

DRAINAGE AND FLOOD CONTROL¹

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ARTICLE I. IN GENERAL

Secs. 12-1—12-15. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT²

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 are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and, when inadequately anchored, damage uses 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;

¹ **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.

² **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 second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - (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 state disaster relief.
- (Ord. No. 87.25, 9-10-87)

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

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

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

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reasonable application:

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 Zone on the flood insurance rate map (FIRM). The base flood depths range from one to three (3) feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

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

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

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 located within the area of special flood hazard.

Financial assistance means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance, other than general or special revenue sharing or formula grants made to states.

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 floodway map means the official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

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

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the flood boundary floodway map, 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").

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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, 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 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 protection system means those physical structural works for which funds have been authorized, appropriated and expended, and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

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 means the channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the 100-year flood without cumulatively increasing the water surface elevation.

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.

Levee means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

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Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

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. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

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 or other datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, 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 a community.

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.

Program means the National Flood Insurance Program authorized by 42 U.S.C. §§ 4001—4128.

Program deficiency means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NFIP standards.

Regulatory flood-elevation means an elevation one foot above the base flood elevation indicated on the FIRM. For example, buildings in Zone "AO (one foot depth)" are required to have the lowest floor two (2) feet higher than the highest adjacent grade.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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

Special flood hazard area means an area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 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.

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 improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started; or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

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 the community'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.

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

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.

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(b) Within a delineated floodplain, the development services 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 development services 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)

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

The area of special flood hazard identified by the Federal Insurance Administration (FIA) in a scientific and engineering report entitled "The Flood Insurance Study for Maricopa County and Incorporated areas", with an accompanying flood insurance rate map, is hereby adopted by reference and declared to be a part of this article. The flood insurance study is on file at the city engineering office. The flood insurance study is 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.

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

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, or the Federal Insurance Administration 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)

Sec. 12-24. Statutory exemptions.

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

- (1) Affect existing uses of property or the right to continuation of the 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 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.

(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 to the construction of public highways, roads and streets intersecting a watercourse;
- (2) The construction of structures on banks of a creek, stream, river, wash, arroyo or other watercourse to prevent erosion of or damage to adjoining land, or dams for the conservation of floodwaters as permitted by Title 48, Chapter 21;
- (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; or
- (4) Any flood-control district, or other political subdivision, from exercising powers granted to it under Title 45, Chapter 10, Arizona Revised Statutes.

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

Sec. 12-25. Violations.

(a) It is unlawful for any person to divert, retard or obstruct the flow of waters in any watercourse whenever it creates a hazard to life or property.

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(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 or under its authority to abate nuisances.

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

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 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 habitable floor (including basement) of all structures; in Zone AO, elevation of existing grade and proposed elevation of lowest habitable floor of all structures;
- (2) Proposed elevation, in relation to mean sea level, to which any 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(c); and
- (4) 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)

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

(a) *Designation.* The floodplain administrator is hereby designated as enforcing officer for 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 the floodway. 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 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 elevation required in § 12-29(c)(1);
 - b. The certification required in § 12-29(c)(2);
 - c. The floodproofing certification required in § 12-29(c)(3); and
 - d. The certified elevation required in § 12-32(b).
- (4) Whenever a watercourse is to be altered or relocated:

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- 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) 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.
- (6) 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.
- (7) 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 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.
- (8) Take actions on violations of this article as required in § 12-25 herein.
(Ord. No. 87.25, 9-10-87)

Sec. 12-29. Standards of construction.

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

- (a) *Anchoring:*
 - (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 - (2) All manufactured homes shall meet the anchoring standards of § 12-33(b).

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(b) *Construction materials and methods:*

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) *Elevation and floodproofing:*

- (1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in subsection (3) below. Upon the completion of the structure the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator prior to the issuance of a certificate of occupancy.
- (2) New construction and substantial improvement of any structure in Zone AO shall have the lowest floor, including basement, higher than the highest adjacent grade by at least one foot higher than the depth number on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in subsection (3) below. Upon completion of the structure and prior to occupancy, a registered professional engineer or surveyor shall certify to the floodplain administrator that the elevation of the structure meets this standard.
- (3) Nonresidential construction shall either be elevated in conformance with subsections (1) or (2) above or, together with attendant utility and sanitary facilities:
 - a. Be floodproofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator prior to occupying any building or structure on the property.
- (4) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this

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requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

- (5) Manufactured homes shall meet the above standards and also the standards in § 12-33.

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

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 preliminary subdivision plats shall identify the boundary of the flood hazard area and the elevation of the base flood;

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- (2) All final subdivision plans will provide the elevation of proposed structure(s) and pads. The final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator; and
- (3) All subdivision proposals shall be consistent with the need to minimize flood damage. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

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

Sec. 12-33. Standards for manufactured homes.

All new and replacement manufactured homes and additions 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.

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

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.

(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

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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 the community;
- (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.

(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 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 appeal actions and report any variances to the Federal Insurance Administration upon request.

(g) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.

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(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 that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk 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)

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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.

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ARTICLE IV. STORM WATER RETENTION

DIVISION 1. GENERALLY

Sec. 12-56. Purpose.

