Chapter 17

DEVELOPMENT, REAL PROPERTY AND HOUSING

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ARTICLE I. IN GENERAL

Sec. 17-1. Definitions.

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

Allotted land means land which has been allotted to individual ownership under the trusteeship of the United States government.

Commercial development means any use of land which includes construction or installation of buildings or other structures which will be used in any business enterprise or activity or engaging in business or commerce on such land.

Designates land means the action by the Community Council memorializing in a written document the description of a particular parcel of land or other natural resource of the Community which the Community Council thereby sets aside, subject to whatever conditions it imposes in such document, for the use of a division of the Community or of any other business entity of which the Community owns at least a majority interest.

Lands, natural resources and other public property of the Community means all real property in the Community including the products thereof, in the ownership of the Community-at-large under the trusteeship of the United States government.

Other instruments shall include in its meaning any instrument by which the Community Council designates land or any natural resource owned by the Community for use of a division of the Community or of any other business entity of which the Community has at least a majority ownership interest.

(Code 1981, § 17-1; Code 2012, § 17-1; Ord. No. SRO-25-74, § 1, 3-21-1979; Ord. No. SRO-183-95, § 1, 10-12-1994; Ord. No. SRO-204-95, 6-21-1995; Ord. No. SRO-402-2012, § 17-1, 5-30-2012)

Sec. 17-2. Policy concerning cultural preservation in development.

(a) The Community Council, recognizing the profound impact of population growth, high-density urbanization, industrial expansion, resource exploitation, and the critical importance of maintaining the Community as a Community of Indian people dedicated to the preservation of Indian cultural and the economic, educational and cultural advancement of the Community of Indian people declares that it is the continuing policy of the Community to use all practicable means and measures, in a manner calculated to foster and promote the general welfare to create and maintain conditions under which the Indian people of the Community can exist in productive harmony, and fulfill the social, cultural, economic and other requirements of their present and future generation.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Community to use all practicable means to improve and coordinate its plans, functions, programs, and resources to the end that the Community may:

(1) Fulfill the responsibilities of each generation as trustees of the culture and the environment for succeeding generations;

(2) Ensure for all Indian people of the Community safe, healthful, productive and aesthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural and natural aspects of our heritage, and maintain, within the Pima-Maricopa tradition, an environment which supports diversity and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(Code 1981, § 17-2; Code 2012, § 17-2; Ord. No. SRO-25-74, § 2, 3-21-1979; Ord. No. SRO-402-2012, § 17-2, 5-30-2012)

Sec. 17-3. Development standards.

The Community Council authorizes and directs that, to the fullest extent possible the policies, regulations and public laws of the Community shall be interpreted and administered in accordance with the policies set forth in this chapter and all agencies of the Community shall:

(1) Utilize a systematic, interdisciplinary approach which will ensure SRPMIC prehistoric, historic and cultural standards are integrated in decision-making which may have an impact on the continued integrity of the Community;

(2) Identify and develop methods and procedures that integrate long-standing cultural and environmental values are considered as part of economic and technical review of the Community's development:

(3) All recommendations and reports on land use, zoning and/or right-of-way proposal on allotted and/or Community land will include:

a. The positive and adverse impact of the proposed action on Community's cultural integrity, to include possible enhancements of Community culture or any irreversible and/or irretrievable impacts to the culture;

b. Address any alternatives to the proposed action;

c. Comparison of short and long-term economic benefits for the Community and the maintenance and enhancement of Community integrity and Community culture; and

d. Prior to the making of any detailed statement by the land management board, the appropriate SRPMIC government department shall consult with and obtain the comments of any and all departments, agencies and entities with responsibility any jurisdiction by law, special expertise or Council authorized expertise. Copies of such statements, comments and view shall accompany the proposal through the regulatory review process.

(Code 1981, § 17-3; Code 2012, § 17-3; Ord. No. SRO-25-74, § 3, 3-21-1979; Ord. No. SRO-402-2012, § 17-3, 5-30-2012; Ord. No. SRO-531-2021, 2-24-2021)

Sec. 17-4. Construction of chapter.

The policies and goals set forth in this chapter are supplementary to those set forth in existing ordinances of the Community and subject to the laws of the United States.

(Code 1981, § 17-4; Code 2012, § 17-4; Ord. No. SRO-25-74, § 4, 3-21-1979; Ord. No. SRO-402-2012, § 17-4, 5-30-2012; Ord. No. SRO-531-2021, 2-24-2021)

Sec. 17-5. Authority of Community Council in matters affecting development of allotted lands and public property.

(a) No contract, lease or other instrument affecting the use and disposition of allotted and tribal land within the Community shall be binding upon the signatories thereto unless such contract, lease or other instrument is approved by the Community Council, and no person shall commence any commercial development within the Community without approval by the Community Council.

(b) No contract, lease or other instrument affecting the use and development of the lands, natural resources and other public property of the Community shall be entered into or be binding without the approval of the Community Council.

(c) The final decision in all matters relating to the use and disposition of allotted and tribal land and the use and development of land, natural resources and other public property of the Community shall be vested in the Community Council.

(d) Prior to the final decision of the Community Council relating to any proposal received by the Community Council from the land management board, and within 20 business days of the

receipt of such proposal, the Community Council shall set a time upon its agenda at a regularly scheduled council meeting with a consideration of such proposal and the recommendation of the land management board. Notice for such hearing shall be made at least seven days prior to the date of hearing and shall be sent by ordinary mail to all persons who had received notice of the hearing concerning the proposal before the land management board as well as all other members of the Community, who, in writing, request such notice.

(e) If the Community Council finds in any particular situation that it is unnecessary to utilize the procedures of subsection (d) of this section and Section 17-7(d) because adequate public hearing and notice has occurred or will occur under special procedures adopted by the Community Council to adequately inform members of the Community of the intended use and development of land, natural resources and/or other public property of the Community, and if the Community Council by resolution sets out the facts that is has found and the conclusions it has drawn from those facts, it may, by the same resolution, adopt special procedures and waive the procedures of subsection (d) of this section and Section 17-7(d) for the particular use and development. The waiver will be effective upon adoption of the resolution.
(Code 1981, § 17-5; Code 2012, § 17-5; Ord. No. SRO-25-74, § 5, 3-21-1979; Ord. No. SRO-183-95, § 1, 10-12-1994; Ord. No. SRO-216-96, § 1, 3-20-1996; Ord. No. SRO-402-2012, § 17-5, 5-30-2012; Ord. No. SRO-531-2021, 2-24-2021)

Sec. 17-6. Approval of contracts, leases and other instruments.

(a) The Community Council shall not approve any contract, lease or other instrument pursuant to Section 17-5 unless such contract, lease or other instrument shall adequately provide for the employment, promotion and training of members of the Community in the business or other enterprise located with the Community and subject of the contract, lease or other instrument.

