria established by the city engineer.

*On-site storage* means storage on public or private property or any combination thereof, but not on public street or alley right-of-way.

*Retention* means total storage, without overland relief, of flows generated during the design storm.

*Two-year storm* means a storm that has fifty percent (50%) chance of occurring, in accordance with criteria established by the city engineer.  
(Code 1967, § 29A-2; Ord. No. 93.03, 2-11-93; Ord. No. 2004.13, 4-29-04; Ord. No. 2012.45, 9-20-12)

**Sec. 12-58. Repealed.**  
(Ord. No. 93.03, 2-11-93)

### **Sec. 12-59. Violations.**

(a) Violators of this article shall be notified in writing by the city engineer. The notice, which shall be sent by certified mail, shall state specifically the nature of the violation and request that it be corrected. If a violation is not corrected within thirty (30) days after notice, the city engineer shall promptly hand over all pertinent facts to the city attorney with a request for prosecution under the provisions of this article.

(b) Any persons violating any of the provisions of this article shall be guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.  
(Code 1967, § 29A-4)

**Sec. 12-60. Repealed.**  
(Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. No. 2012-45, 9-20-12)

**Secs. 12-61—12-70. Reserved.**

DIVISION 2. ADMINISTRATION

**Sec. 12-71. Generally.**

(a) Except as otherwise provided herein, the public works director shall administer and implement the provisions of this article. Any powers granted to or duties imposed upon the public works director may be delegated by the public works director to other city personnel but shall remain the responsibility of the public works director.

(b) The city engineer is hereby designated as the enforcing officer of this article and is hereby authorized and directed to formulate the procedures and criteria necessary to carry out the intent.

(c) The community development department shall not issue a building permit until receipt of notification from the city engineer that a drainage plan has been approved in accordance with this article.

(d) The community development department shall not issue a certificate of occupancy until receipt of notification from the city engineer that construction has been completed in substantial compliance with the approved drainage plan or that subsequent completion has been guaranteed by other means acceptable to the city.

(Code 1967, § 29A-5; Ord. No. 93.03, 2-11-93; Ord. No. 97.20, 4-10-97; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

**Sec. 12-72. Appeals.**

The public works director is charged with the responsibility for administration and interpretation of this article. Any person who is dissatisfied or aggrieved by any decision of the public works director may appeal such decision by filing written notice of appeal with the city clerk. Such notice of appeal shall be forwarded to the city council at its next regularly scheduled meeting, at which time a date will be set for hearing on the appeal. The decision of the city council on the appeal shall be final.

(Code 1967, § 29A-6; Ord. 2012.45, 9-20-12)

**Sec. 12-73. Drainage permits.**

(a) No person may fill or substantially alter the surface of any lot, plot or parcel of land without first having obtained a drainage permit from the city engineer.

(b) Prior to issuing a drainage permit, the city engineer shall require the owner/developer to submit for approval a drainage plan showing existing and proposed grades with calculations showing the volume of storage required and provided. Such plans and calculations shall be prepared under the direction of a professional civil engineer registered in the State of Arizona, except as hereinafter provided.

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(c) In no event shall a drainage permit be issued unless the drainage plan has been approved by the city engineer and establishes that storm water runoff from the lot, plot or parcel of land will not adversely impact other property or city infrastructure. This article shall not create liability on the part of the city, any officer or employee thereof, for any damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(d) No drainage permit shall be issued by the city engineer, except as provided in this article. The owner/developer of each lot, plot or parcel of land within the city is required to provide storage of sufficient volume to hold the total runoff from a one-hundred-year storm falling on that lot, plot or parcel of land and on adjacent street and alley rights-of-way, except arterial streets, unless one of the following applies:

- (1) The owner/developer of a lot, plot, or parcel of land: (i) discharges the total runoff from a one-hundred-year storm falling on that lot, plot, or parcel of land directly to waters of the United States in compliance with all state and federal laws and regulations; and (ii) either provides storage of sufficient volume to hold the total runoff from a two-year storm or has submitted a best management practices plan, which has been approved by the public works director in accordance with § 12-127(b). Best management practices for discharges directly to Tempe Town Lake shall include, at a minimum, detention and treatment of the first flush; or
- (2) Inside the alternative retention criteria area, the owner/developer of a lot, plot or parcel of land either provides storage of sufficient volume to hold the total runoff from a two-year storm falling on that lot, plot, or parcel of land or has submitted a best management practices plan, which has been approved by the public works director in accordance with § 12-127(b). Best management practices for discharges directly to Tempe Town Lake shall include, at a minimum, detention and treatment of the first flush.