The purpose of this article is to require the owner/developer of each lot, plot or parcel of land within the city, outside of the alternative retention criteria area, to provide storage of sufficient volume to hold the total runoff from the one-hundred year design storm falling on that lot, plot or parcel of land and on adjacent street and alley rights-of-way, except arterial streets. In the alternative retention criteria area, the owner/developer is required to provide storage of sufficient volume to hold the total runoff from the two-year design storm unless storm water pollution best management practices have been approved by the water utilities manager under § 12-127(b). The owner/developer shall not be required to provide storage for runoff from land other than his own.

(Code 1967, § 29A-1; Ord. No. 93.03, 2-11-93; Ord. No. 2004.13, 4-29-04)

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, and excluding Arizona State University-owned property. 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.

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.

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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.

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)

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. Exceptions.

The requirements of this article may be waived at the discretion of the city engineer if:

(a) An individual AZPDES permit for storm water discharges directly from a development to waters of the United States has been issued to the owner/developer by the Arizona Department of Environmental Quality, or

(b) The water utilities manager, in consultation with the Arizona Department of Environmental Quality, determines that retention will result in environmental degradation, and that alternatives to retention will effectively limit pollutant discharges to waters of the United States.

(Ord. No. 2004.13, 4-29-04)

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Secs. 12-61—12-70. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 12-71. Generally.

(a) 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 its intent.

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

(c) The development services 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)

Sec. 12-72. Appeals.

The city engineer is charged with the responsibility for administration and interpretation of this article. Any person who is dissatisfied or aggrieved by any decision of the city engineer 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)

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 engineer registered in the State of Arizona, except as hereinafter provided.

(c) Where the permittee is the owner of a platted residential lot and where the work is to be done only on such lot, plans and calculations prepared by a professional engineer will not be required. The property owner shall submit a sketch showing the proposed work. The city engineer is authorized to assist the property owner in preparing such a sketch and making any computations which may be required.

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(d) No drainage permit shall be issued by the city engineer until receipt of notification from the development services department that the grading shown on the drainage plan has been approved.

(e) No drainage permit shall be issued by the city engineer in the alternative retention criteria area for developments that do not provide retention storage volume for at least the two-year design storm until receipt of notification from the water utilities department that storm water pollution best management practices have been approved in accordance with § 12-127(b).

(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. As-built plans will not be required from owners of properties developed under subsection (c) of this section.

(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)

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.

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(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.

- (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.

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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.

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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 manager and approved by the city council for any existing storm water facility.

(Code 1967, § 31-13; Ord. No. 2001.17, 7-26-01)

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;

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- (2) A diagram of all property which may be served by any facility to be installed;
- (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;

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- (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;
- (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.

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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 water utilities manager shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the water utilities manager may be delegated by the water utilities manager to other city personnel, but remain the responsibility of the water utilities manager.

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

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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:

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, and excluding Arizona State University-owned property. 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.

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.

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.

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Manager means the water utilities manager who is hereby charged with certain duties and responsibilities by this article, or other city personnel designated by the water utilities manager 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.

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)

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.

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(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.
- (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;

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- 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 water utilities manager 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.

(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 water utilities manager 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)

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 water utilities manager 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)

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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 water utilities manager 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
- (3) Any written guidelines which may be developed or referenced for general use by the water utilities manager.

(b) All owners/developers of lots, plots, or parcels of land in the alternative retention criteria area who do not provide storage of sufficient volume to hold the total runoff from the two-year design storm shall provide on-site pollution prevention best management practices which will provide storm water pollutant removal or prevention equivalent to that which would be achieved using on-site storage. Best management practice plans shall be submitted to the water utilities manager for approval prior to construction.

(c) If a practicable best management practice is required by the water utilities manager, the person receiving the notice of such a requirement may petition the water utilities manager 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 water utilities manager 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)

Sec. 12-128. Construction sites.

(a) Any person performing construction shall use all practicable best management practices identified by the water utilities manager 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 water utilities manager.

(b) If a practicable best management practice is required by the water utilities manager, the person receiving the notice of such a requirement may petition the water utilities manager to reconsider the application of the practicable best management practice to the construction

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activity. The written petition must be received within ten (10) working days setting forth any reasons or proposed alternatives. The water utilities manager 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)

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

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 water utilities manager may establish on premises such devices as the water utilities manager 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 water utilities manager 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 water utilities manager reasonably may specify. The costs of such activities, analyses, and reports shall be borne by the recipient of the order.

(d) If the water utilities manager 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 water utilities manager may seek issuance of a search warrant from the municipal court of the city. The water utilities manager 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)

Secs. 12-136—12-144. Reserved.

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DIVISION 4. ENFORCEMENT

Sec. 12-145. Purpose.

The purpose of this division is to ensure compliance with practicable best management practices required by the water utilities manager, 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)

Sec. 12-146. Notice of violation.

When the water utilities manager finds that any person has violated, or continues to violate, any provision of this article, or any related laws or regulations, the water utilities manager 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 water utilities manager 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 water utilities manager's authority to take further enforcement actions. Nothing in this section shall limit the authority of the water utilities manager to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the water utilities manager 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)

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 water utilities manager 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 water utilities manager may issue an order to the person directing them to cease and desist all such violations and direct the person to:

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- (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.

(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 water utilities manager 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)

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 three hundred dollars (\$300).

(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)

Sec. 12-150. Injunctive relief.

When the water utilities manager 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)

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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)

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