(b) The Community Council shall not approve any contract, lease or other instrument pursuant to Section 17-5 unless such contract, lease or other instrument shall provide that the Community shall have the right to provide utility services to the premises either through its own facilities or by contract or the permitting of contracts with other governmental or private entities capable of providing such services.
(Code 1981, § 17-5.1; Code 2012, § 17-5.1; Ord. No. SRO-93-85, § 2, 1-23-1985; Ord. No. SRO-100-86, § 1, 7-23-1986; Ord. No. SRO-402-2012, § 17-5.1, 5-30-2012)

Editor's note—Inclusion of § 2 of Ord. No. SRO-93-85, adopted Jan. 23, 1985, as § 17-5.1, and subsequent inclusion of Ord. No. SRO-100-86, § 1, adopted July 23, 1986, as subsection 17-5.1(b), was at the discretion of the editor.

Sec. 17-7. Land management board.

(a) *Created; membership; appointment.* There shall be a land management board. The land management board shall consist of seven enrolled Community Members. Each member shall be appointed for a three-year term and the appointment shall be so made that the terms of office of no more than three members shall expire during the same calendar year. Members of the land management board shall serve at the pleasure of the council and may be removed by the council by a majority vote of the members of the council present at any regularly or specially called council meeting. Members of the land management board shall be appointed, from time-to-time as the vacancies occur, by the Community Council. At least one Board member shall reside in the Lehi district and one Board Member shall reside in the Salt River district.

(b) *Responsibility to make recommendations.* The land management board shall have the responsibility to recommend to the Community Council, for its consideration, courses of action relating to proposals affecting the use and disposition of allotted and tribal land and the use and development of the lands, natural resources and other public property of the Community.

(c) *Rule-making authority.* The land management board shall prescribe, subject to the approval of the Community Council, rules and regulations not in conflict with the ordinances of the Com-

munity, necessary to enforce this chapter and shall be charged with the enforcement of such rules and regulations.

(d) *Hearings.* The land management board shall hold a hearing prior to recommending to the Community Council courses of action relating to proposals as provided in subsection (b) of this section, but no later than 15 days after the proposal has been transmitted to the land management board. Notice of the hearing shall be given by ordinary mail, or other means, at least seven days prior to the hearing, to:

(1) The applicant;

(2) The persons on whose land the development is proposed to occur;

(3) All authorized spokesmen of allottee landowners of the allotted land which development is proposed; and

(4) All persons, members of the Community, who are allottee landowners of land located within one-half mile of land where the development is proposed to occur, or the authorized spokesman of such allottee landowners.

(e) The director (or designee) of the Community development department shall be responsible for the notifications provided for in this subsection, as well as, for the setting of dates for the hearing provided for in this subsection. The subject of the hearing will be the nature of the recommendation to be made to the Community Council. A decision by the land management board shall be made within five business days of the conclusion of the hearing, and the land management board shall transmit its recommendation together with the statement and comments provided for in Section 17-3(3) and a report supporting its recommendation to the Community Council within ten days of the conclusion of the hearing.

(Code 1981, § 17-6; Code 2012, § 17-6; Ord. No. SRO-25-74, § 6, 3-21-1979; Ord. No. SRO-402-2012, § 17-6, 5-30-2012; Ord. No. SRO-531-2021, 2-24-2021)

Sec. 17-8. Community development department.

(a) *Responsibility for forwarding proposals.* The Community development department shall be responsible for the transmittal to the land management board of all applications pursuant to this article. Transmittal of such applications shall be made at such time as an application contains all the data required by the Community development department so that the land management board may make an appropriate recommendation to the Community Council.

(b) *Rule-making authority.* The Community development department shall prescribe, subject to the approval of the Community Council, rules and regulations, not in conflict with the ordinances of the Community, necessary to perform its functions under this section.

(c) *Board to make recommendation.* The land management board shall make recommendations concerning approval, or disapproval of any application to the Community Council, based solely on its findings pursuant to section 17-3(3). The Community Council shall thereafter make such decision as the general welfare of the Community requires.

(Code 1981, § 17-7; Code 2012, § 17-7; Ord. No. SRO-25-74, § 7, 3-21-1979; Ord. No. SRO-97-85, 2-27-1985; Ord. No. SRO-183-95, § 1, 10-12-1994; Ord. No. SRO-402-2012, § 17-7, 5-30-2012)

Editor's note—Ord. No. SRO-97-85, adopted Feb. 27, 1985, changed the name of the planning and land management department to the Community development department. As pages are pulled for supplements, the change in wording will be made.

Sec. 17-9. Application for development of allotted lands or public property.

(a) *To be given to Community development department.* Any person seeking the approval of the Community Council for any contract, lease or other instrument affecting the use and disposition of allotted land or affecting the use and development of the lands, natural resources and other public property in the Community or to commence any development within the Community shall make application therefor to the Community development department.

(b) *Transmittal to land management board.* The Community development department shall transmit to the land management board all applications which are complete pursuant to the requirements for data established under the rules and regulations of the Community development department.

(c) *Board to make recommendations.* The land management board shall make recommendations concerning approval, or disapproval of any contract, lease or other instrument affecting the use and disposition of allotted land or affecting the use and development of the lands, natural resources, and other public property of the Community, to the Community Council, based solely on its findings pursuant to section 17-3(3). The Community Council shall thereafter make such decision as the general welfare of the Community requires.

(d) *Changes in existing contracts, etc., subject to chapter.* Any change in any contract, lease or other instrument affecting the use and disposition of allotted land previously entered into including but not limited to changes in terms, parties and matters allowed to be changed with the approval of one or all of the parties to the instrument shall be subject to the provisions of this chapter.
(Code 1981, § 17-8; Code 2012, § 17-8; Ord. No. SRO-25-74, § 8, 3-21-1979; Ord. No. SRO-183-95, § 1, 10-12-1994; Ord. No. SRO-402-2012, § 17-8, 5-30-2012)

Sec. 17-10. Modified procedure and requirements for short-term mining and other nondevelopment land uses.

(a) *When permit may be issued.* Upon the determination of the land management board, as provided for herein, the president or vice-president of the Community may issue a permit for the use of allotted land or the land, natural resources and other public property of the Community, together with facilities located on such lands for periods of time not less than 90 days or more than 365 days.

(b) *Application to land management board.* Any person seeking to secure a permit within the scope of this article shall make application to the Community development department which will forthwith forward the application to the land management board. If the land management board determines after a hearing that the requested permit will not allow for any substantial development or alteration of the lands sought to be subject of the permit, except in the case of sand and gravel mining operations; and will not adversely affect the adjoining landowners or the Community, the land management board shall certify to the president or vice-president of the Community that the requested permit is authorized under this section. A hearing upon the application shall be held within ten days of the filing of the application, and within five days after such hearing the land management board shall forward its determination to the president or vice-president of the Community.