(e) The owner/developer shall not be required to provide storage for runoff from a lot, plot or parcel of land other than his own.

(f) All drainage permits required by the provisions of this article shall be issued by the city engineer. Permits will be issued only upon approval of a drainage plan and payment of fees. (see Appendix - Drainage Permit Fees)

(g) The owner/developer will provide construction staking.

(h) The city will inspect and accept the work, including material testing necessary to determine that the work is done in accordance with the requirements of the city engineer.

(i) Prior to acceptance of the work, the owner/developer shall furnish a reproducible copy of the approved drainage plan containing a certificate, signed by a professional engineer or land surveyor registered in this state, certifying that the improvements were constructed in accordance with the approved plan.

(Code 1967, § 29A-7; Ord. No. 93.03, 2-11-93; Ord. No. 97.20, 4-10-97; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

**Secs. 12-74—12-85. Reserved.**

DIVISION 3. STANDARDS AND SPECIFICATIONS

**Sec. 12-86. On-site storage.**

(a) On-site storage may be provided in any of the following ways:

- (1) Individual storage;
- (2) Central storage; or
- (3) Combination storage.

(b) Individual storage shall consist of providing adequate storage volume for the design storm on a lot, plot or parcel of land for all water falling on the lot, plot or parcel of land. Storage volume shall also be provided for adjacent streets and alleys, except for arterial streets. In single-family residential zones, the maximum depth of water in the storage area at design storm shall be eight (8) inches, unless otherwise approved by the city engineer. In all other zoning categories, the maximum depth of water at design storm shall be three (3) feet.

(c) Central storage shall consist of providing adequate storage volume for the appropriate design storm in one or more central basins to handle the runoff from more than one lot, plot or parcel of land. The maximum depth of water in the storage area at design storm shall be three (3) feet, unless otherwise approved by the city engineer.

- (1) The owner of the property on which the central storage basin is to be located shall grant a right to use such property for drainage purposes. Such grant shall be made by means of a document which shall be approved by the city attorney and recorded in the office of the county recorder and which shall contain the following provisions:
  - a. A legal description of the property to be used for storage purposes;
  - b. A legal description of the property which is permitted to drain to the basin;
  - c. A statement that the owner is responsible for the construction and maintenance of the basin in accordance with standards established by the city engineer;
  - d. A statement that no buildings or structures may be constructed within the basin;
  - e. A statement that the property shall be used for storm water storage so long as it is required in the opinion of the city engineer; and
  - f. Such other provisions as are deemed by the city attorney to be necessary to effectuate the provisions of this article.

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- (2) In lieu of the requirements contained in subparagraph (c)(1), the owner may dedicate the property to be used for central storage to the city for public use for basins greater than five (5) acres. Such dedication shall become effective only upon acceptance by the city council. As conditions precedent to the acceptance of a dedication, the city council may require the owner to comply with the following conditions:
- a. Grading of the basin in accordance with standards established by the city engineer;
  - b. Construction of dry wells as necessary to dispose of nuisance water;
  - c. Seeding to provide ground cover;
  - d. Construction of flood irrigation or sprinkler systems; and
  - e. Such other construction as the city council may deem necessary to the proper public use of the property.

Upon the acceptance of the dedication by the city council and completion of any required construction, the city will assume responsibility for the operation and maintenance of the property and all facilities thereon.

(d) Combination storage shall consist of providing adequate storage volume for the design storm by a combination of individual and central storage. All requirements and conditions outlined in subsections (b) and (c) of this section shall apply.  
(Code 1967, § 29A-8; Ord. No. 93.03, 2-11-93)

### **Sec. 12-87. Building floor elevations.**

(a) The minimum building floor elevation shall be ten (10) inches above the design high water elevation for the design storm or the outfall of the lot, whichever is higher, in the case of individual or combination storage.

(b) In the case of central storage, the minimum building floor elevation shall be ten (10) inches above the outfall of the lot.

(c) The owner/developer shall have the option of floodproofing, in a manner acceptable to the city engineer, to the minimum building floor elevation.

(d) The provisions of this section shall not apply to any existing building or structure, nor to an expansion of less than twenty-five percent (25%) in floor area to an existing building or structure; but in no case shall the floor elevation of the extension be below the existing floor of the habitable space.

(e) Prior to occupying any building or structure constructed under the provisions of this article, the owner/developer shall submit to the city engineer a certificate, signed by a professional engineer or land surveyor registered in this state, giving the actual building pad elevation as constructed.

(Code 1967, § 29A-9; Ord. No. 93.03, 2-11-93)

### **Secs. 12-88—12-100. Reserved.**

**ARTICLE V. STORM WATER SYSTEM EXTENSION POLICY**

**Sec. 12-101. Established.**

There is hereby established, as set forth in this article, a policy and an orderly program for extension of the city storm water system to serve those properties within and without the city limits.

(Code 1967, § 31-12)

**Sec. 12-102. Definitions.**

For the purposes of this article, the following words, terms and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

*Cost* means construction contract price.

*Developer/owner* means any person engaged in the development of one or more parcels of land and contracting for an extension of the city storm water system.

*Facility* means any storm water conduit, drainage structure, retention basin, pumping equipment and any other related construction which constitutes or will constitute part of the city storm water system.

*Participating charge* means proportionate share of the cost (construction contract price) based on benefits derived in accordance with standards determined by the public works director and approved by the city council for any existing storm water facility.  
(Code 1967, § 31-13; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

**Sec. 12-103. Preparation of plans, specifications.**

Upon development of any property, area or subdivision within or without the city limits for which storm water facilities are required, all plans and specifications for such facilities shall be prepared by a professional engineer, registered in the state, and in accordance with the city department of public works standards and specifications.

(Code 1967, § 31-14)

**Sec. 12-104. Agreement with city prerequisite to connection.**

Before the extension of or connection to any facility shall be made to serve a subdivision or platted or unplatted property, the developer/owner desiring such extension or connection must execute an agreement with the city which shall include the following:

- (1) A warranty of workmanship and material for facilities installed which shall run to the benefit of the city for a period of at least one year from the date of acceptance by the city;
- (2) A diagram of all property which may be served by any facility to be installed;

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- (3) A statement that the city acquires ownership of any facility upon completion and acceptance of the work by the city;
- (4) A statement that the city's cost for inspecting such work shall be paid by the developer/owner;
- (5) A statement of the developer/owner's proportionate share of the cost for previously installed facilities; and
- (6) A statement of the maximum possible reimbursement that may accrue to the developer/owner for the cost of facilities to be installed by him but from which others may be served. If others are served, a participating charge will be made at the time of their development.

(Code 1967, § 31-15)

### **Sec. 12-105. Financing of connections.**

The following provisions may be applicable to facilities to serve individuals, unplatted areas and subdivisions:

- (1) When an existing facility will be used, a participating charge based upon that portion of the property to be developed shall be placed on deposit with the city prior to developing the property;
- (2) No person shall be permitted to extend service to adjacent property owned by someone else or to property for which a participating charge has not been advanced and deposited with the city without written approval of the city;
- (3) The city will establish a separate account for each reimbursement agreement for the collection of participating charges and reimbursements to the party who financed the installation of the facility. Sums collected shall be treated as trust funds to be paid upon receipt. In no event will the sums reimbursed exceed the contract price for the installation of the facility;
- (4) The reimbursement agreement shall state to whom reimbursement shall be made and shall include a diagram of the property from which reimbursements are contemplated. Should the property or any portion thereof not be served by the facility installed under the agreement, the developer/owner will not be reimbursed for the proportionate share of the cost otherwise due from such property;
- (5) Any developer/owner may assign the benefits arising out of any storm water facility agreement with the city; provided, however, that any such assignment shall not relieve the developer/owner from his duties and obligations under such agreement;
- (6) Any agreement providing for reimbursement of the developer/owner by a subsequent and adjacent developer/owner shall run for a maximum period of twenty (20) years after execution of the agreement and thereupon terminate;