(c) *Special notice requirements.* If the requested permit involves utilization of land within one-half mile of any residence or commercial enterprise, then the land management board shall notice the hearing provided for in subsection (b) of this section in the same manner as provided for in section 17-7(d).

(d) *Permits for less than 90-day period.* Applications for permits for periods of less than 90 days shall be submitted to the president or vice president of the Community who shall be authorized to issue such permits if such officer deems it to be in the best interest of the Community.

(e) *Criteria for determination.* In making the determination pursuant to subsections (a) and (d) of this section, the president or vice president of the Community shall determine the conditions, fees and prices of the permits applied for where such permits utilize the land, natural resources, and other property of the Community.

(f) *Filing fee.* Applications presented to the Community development department shall be accepted only if the applicant pays a filing fee with such other fees as will be necessary to offset the costs connected with the review of the documents submitted. The filing fees shall be based upon the length of the intended use and shall be as follows:

(1) $25.00 for a period up to 90 days;

(2) $50.00 for a period from 90 days to six months;

(3) $75.00 for a period from six months to nine months; and

(4) $100.00 for a period from nine months to 12 months.

The filing fee and review costs may be waived by the planning and land management board where the applicant is unable to make such payments as the result of economic circumstances and where the proposed use would appear to be beneficial to the Community.

(g) *Short-term lease amendments.* Upon the determination of the land management board, as provided for herein, the president of the Community may approve an amendment in any lease which has a term of five years or less in situations in which the amendment does not significantly affect the interest of the lessors. Utilizing the procedure set out in subsections (b) and (c) of this section, a decision concerning such a determination shall be made by the land management board and forwarded to the president or vice-president.
(Code 1981, § 17-9; Code 2012, § 17-9; Ord. No. SRO-25-74, § 9, 3-21-1979; Ord. No. SRO-183-95, § 1, 10-12-1994; Ord. No. SRO-402-2012, § 17-9, 5-30-2012)

Sec. 17-11. Special procedure for grants of right-of-way.

(a) *When right-of-way may be allowed.* Upon the recommendation of the Community development department, as provided for herein, the president or vice president of the Community may issue a utility right-of-way over allotted land or the land of the Community.

(b) *Application to Community development department.* Any person seeking to secure a utility right-of-way within the scope of this section shall make application to the Community development department. If the Community development department determines after a hearing that the requested right-of-way:

(1) Will be compatible with the general plan and zoning ordinances of the Community;

(2) Will not adversely affect adjoining landowners or the Community; and

(3) Has been approved by allotted landowners over or through whose land the right-of-way will go;

the Community development department shall certify to the president or vice president of the Community that the requested utility right-of-way is authorized under this section. A hearing upon the application for utility rights-of-way shall be held within ten days of the filing of the application, and within five days after such hearing the Community development department shall forward its determination to the president or vice president of the Community. Hearings shall not be heard for right-of-way applications when right-of-way has already been obtained in utility corridor.

(c) *Authorization by president.* Upon receipt of the certification of the utility right-of-way from the Community development department, the president or vice president of the Community may authorize such utility right-of-way if the president or vice president of the Community determines that the issuance of the utility right-of-way is beneficial to the party to be served therewith and the Community.

(d) *Filing of copies.* Copies of all approved utilities rights-of-way shall be filed with the Community development department and with each member of the Community council.
(Code 1981, § 17-10; Code 2012, § 17-10; Ord. No. SRO-25-74, 3-21-1979; Ord. No. SRO-402-2012, § 17-10, 5-30-2012)

Sec. 17-12. Modified procedure and requirements regarding the lease of developed agricultural land for agricultural purposes.

The provisions of this article in regard to the holding of public hearings shall not be applicable as to any lease or other agreement which would allow the use of already developed and previously farmed agricultural land for agricultural purposes.
(Code 1981, § 17-11; Code 2012, § 17-11; Ord. No. SRO-67-81, § 1, 10-8-1980; Ord. No. SRO-402-2012, § 17-11, 5-30-2012)

Sec. 17-13. Exception for purchase or construction of home.

The provisions of sections 17-1 through 17-12 shall not be applicable to transactions involving the securing, with a member's interest in allotted land or leased allotted or Community land located within the Community, a loan for the purchase or construction of a home for a member of the Community or the purchase or construction of a home for a member of the Community.
(Code 1981, § 17-11.1; Code 2012, § 17-11.1; Ord. No. SRO-99-85, 8-7-1985; Ord. No. SRO-402-2012, § 17-11.1, 5-30-2012)

Sec. 17-14. Agricultural lease conditions for cotton or grain crops.

(a) No agricultural lease will be approved by the Community unless the lessee shall have given adequate assurance, through cash deposit, that all acreage to be planted with cotton or grain shall be plowed down or disked within 30 days of the harvesting of any cotton or grain crop.

(b) The Community development department shall prescribe, subject to the approval of the Community Council, rules, regulations and standards of compliance, not in conflict with ordinances of the Community, necessary to perform its functions under this section.

(c) Requirements:

(1) Every lessee of agricultural land leases within the Community shall plow down or disk all acreage planted with cotton or grain within 30 days of the harvesting of any cotton or grain crop.

(2) In the event any such lessee fails to comply with this section, the Community may undertake the plow down or disking in order to protect the land and crops of other persons within the Community. Such action by the Community, whether through its employees, agents, or independent contractors, shall be done with due care and regard for the land and its owners, shall be a public responsibility undertaken by the Community, and excepting only negligence, shall not be a trespass on landowners or lessees.

(3) The lessee who leased land is plowed down or disked pursuant to subsection (c) of this section shall pay to the Community within ten days of the conclusion of the work by the Community the actual cost of the work together with an amount equal to 15 percent of such actual cost to pay for otherwise unaccounted administrative expenses resulting from the failure of the lessee to perform.

(4) If payment is not made within ten days of the completion of the work, five days' notice of the sum due having been given to the lessee by mailing to lessee at lessee's last known address by registered letter a full statement of the amount owed, the Community may secure payment by seizure of the deposit to the amount of the obligation. In the event no such deposit has been made, the Community may bring an action for damages against the lessee in the Community court or in any other court having jurisdiction over lessee. The court may award advocate's/attorney's fees to the Community in the event the Community is granted judgment. Advocate/attorney's fees will be calculated by their reasonable value.

(5) No person against whom a judgment has been rendered, which judgment is unsatisfied, is qualified to be a lessee of land within the Community.

(Code 1981, § 17-12; Code 2012, § 17-12; Ord. No. SRO-86-84, 5-16-1984; Ord. No. SRO-402-2012, § 17-12, 5-30-2012)

Sec. 17-15. Group homes.