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- (7) The city shall be responsible for servicing and maintaining all storm water facilities approved and accepted by the city; and
- (8) The city shall be responsible for providing major storm water facilities but may require developer/owner to pay their proportionate share of the cost of such facilities, as established by the city.

(Code 1967, § 31-16)

**Secs. 12-106—12-114. Reserved.**

## DRAINAGE AND FLOOD CONTROL

### ARTICLE VI. STORM WATER POLLUTION CONTROL

#### DIVISION 1. GENERAL PROVISIONS

##### **Sec. 12-115. Purpose and policy.**

(a) This article sets forth requirements for the control of pollutants that are or may be discharged to the public storm drain system. The purpose is to improve the quality of storm water discharges and to enable the city to comply with all applicable state and federal laws, including but not limited to, the Clean Water Act (33 United States Code § 1251 et seq.), the National Pollutant Discharge Elimination System Regulations (40 Code of Federal Regulations Part 122), and the Arizona Pollutant Discharge Elimination System Regulations (Arizona Administrative Code, Title 18, Chapter 9, Article 9). The objectives of this article are:

- (1) To reduce the discharge of pollutants from our public storm sewer system into receiving waters, waterways, and groundwater;
- (2) To control the discharge to the public storm drain system resulting from spills, dumping, or disposal of materials other than storm water;
- (3) To enable the city to comply with the conditions of its National Pollutant Discharge Elimination System storm water permit or Arizona Pollutant Discharge Elimination System storm water permit;
- (4) To prevent discharges that could cause or contribute to damage to the public storm drain system;
- (5) To promote the proper management of hazardous materials and other wastes to prevent their discharge into the public storm drain system;
- (6) To reduce pollutants in storm water to the maximum extent practicable; and
- (7) To protect the public health and the environment.

(b) This article establishes discharge prohibitions; authorizes the identification of controls to reduce the discharge of pollutants that may be required; provides for necessary inspections, monitoring, compliance, and enforcement activities; and establishes administrative review procedures.

(Ord. No. 98.34, 08-13-98; Ord. 2004.13, 4-29-04)

##### **Sec. 12-116. Administration.**

Except as otherwise provided herein, the public works director shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the public works director may be delegated by the public works director to other city personnel, but remain the responsibility of the public works director.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

**Sec. 12-117. Abbreviations.**

The following abbreviations, when used in this article, shall have the designated meanings:

ADEQ - Arizona Department of Environmental Quality

AZPDES - Arizona Pollutant Discharge Elimination System

CFR - Code of Federal Regulations

EPA - United States Environmental Protection Agency

NPDES - National Pollutant Discharge Elimination System

(Ord. No. 98.34, 08-13-98; Ord. No. 2004.13, 4-29-04)

**Sec. 12-118. Definitions.**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated:

*Arizona Department of Environmental Quality, or ADEQ*, means the state agency charged with primary enforcement of the federal Clean Water Act.

*AZPDES storm water permit* means an Arizona pollutant discharge elimination system permit issued by the ADEQ which authorizes the discharge of storm water pursuant to the Clean Water Act § 402.

*Best management practices* mean schedules of activities, prohibition of practices, structural and non-structural controls, operational and maintenance procedures, control techniques or systems, design and engineering methods, and other management practices to prevent or reduce the discharge of pollutants.

*City* means the City of Tempe.

*Clean Water Act* means the Federal Water Pollution Control Act, as amended, 33 United States Code § 1251 et seq.