(a) Unrelated persons living together notwithstanding, a residential facility operated by or licensed and supervised by the Community which serves eight or fewer persons shall be considered a residential use of property for the purposes of the Community's zoning ordinances if such facility provides care on a 24-hour per day basis. The residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property. The limitation of eight or fewer persons does not include the operator of a resi-

dential facility, members of the operator's family or persons employed as staff, except that the total number of all persons living at the residential facility shall not exceed ten.

(b) For the purpose of the zoning ordinance, a residential facility which serves eight or fewer persons shall not be included within the definition of any term which implies that the residential facility differs in any way from a single-family residence.

(c) The provisions of this section shall not be construed to forbid the Community from placing restrictions on building heights, setbacks, lot dimensions and placements of signs of a residential facility which serves eight or fewer persons as long as such restrictions are identical to those applied to other single-family residences.

(d) The provisions of this section shall not be construed to forbid the application to a residential facility of any Community law or regulation which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of the Community, so long as the law or regulation applies equally to other single-family dwellings and does not distinguish residents of such residential facilities from persons who reside in other single-family dwellings.

(e) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves eight or fewer persons which is not required of other single-family residences in the same zone.

(f) For the purposes of any contract, deed, lease or covenant for the transfer of an interest in real property executed subsequent to the effective date of this section, a residential facility which serves eight or fewer persons shall be considered a residential use of property and a use of property by a single-family, notwithstanding any disclaimers to the contrary.

(g) No residential facility shall be established within a 1,200-foot radius of an existing residential facility in a residential area.

(h) Residential facilities which serve nine or more persons shall be a permitted use in any zone in which residential buildings of similar size, containing rooms or apartments which are provided on a continuing basis for compensation, are a permitted use. Nothing in this section shall be construed to prohibit the Community from requiring a conditional use permit in order to maintain a residential facility serving nine or more persons, provided that no conditions shall be imposed on such a facility which are more restrictive than those imposed on other similar dwellings in the same zones.

(i) The provisions of this section shall apply only to residential facilities licensed, operated, supported or supervised by the Community and the establishment of a particular facility shall not create any zoning rights with respect to any subsequent use of the property involved.

(Code 1981, § 17-13; Code 2012, § 17-13; Ord. No. SRO-286-02, 1-30-2002; Ord. No. SRO-402-2012, § 17-13, 5-30-2012)

Secs. 17-16—17-33. Reserved.

ARTICLE II. EMINENT DOMAIN

Sec. 17-34. Purposes for which eminent domain may be exercised.

Subject to the provisions of this chapter and in accordance with article III of the bylaws of the Community, the right of eminent domain, also called condemnation, may be excised by the Community to:

(1) Acquire all or any portion of any ownership interest in any real property or improvements located within the exterior boundaries of the Community which ownership interest is held by any nonmember of the Community who is not an heir of an original allottee and which land is not subject to trust status.

(2) Acquire the leasehold interest of a lessee of Community land for the purpose of using such land for roadway and utility corridors and other public purposes.

(Code 1981, § 5-61; Code 2012, § 17-21; Ord. No. SRO-110-88, § 1, 2-17-1988; Ord. No. SRO-125-89, § 1, 7-12-1989; Ord. No. SRO-402-2012, § 17-21, 5-30-2012)

Sec. 17-35. Prerequisite to condemnation.

Before instituting an action for condemnation the council shall first enact a resolution of its intention to condemn. The legal description of the property and/or improvements or interests in property to be condemned shall be set forth in the resolution.
(Code 1981, § 5-62; Code 2012, § 17-22; Ord. No. SRO-110-88, § 2, 2-17-1988; Ord. No. SRO-125-89, § 2, 7-12-1989; Ord. No. SRO-402-2012, § 17-22, 5-30-2012)

Sec. 17-36. Actions for condemnation; immediate possession; money deposit.

(a) *Commencement of action; application for possession.* All actions for condemnation shall be brought as other civil actions in the Community court. The action shall be commenced in the name of the Community as plaintiff. The plaintiff may, at the time of filing the complaint, or at any time thereafter, make application to the court for an order permitting it to take possession of and use the property or interest therein sought to be condemned.

(b) *Service of notice.* Upon filing the application, a time for hearing shall be fixed, and notice thereof served upon the parties in interest by personal service pursuant to section 5-23 or by publication in a newspaper of general circulation in Maricopa County, Arizona, if they cannot be served pursuant to the Community's Rules of Civil Procedure.

(c) *Evidence or probable damages.* On the day of the hearing the court shall receive evidence as to the probable damages to each owner, possessor or person having an interest in each parcel of land and/or improvements or interests in property sought to be condemned, and may direct that upon a deposit of money or a bond in a form to be approved by the court, the plaintiff shall be let into the possession and full use of the parcels of land and/or improvements or interests in property, as described in the order. In determining the value of a lessee's interest in a leasehold estate the value shall be limited by the more restrictive of:

(1) The uses allowed under the lease;

(2) The uses permitted in the zoning of the land subject of the lease in force at the time the application was filed; and

shall be further limited to the extent the considerations for the leasehold interest were less than the highest value obtainable as allowed under the provisions of 25 USC 416.

(d) *Deposit of money or bond.* The money or bond may be deposited with the Community treasurer at the election of the plaintiff and held for the use and benefit of each person having an interest in each parcel of land sought to be condemned, subject to final judgment after trial of the action, and held also as a fund to pay any further damages and costs recovered in the proceedings, as well as all damages sustained by the defendant if for any cause the property is not finally taken. The deposit of the money or bond shall not discharge the plaintiff from liability to maintain the fund in full but it shall remain deposited for all accidents, defalcations or other contingencies, as between the parties to the proceedings, at the risk of the plaintiff, until the compensation or damage is finally settled by judicial determination, and the court awards such part thereof as shall be determined to the defendant or the treasurer is ordered by the court to disburse it.

(e) *Investment and disbursement of money or bond.* The treasurer shall receive the money or bond and return a receipt therefor to the court and the treasurer shall safely keep such deposit in a special fund to be entered on his or her books as the condemnation fund. The treasurer shall invest and reinvest the monies in the condemnation fund. The treasurer shall disburse the money deposited and, if necessary, convert such investments to cash for the purpose of making such disbursements or forfeit the bond as the court may direct pursuant to its judgment. After satisfaction of the judgment in a condemnation action, the excess, if any, of the deposit made regarding such action, including monies earned by the investment and reinvestment of such deposit, shall be returned by the treasurer to the plaintiff.

(f) *Amount of deposit.* The parties may stipulate as to the amount of deposit, or for a bond from the plaintiff in lieu of a deposit.

(g) *Rights of persons in interest.* The parties may stipulate that:

(1) The plaintiff deposit with the clerk of the court the amount in money for each person in interest which plaintiff's valuation evidence shows to be the probable damages to each person in interest; and

(2) Upon order of the court each person in interest may withdraw the amount which plaintiff has deposited for his or her interest.

(h) *Withdrawal or repayment of funds.* No person in interest for whom a deposit has been made, pursuant to stipulation for his or her withdrawal, shall be entitled to interest upon the amount which he or she is allowed to withdraw, but he or she shall be entitled to interest upon that portion of the final judgment, exclusive of costs allowed by the court, which exceeds the amount which is deposited for his or her withdrawal. Should the amount which is withdrawn by any defendant exceed the amount of the final judgment awarded the defendant inclusive of costs allowed by the court, such defendant withdrawing the funds shall forthwith repay the plaintiff such excess, with legal interest, as set by the court, but, not to exceed ten percent, from date of withdrawal to date of repayment.

(i) *Use as evidence.* No stipulation which is made nor any evidence which is introduced pursuant to this section shall be introduced in evidence or used to the prejudice of any party in interest on the trial for the action.
(Code 1981, § 5-63; Code 2012, § 17-23; Ord. No. SRO-110-88, § 3, 2-17-1988; Ord. No. SRO-125-89, § 3, 7-12-1989; Ord. No. SRO-402-2012, § 17-23, 5-30-2012)

Sec. 17-37. Complaint.

The complaint shall set forth:

(1) The names of all owners and claimants of the property, if known, or a statement that they are unknown, as defendants.

(2) A statement that the owner or owners are not members of the Community nor heirs of an original allottee and that the land described in section 17-36 is not in trust status.

(3) A description of each interest in land and/or improvement sought to be taken, and whether the interest in land constitutes the whole or only a part of an entire parcel or tract.
(Code 1981, § 5-64; Code 2012, § 17-24; Ord. No. SRO-110-88, § 4, 2-17-1988; Ord. No. SRO-125-89, § 4, 7-12-1989; Ord. No. SRO-402-2012, § 17-24, 5-30-2012)

Sec. 17-38. Summons; contents; service.

(a) The clerk shall issue a summons containing:

(1) The names of the parties.

(2) A general description of the whole property.

(3) A reference to the complaint for descriptions of the respective parcels.

(4) Notice to defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint.

(b) The summons in all other particulars shall be as provided in civil actions and shall be served in like manner.
(Code 1981, § 5-65; Code 2012, § 17-25; Ord. No. SRO-110-88, § 5, 2-17-1988; Ord. No. SRO-125-89, § 5, 7-12-1989; Ord. No. SRO-402-2012, § 17-25, 5-30-2012)

Sec. 17-39. Right to defend action.

All persons occupying, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend in respect to his or her property or interest, or that claimed by him or her, as if named in the complaint.
(Code 1981, § 5-66; Code 2012, § 17-26; Ord. No. SRO-110-88, § 6, 2-17-1988; Ord. No. SRO-125-89, § 6, 7-12-1989; Ord. No. SRO-402-2012, § 17-26, 5-30-2012)

Sec. 17-40. Ascertainment and assessment of value, damages and benefits.

The court shall ascertain and assess in regard to eminent domain exercised under:

(1) Section 17-34(1), the value of the property sought to be condemned and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein, and if it consists of different parcels, the value of each parcel and each estate or interest therein separately;

(2) Section 17-34(2), the value of the lessee's interest in the leasehold estate shall be limited by the more restrictive of the uses:

a. Allowed under the lease;

b. Permitted in the zoning of the land subject of the lease in force at the time the application was filed; and

shall be further limited to the extent the considerations for the leasehold interest were less than the highest value obtainable as allowed under the provisions of 25 USC 416.
(Code 1981, § 5-67; Code 2012, § 17-27; Ord. No. SRO-110-88, § 7, 2-17-1988; Ord. No. SRO-125-89, § 7, 7-12-1989; Ord. No. SRO-402-2012, § 17-27, 5-30-2012)

Sec. 17-41. Accrual of right to compensation and damages; limitation.

(a) For the purpose of assessing compensation and damages, the right to compensation and damages shall be deemed to accrue at the date of the summons, and its actual value at that date shall be the measure of compensation and damages.

(b) If an order is made letting the plaintiff into possession prior to final judgment, the compensation and damages awarded shall draw legal interest from the date of the order except that where the defendant is allowed, pursuant to section 17-36(c), to withdraw the money deposited by plaintiff, such defendant shall not be entitled to any legal interest upon the money which he or she is allowed to withdraw regardless of the date of the order letting plaintiff into possession.

(c) No improvements placed upon the property subsequent to the date of service of summons shall be included in the assessment of compensation or damages.
(Code 1981, § 5-68; Code 2012, § 17-28; Ord. No. SRO-110-88, § 8, 2-17-1988; Ord. No. SRO-125-89, § 8, 7-12-1989; Ord. No. SRO-402-2012, § 17-28, 5-30-2012)

Sec. 17-42. Final order of condemnation; vesting of property.

When the final judgment has been satisfied, the court shall make a final order of condemnation, describing the property condemned; and thereupon the property described shall vest in plaintiff.
(Code 1981, § 5-69; Code 2012, § 17-29; Ord. No. SRO-110-88, § 9, 2-17-1988; Ord. No. SRO-125-89, § 9, 7-12-1989; Ord. No. SRO-402-2012, § 17-29, 5-30-2012)

Sec. 17-43. Procedures following judgment.

(a) *Possession by plaintiff after judgment or pending appeal.* At any time after judgment is entered, or pending an appeal from the judgment to the appellate division, when plaintiff has paid into court for defendant or defendants the full amount of the judgment, and such other amounts as required by the court as a fund to pay further damages and costs which may be recovered in the proceedings, as well as all damages that may be sustained by defendant or defendants if for any cause the property is not finally taken the trial court may, upon notice of not less than ten days, authorize plaintiff, if already in possession, to continue therein, or if not, then to take possession of and use the property until final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against plaintiff on account thereof.

(b) *Receipt of payment by defendants.* The defendant or defendants who are entitled to the money paid into court upon any judgment may demand and receive the money at any time thereafter upon an order of the court. The court shall, upon application, order the money so paid into court delivered to the party entitled thereto upon his or her filing either a satisfaction of the judg-

ment or a receipt for the money, and an abandonment of all defenses to the action or proceeding except as to the amount of damages to which he or she may be entitled if a new trial is granted. Such payment shall be deemed an abandonment of all defenses, except the party's claim for greater compensation.

(c) *Custody of money paid into court.* The money paid into court on final judgment may be placed by order of court in the custody of the treasurer to be held or disbursed upon order of court, and plaintiff and such officers shall be subject to the same responsibility, liabilities and restrictions with respect thereto as provided in this article when money is paid into court by plaintiff upon application for possession before trial.