*Director* means the public works director who is hereby charged with certain duties and responsibilities by this article, or other city personnel designated by the public works director to act on his/her behalf.

*NPDES storm water permit* means a National Pollutant Discharge Elimination System permit issued by the EPA which authorizes the discharge of *storm water* pursuant to the Clean Water Act § 402.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

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*Pollutant* means any solid, liquid, gaseous, or other substance that can alter the physical or chemical properties of water including, but not limited to: fertilizers, solvents, sludge, petroleum and petroleum products, solid waste, garbage, biological materials, radioactive materials, sand, dirt, animal wastes, acids, and bases.

*Pollution* means the presence of a pollutant(s) on land or in storm water.

*Premises* means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Public storm drain system* means all or any part of the storm drains, ditches, pipes, graded areas, and gutters located within public easements, public rights-of-way, public parks, streets, roads, highways, common areas, or required onsite retention areas, or publicly owned real property that are used for collecting, holding, or conveying storm water.

*Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that can cause pollution.

*Storm water* means any flow occurring during or following any form of natural precipitation and resulting from such precipitation.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

**Secs. 12-119 to 12-124. Reserved.**

### DIVISION 2. PROHIBITIONS AND CONTROLS TO REDUCE THE DISCHARGE OF POLLUTANTS IN STORM WATER

**Sec. 12-125. Prohibitions of non-storm water discharges to the public storm drain system; exemptions.**

(a) Unless expressly authorized or exempted by this article, no person shall cause or allow the release to a public right-of-way or public storm drain system of any substance that is not composed entirely of storm water.

(b) Unless expressly authorized or exempted by this article, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to storm water.

(c) The following discharges are exempt from the prohibition set forth in subsections (a) and (b) of this section provided they are not significant sources of pollutants to waters of the United States:

- (1) The prohibition on discharges shall not apply to any discharge regulated under a NPDES OR AZPDES permit issued to the discharger under the authority of the EPA OR ADEQ, respectively.

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- (2) The prohibition on discharges shall not apply to any discharge that is eligible for coverage under a general NPDES or AZPDES permit issued under the authority of EPA or ADEQ, respectively.
- (3) Discharges caused by a person from any of the following activities:
  - a. Water line flushing and other discharges from drinking water sources;
  - b. Lawn watering;
  - c. Irrigation water;
  - d. Diverted stream flow;
  - e. Rising groundwater;
  - f. Uncontaminated groundwater infiltration;
  - g. Uncontaminated pumped groundwater;
  - h. Foundation and footing drains;
  - i. Water from crawl space pumps;
  - j. Air conditioning condensation and evaporative cooler run-off;
  - k. Natural springs;
  - l. Individual residential car washing;
  - m. Flows from riparian habitats and wetlands, as those areas are designated under applicable federal and state laws;
  - n. Dechlorinated swimming pool discharges;
  - o. Flows resulting from fire fighting activities;
  - p. Dust control watering; or
  - q. Any other activity that is exempted under the City's NPDES OR AZPDES storm water permit.

(d) No person shall discharge to a publicly owned right-of-way or the public storm drain system any exempted discharge under subsection (c) paragraph 2 of this section if the public works director identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.

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(e) No person shall discharge to the public storm sewer system where such a discharge would result in or contribute to a violation of the NPDES or AZPDES storm water permit issued to the city, either separately considered or when combined with other discharges. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.

(f) No person shall establish, use, maintain, or continue any connection to the public storm sewer system which has caused or will likely cause a violation of this section. Any connection that was permitted or authorized by a governmental entity with jurisdiction and authority, will be discontinued upon thirty (30) days written notice by the public works director to: (a) the last known address of the owner of the property and by posting on the property; or (b) the person maintaining the connection. This prohibition is retroactive and shall apply to any connection that was made in the past, regardless of whether it was made under a permit or other authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of the connection.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

### **Sec. 12-126. Cleanup and notification requirements.**

(a) As soon as any owner or operator has actual or constructive knowledge of any release which may result in pollutants or discharges that are not in compliance with this article entering the public storm drain system, such person shall promptly take all necessary steps to ensure the discovery of the source and extent and proceed with containment and cleanup of such release.