(d) *Costs of new trial.* When a new trial is granted upon application of a defendant, and he or she fails upon the trial to obtain greater compensation than was allowed upon the first trial, the costs of the new trial shall be taxed against him or her.
(Code 1981, § 5-70; Code 2012, § 17-30; Ord. No. SRO-110-88, § 10, 2-17-1988; Ord. No. SRO-125-89, § 10, 7-12-1989; Ord. No. SRO-402-2012, § 17-30, 5-30-2012)

Sec. 17-44. Costs.

(a) Costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

(b) If, prior to commencement of the action or proceeding, the Community tenders to the owner of the property and/or improvements such sum of money as it deems the reasonable value of the property, or interests in property, and the owner refuses to accept it and transfer the property, then all costs and expenses of the action or proceeding shall be taxes against the owner unless the sum of money assessed in the judgment as the value of the property and compensation to be paid therefor is greater than the amount so tendered.
(Code 1981, § 5-71; Code 2012, § 17-31; Ord. No. SRO-110-88, § 11, 2-17-1988; Ord. No. SRO-125-89, § 11, 7-12-1989; Ord. No. SRO-402-2012, § 17-31, 5-30-2012)

Secs. 17-45—17-61. Reserved.

ARTICLE III. ROADWAY CONSTRUCTION

Sec. 17-62. 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:

Private road or *driveway* means a place in allotted assigned fee or tribal ownership and used for vehicular traffic by the owner and those having express or implied permission from the owner, but not by other persons.

Roadway means all streets, highways and roads which are not defined as private roads or driveways.
(Code 1976, § 14.11; Code 1981, § 17-41; Code 2012, § 17-41; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-402-2012, § 17-41, 5-30-2012)

Sec. 17-63. Authorization required for construction.

No roadway shall be constructed upon the lands within the exterior boundaries of the Community unless the Community Council enacts a resolution authorizing such roadway construction.
(Code 1976, § 14.12; Code 1981, § 17-42; Code 2012, § 17-42; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-346-09, § 1, 1-21-2009; Ord. No. SRO-402-2012, § 17-42, 5-30-2012)

Sec. 17-64. Applicability of article.

This article shall apply only to the construction of new roadways and to the widening of old roadways by the addition of no less than five feet.
(Code 1976, § 14.16; Code 1981, § 17-43; Code 2012, § 17-43; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-402-2012, § 17-43, 5-30-2012)

Sec. 17-65. Exclusion of certain lands.

This article will not apply to roadways proposed to be constructed in the following described

portion of the Community: Section 1, Township 1 North, Range 4 East, Gila and Salt River Meridian, Arizona.
(Code 1976, § 14.17; Code 1981, § 17-44; Code 2012, § 17-44; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-402-2012, § 17-44, 5-30-2012)

Sec. 17-66. Procedure; hearing and notice.

The land management board of the Community shall sit as a hearing board in all matters concerning the construction of roadways upon lands within the exterior boundaries of the Community. Hearings will be conducted by the land management board at the direction of the Community council. At such hearings, the land management board will take testimony as to whether the general welfare of the Community will be served by the construction of a proposed roadway. All such hearings shall be publicly noticed by the posting of notices 14 days prior to the holding on all public bulletin boards within the Community, by publication at least once, no less than 14 days prior to the holding of the hearing in any newspaper of general circulation distributed within the Community, and by written notice to all persons having an interest in assigned land or allotments located within one-half mile of the proposed roadway. The notices of hearing will solicit the attendance and advice of all Community members.
(Code 1976, § 14.13; Code 1981, § 17-45; Code 2012, § 17-45; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-402-2012, § 17-45, 5-30-2012)

Sec. 17-67. Report to the Community Council.

At the conclusion of its hearing and within five days thereof, the land management board shall make its report to the Community Council. The report shall relate the findings of the land management board, based upon the testimony received at the hearing, as to whether the general welfare of the Community will be served by the construction of the proposed roadway.
(Code 1976, § 14.14; Code 1981, § 17-46; Code 2012, § 17-46; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-402-2012, § 17-46, 5-30-2012)

Sec. 17-68. Action by Community Council.

Within 14 days after receiving the report of the land management board, the Community Council shall determine whether the proposed roadway construction shall be approved or disapproved, including any new stipulations or modifications that the Community Council may require, unless, the Community Council continues the determination. The Community Council may continue a determination no more than twice and for no more than 14 days of each such continuance occasion. Approval of construction shall be by resolution enacted by the Community Council. Failure to act within the time set out shall constitute a denial of the application for construction of a roadway. Notice of the enactment of a resolution or of nonaction for 14 days subsequent to the receipt of a report from the land management board, or for such continued time as determined by the Community Council, shall be given to the person who has solicited the approval of the Community Council, to all persons who had previously received personal mailed notice of the proposed construction, and to all persons who attended the hearing of the land management board. The Community Council may approve the roadway construction for the outer loop freeway and for other construction of roadways which have utilized or are complying with applicable Community and federal right-of-way processes without a public hearing before the land management board and/or the Community Council, and in addition, without submission of a report from the land management board.
(Code 1976, § 14.15; Code 1981, § 17-47; Code 2012, § 17-47; Ord. No. SRO-30-74, 5-29-1974; Ord. No. SRO-131-90, 8-20-1990; Ord. No. SRO-346-09, § 2, 1-21-2009; Ord. No. SRO-402-2012, § 17-47, 5-30-2012)

Secs. 17-69—17-94. Reserved.

ARTICLE IV. STREET NUMBERS AND NAMES

Sec. 17-95. Policy.

(a) It shall be the policy of the Community to assign street addresses to all properties and buildings thereon and naming of streets or roads within the Community.

(b) The planning and land management department is hereby authorized to administer the provisions of this article.

(c) The director is further authorized to promulgate such rules and regulations as required to implement this article.

(d) All house numbering shall correspond to the Maricopa County address and street assignment policy.
(Code 1981, § 17-48; Code 2012, § 17-48; Ord. No. SRO-73-81, § 1, 9-2-1981; Ord. No. SRO-402-2012, § 17-48, 5-30-2012)

Sec. 17-96. Street addressing.

(a) Property having one building will be issued one address and must front on a named street that corresponds to existing nearby streets and numbering.

(b) Property having several buildings with interior street or drives shall be issued one master address for the project on which the main entrance fronts.

(c) Property having several buildings without interior streets or drives shall be issued one address for each building on a dedicated street.
(Code 1981, § 17-49; Code 2012, § 17-49; Ord. No. SRO-73-81, § 2, 9-2-1981; Ord. No. SRO-402-2012, § 17-49, 5-30-2012)

Sec. 17-97. Street naming.

(a) The land management board shall review and recommend to the Community Council approval or disapproval of all street names.