(b) In addition to the requirements contained in subsection (a) of this section, such person shall notify the public works director of the release in both of the following manners:

(1) By telephone within twenty-four (24) hours or by 12:00 noon of the next work day if knowledge is received on a weekend or holiday; and

(2) In writing within three (3) days of receiving knowledge of the release.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

### **Sec. 12-127. Practicable best management practices.**

(a) All persons owning or operating facilities or engaged in activities which will or may reasonably be expected to result in pollutants entering the public storm drain system or affecting the public storm drain system, shall undertake all practicable best management practices identified by the public works director to minimize such pollutants. Such measures shall include the requirements imposed by all of the following:

(1) This chapter;

(2) Chapter 33, Article VI (Water Wasting); § 29-20 (discharge of water from private premises); and § 19-50 (hauling waste fill or waste excavation material); and

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- (3) Any written guidelines which may be developed or referenced for general use by the public works director.

(b) All owners/developers of lots, plots, or parcels of land who are required under § 12-73(d) to provide best management practices shall submit a best management practices plan to the public works director for approval at the time that a drainage plan is submitted under § 12-73(b). The public works director shall approve a best management practices plan if the plan includes practices that will reduce pollutants in storm water runoff to the maximum extent practicable.

(c) If a practicable best management practice is required by the public works director, the person receiving the notice of such a requirement may petition the public works director to reconsider the application of the practicable best management practice to the facility or the activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The public works director will act within thirty (30) days on the request.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10; Ord. 2012.45, 9-20-12)

### **Sec. 12-128. Construction sites.**

(a) Any person performing construction shall use all practicable best management practices identified by the public works director to minimize pollutants and sediment from leaving the construction site. This is in addition to what may be required in § 19-50 (hauling waste fill or waste excavation material) of the Tempe City Code. At a minimum, the person shall do both of the following:

- (1) Not cause or contribute to a violation of § 12-125; and
- (2) Comply with any written guidelines which may be developed or referenced for general use by the public works director.

(b) If a practicable best management practice is required by the public works director, the person receiving the notice of such a requirement may petition the public works director to reconsider the application of the practicable best management practice to the construction activity. The written petition must be received within ten (10) working days setting forth any reasons or proposed alternatives. The public works director will act within thirty (30) days on the request.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

### **Secs. 12-129 to 12-134. Reserved.**

## DRAINAGE AND FLOOD CONTROL

### DIVISION 3. COMPLIANCE MONITORING

#### **Sec. 12-135. Inspection and sampling; right of entry.**

(a) Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the city shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this article. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the city in determining compliance with the requirements of this article. All persons shall allow such activities under safe and nonhazardous conditions with a minimum of delay.

(b) In addition to those activities described in subsection (a) of this section, authorized city employees shall engage in monitoring necessary to ensure compliance with this article. The public works director may establish on premises such devices as the public works director reasonably determines are necessary to conduct sampling or metering operations. Such devices shall be installed so as to minimize the impact on the owner and occupant of the premises. During all inspections as provided in subsection (a) of this section, authorized city employees may take any samples necessary to aid in the pursuit of the inquiry or in the recordation of the activities on the premises.

(c) The public works director may order any person engaged in any activity or owning or operating on any premises which may cause or contribute to discharges of pollutants to the public storm drain system in violation of this article to undertake such monitoring activities and analyses and furnish such reports as the public works director reasonably may specify. The costs of such activities, analyses, and reports shall be borne by the recipient of the order.