(b) Alignment is the arrangement, positioning, adjustment or formation of a line, road or street with another line, road or street of extension of that line.

(c) Street names. Any combination of no fewer than two of a prefix, primary, and suffix will constitute a full or total name.

(d) A complete name shall consist of no more than four words including suffix.

(e) Existing mile and half-mile road or street names are to remain fixed except where recommendations calling for changes are approved by the Community Council.

(f) All future road or street names shall be approved as provided herein.
(Code 1981, § 17-50; Code 2012, § 17-50; Ord. No. SRO-73-81, § 3, 9-2-1981; Ord. No. SRO-402-2012, § 17-50, 5-30-2012)

Sec. 17-98. Block addressing.

A series of addresses assigned to 1½-mile grids within a range must be in a sequential series using zero as a base point extending north and east from an existing Maricopa County system.
(Code 1981, § 17-50.1; Code 2012, § 17-50.1; Ord. No. SRO-73-81, § 4, 9-2-1981; Ord. No. SRO-402-2012, § 17-50.1, 5-30-2012)

Secs. 17-99—17-124. Reserved.

ARTICLE V. HOMESITES

DIVISION 1. GENERALLY

Sec. 17-125. Policy.

(a) The issuance of a residential homesite lease is reserved for enrolled Community members only. Any other person not enrolled in the Community seeking permission to have a residential lease within the Community boundaries will be denied.

(b) It is the policy of the Community that the council designates certain tribal lands to be made available for residential homesites for enrolled Community members to provide for the health and welfare of the Community.

(c) The Community also recognizes the limited availability of tribal lands for homesite purposes and as such, homesite leases on tribal lands shall be made in a responsible and prudent manner.

(d) It is the policy of the Community that enrolled Community members, who are landowners within the Community, be provided the opportunity to have a homesite lease on allotted lands in which they hold ownership interests.

(e) The Community also recognizes the limited availability of public resources to provide roadway and utility easements and services to remote areas of the Community, and as such, a homesite applicant or assignee may be required to pay for, at their own expense, certain easements or services to their homesite.

(f) The Community provides important governmental services and capital improvements and infrastructure, including fire, police, ambulatory, water, sewer and road maintenance services to individuals who live within the boundaries of the Community and due to limited resources and jurisdictional concerns, only enrolled Community members may obtain a homesite lease within the boundaries of the Community.

(g) The Community supports providing educational opportunities for homeowners and potential homeowners to ensure that enrolled Community members are aware of homeownership opportunities and responsibilities including the manner and type of building materials available, financing options, the dangers of predatory lending and the responsibilities of long-term care and maintenance of homes.

(Code 1981, § 17-51(a); Code 2012, § 17-51(a); Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-15(a), 5-30-2012; Ord. No. SRO-453-2015, § 17-125, 10-22-2014)

Sec. 17-126. 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:

Allotted lands means land held in trust status by the United States federal government for the benefit of an individual person.

Applicant means any natural person(s) that is requesting approval for a homesite lease within the jurisdictional and/or physical boundaries of the Community.

Assignee means any natural person(s) to whom homesite rights or benefits are transferred to.

Community means the Salt River Pima-Maricopa Indian Community.

Homesite means an area of land that has been encumbered or is in the process of being encumbered for use by an assignee for a primary residence.

Homesite assignment or homesite lease means a lawfully approved agreement between either an allotted landowner(s) or the Community and a natural person(s) who is the assignee, and such assignee shall have the right to use of the land for a primary residence for a certain term.

Landowner means either a natural person or the Community who owns title to the underlying land interests.

SRPMIC means the Salt River Pima-Maricopa Indian Community.

Supporting easement means any and all ingress/egress easements (i.e. roadway) and basic utility easements (including but not limited to sewer, wastewater, water, telecommunications, irrigation, natural gas and/or electrical) necessary for the health, welfare and safety of the homesite assignee.

Tribal land means land owned by the Community.

(Code 1981, § 17-51(b); Code 2012, § 17-51(b); Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-15(b), 5-30-2012)

Secs. 17-127—17-150. Reserved.

DIVISION 2. HOMESITE LEASES ON TRIBAL LANDS

Sec. 17-151. Designated area for homesites on tribal lands.

The Community Council shall designate certain tribal lands within the Community to be used solely for the purpose of residential homesite development. The Community development department shall be responsible for maintaining and administering all records relating to the Community's tribal lands that are designated for residential homesite development.

(Code 1981, § 17-52; Code 2012, § 17-52; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-52, 5-30-2012)

Sec. 17-152. Application for homesite lease on tribal lands.

(a) *Application and approval process.* All applications for a homesite lease on tribal land shall be filed with the Community development department.

(1) Upon receipt of a complete application and the availability of tribal land suitable for homesite purposes, the Community development department shall review and recommend approval or denial of any proposed homesite lease on tribal land.

(2) The president or vice president shall approve or deny, on behalf of the council, a homesite lease application. The president or vice president shall take into account the recommendation of the Community development department when making their decision.

(b) *Qualifications of all applicants.* In order for an applicant to qualify for a homesite lease on tribal land, an applicant must:

(1) Be an enrolled member of the Community;

(2) Be at least 18 years of age;

(3) Not be an owner of any interests of allotted land within the Community that are suitable for use as a homesite:

a. If the applicant owns any interest of allotted land that is not suitable for use as a homesite, the applicant may exchange their interest in accordance with provisions of section 17-205, in order to obtain land suitable for a homesite;

b. If an applicant sells an interest of allotted land that is suitable for homesite use to the Community after November 1, 2009, such applicant is not eligible for a homesite on tribal land, unless expressly authorized by council; and

(4) Have enrolled in and completed a Community-endorsed home ownership education class.

(c) *Conditions of assignment.* All assignees for a homesite lease on tribal land shall agree to the following conditions:

(1) If a homesite assignee has not obtained at least a letter of engagement from a bona fide lender within three years from the date of the homesite lease approval, the assignment shall terminate and the Community may elect to reassign the assignment.

(2) A homesite assignee shall be responsible for all costs and charges associated with the assigned property and its use.

(3) A homesite assignee shall bear all costs of construction related to the building of a home on the homesite, including costs associated with acquiring supporting easements to the residential dwelling from the nearest existing easement.

(4) A homesite assignee shall hold the Community harmless from any and all liability in regards to the construction of the home on the homesite.

(5) A homesite assignee shall agree to abide by all of the laws, ordinances, regulations, policies and rules of the Community, including those related to securing relevant building permits and approvals for the construction of a house upon the assigned homesite.

(6) The homesite assignment shall terminate if the house erected on the homesite is vacant for a period of more than one year or is destroyed by fire or other casualty and not replaced and occupied within two years of such event.

(7) No more than one dwelling unit shall be constructed on any homesite. Accessory structures authorized by the Community zoning code, with the approval of the Community development department, may be constructed.