(d) If the public works director has been refused access to any premises, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect, interview, copy, photograph or sample as part of an inspection and sampling procedure of the city designed to determine compliance with the requirements of this article or any related laws or regulations, or to protect the environment and the public health, safety and welfare of the community, then the public works director may seek issuance of a search warrant from the municipal court of the city. The public works director may, in addition, obtain an "inspection warrant" pursuant to chapter 34 of this code.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

**Secs. 12-136—12-144. Reserved.**

DIVISION 4. ENFORCEMENT

**Sec. 12-145. Purpose.**

The purpose of this division is to ensure compliance with practicable best management practices required by the public works director, to cease/discontinue pollutant discharges, to provide for civil penalty actions in municipal court, or to institute actions through the city attorney in the appropriate court for civil or criminal enforcement of this article.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

**Sec. 12-146. Notice of violation.**

When the public works director finds that any person has violated, or continues to violate, any provision of this article, or any related laws or regulations, the public works director may serve upon that person a written notice of violation. The person, within ten (10) working days of the receipt of this notice, must provide in writing to the public works director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions to be taken by the person in violation to prevent subsequent violations. Submission of this plan in no way relieves the person of liability for any violations in the notice or that occurred before or after receipt of the notice of violation nor limits the public works director's authority to take further enforcement actions. Nothing in this section shall limit the authority of the public works director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the public works director may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

**Sec. 12-147. Consent orders; best management practice.**

The city may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this article and shall be judicially enforceable.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

**Sec. 12-148. Cease and desist orders.**

(a) When the public works director finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the public works director may issue an order to the person directing them to cease and desist all such violations and direct the person to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation.

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(b) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the public works director issued pursuant to this division shall constitute a violation of this article. (Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

### **Sec. 12-149. Civil penalties.**

(a) In addition to any other enforcement authority contained in this article, the city may issue a civil citation to any person who has violated, or continues to violate, any provision of this article or any related laws or regulations. The form of the citation shall be established by the city attorney.

(b) If the defendant fails to appear as directed on the citation, the court upon request of the city, shall enter a default judgment for the amount of the fine indicated for the violation charged, together with a default penalty not to exceed fifty dollars (\$50).

(c) The civil penalty for violating this article shall be an amount not to exceed two thousand five hundred dollars (\$2,500) per violation per day.

(d) All civil hearings under this article before the Tempe Municipal Court shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The Rules of Evidence do not apply, except for any rules or statutes relating to privileged communications. If the allegation in the citation is denied, the city is required to prove the violation by a preponderance of the evidence. The court is authorized to make such orders as may be necessary or appropriate to fairly and efficiently decide the case at hand. An appeal from the judgment of the court may be taken in the same manner as civil traffic appeals. (Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.35, 8-8-02; Ord. No. 2004.13, 4-29-04; Ord. No. 2012-40, 9-6-12)

### **Sec. 12-150. Injunctive relief.**

When the public works director finds that a person has violated, or continues to violate, any provision of this article or any related laws or regulations, or that the person's past violations are likely to recur, the city may petition the Superior Court of Arizona, Maricopa County, through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of any order or other requirement imposed by this article on activities of the person. The city may also seek such other action as is appropriate for legal or equitable relief.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04; Ord. No. 2010.02, 2-4-10)

### **Sec. 12-151. Criminal prosecution.**

A person who willfully or negligently violates any provision of this article, or any related laws or regulations shall, upon conviction, be guilty of a class one misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500) per violation, per day, or imprisonment for not more than six (6) months, or both. (Ord. No. 98.34, 08-13-98)

**Sec. 12-152. Remedies non-exclusive.**

The remedies provided for in this article are not exclusive. Each day's noncompliance constitutes a new violation. The city may take any, all or any combination of these actions against a noncompliant person.

(Ord. No. 98.34, 08-13-98; Ord. No. 2001.17, 7-26-01; Ord. No. 2004.13, 4-29-04)

**Sec. 12-153. Enforcement response plan and penalty policy.**

(a) The public works director is authorized to develop and submit to the city council for its approval by resolution:

- (1) An enforcement response plan; and
- (2) Penalty policy.

(b) The enforcement response plan and penalty policy developed by the public works director pursuant to this section may be combined with the plans and policies developed pursuant to §§ 27-95 and 33-111, as determined appropriate by the public works director, to ensure consistent enforcement response plans and penalty policies.

(Ord. No. 2012-40, 9-6-12)