(8) The homesite shall be used primarily for the applicant's residential use. An assignee shall not sell, lease or encumber to a third party their homesite lease without the approval of the Community.

(d) *Penalties.* Any person who violates any provisions of this section may be subject to termination of their homesite lease, including the possibility of also being subject to civil or criminal prosecution by the Community.
(Code 1981, § 17-53; Code 2012, § 17-53; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-53, 5-30-2012; Ord. No. SRO-453-2015, § 17-152, 10-22-2014)

Secs. 17-153—17-172. Reserved.

DIVISION 3. HOMESITES ON ALLOTTED LANDS

Sec. 17-173. Community development department to maintain and administer.

(a) *Adminstration of records.* The Community development department shall be responsible for maintaining and administering all records regarding homesites on allotted land.

(1) *Application process and qualification.*

a. *Application process.* The application for a homesite on allotted land shall be filed with the Community development department.

1. The Community development department shall review and process the homesite application.

2. Until a homesite application has been executed and approved by the secretary of the interior, the applicant shall have no rights or interest in the land underlying the proposed homesite location.

b. *Qualification.* The Community development department shall only process a homesite application if the applicant is an enrolled Community member.

(2) *Landowner consent.* All homesites on allotted lands shall require at least the minimum consents of all other co-landowners, as required by federal law.

(3) *Infrastructure and capital improvements.*

a. The homesite applicant shall be required to meet with the engineering and construction services and the public works departments to verify basic utility services and supporting easements for the proposed homesite through a homesite verification or withdrawal process. This verification of utility service shall include a review of all legal access to domestic water sources, sewer and waste water, electricity and roadway access to the homesite.

b. No homesite shall be approved by the Community until any and all necessary supporting easements have been obtained.

1. If the proposed homesite, does not have access to certain necessary supporting easements, the applicant is solely responsible for obtaining the necessary roadway and/or utility easements that cross adjacent allotted or tribal lands.

2. If the supporting easements necessary for the proposed homesite are not planned for and incorporated in the Community's Capital Improvement Plan (CIP) budget for the current fiscal year, the applicant shall be required to pay for all such supporting utilities easements.

3. All supporting easements shall be constructed in accordance with the laws, ordinances and policies of the Community and upon completion such utilities and easement shall be dedicated by the applicant/assignee to the Community who will then assume the costs and responsibilities of operation and maintenance of the supporting easement.

(4) *Haul permit.* A Community haul permit shall be required prior to the transporting of any modular or mobile homes within the boundaries of the Community.

(b) *Homeownership education.* All applicants seeking a homesite on allotted lands are encouraged to attend an educational workshop on building materials, long-term maintenance and financing.

(Code 1981, § 17-53a; Code 2012, § 17-53A; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-53a, 5-30-2012)

Secs. 17-174—17-199. Reserved.

DIVISION 4. HOMESITES GENERALLY

Sec. 17-200. Period of assignment; renewal option; fee.

Homesite leases on either tribal or allotted land shall be granted for a period of 65 years and may be renewed after expiration of the original term.

(1) *Assignment on tribal land.* The fee for homesite assignments on tribal land shall be $65.00.

(2) *Assignment on allotted lands.* The fee for assignments of homesite leases on allotted land shall be determined by the landowner(s) and the assignee. In accordance with federal law, assignments of homesite leases to and from certain family members may occur without monetary consideration.

(Code 1981, § 17-54; Code 2012, § 17-54; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-54, 5-30-2012)

Sec. 17-201. Rights of homesite assignee.

(a) A homesite assignee shall have the right to the quiet enjoyment of the use of the homesite so long as the conditions of the assignment are not violated.

(b) A homesite assignee may devise the remaining length of their homesite lease and/or assignment to the following:

(1) Heirs, including spouses, who are enrolled members of the Community, lineal descendents of an enrolled member of the Community or enrolled members of a federally recognized tribe; or

(2) A life-estate interest to a non-Indian spouse conditioned on the non-Indian spouse's express written consent to the laws, ordinances, policies and jurisdiction of the Community.

(c) In the absence of a will, the assignment, which is personal property, shall descend to heirs at law of the assignee who are enrolled members of the Community or another federally recognize tribe.

(Code 1981, § 17-55; Code 2012, § 17-55; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-55, 5-30-2012)

Sec. 17-202. Governmental access and responsibilities.

Community governmental access to homesites on allotted or tribal lands is as follows:

(1) *Blighted areas.* The Community has determined that certain blighted areas constitute a serious and growing menace, injurious or harmful to the Community and its members. The existence of these blighted areas contributes substantially and increasingly to the spread of disease and crime, necessitating expenditures of Community funds to ensure the preservation of the public health, safety, morals and welfare.

a. The Community government shall not exercise its power to remove or remediate any serious growing menace, injurious and harmful to the public health, safety, morals and welfare of the Community and its members unless the Community Council adopts a resolution that finds the following:

1. Conditions exist that meet the standards of a serious growing

menace, injurious and harmful to the public health, safety, morals and welfare of the Community;

2. Removal or remediation of that area is necessary in the interest of the public health, safety, morals or welfare of the residents of the Community.

b. The Community shall notify both the landowner(s) and the assignee of the proposed removal or remediation of the condition that is a serious growing menace, injurious and harmful to the public health, safety, morals and welfare of the Community.

1. The notice to the landowners and the assignee shall contain the time, date and location of the public meeting in which the council resolution will be presented.

2. The notice shall be made by standard mail to the address stated on the most recent records of the Community.

(2) *Surveys and other assessments.* All homesite lease applications on allotted or tribal land shall provide for a provision authorizing the Community to perform land or other nondestructive surveys as needed including surveys of environmental impacts, public safety access, or cultural or archaeological investigations for purposes of obtaining a homesite lease.

(3) *Operation and maintenance of supporting easements.* All homesite leases on allotted or tribal land shall provide a provision authorizing the Community to maintain ingress/egress roadways and basic utilities for purposes of public safety and the protection of the health and welfare of the Community.

(Code 1981, § 17-56; Code 2012, § 17-56; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-56, 5-30-2012)

Sec. 17-203. Veteran's preference.

Any veteran of the United States Armed Forces who is an enrolled Community member shall have a preference in the assignment of a homesite on tribal land.

(Code 1981, § 17-57; Code 2012, § 17-57; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-57, 5-30-2012)

Sec. 17-204. Exchange of land for homesites.

Application procedure for homesite exchange:

(1) If an applicant has interests in allotted land that are insufficient enough to be used as a homesite location or that is otherwise inappropriate for homesite use, the applicant may apply to the Community development department to exchange their allotted land interest for tribal land.

(2) The applicant's interest in allotted land would be exchanged with tribal land on a value-for-value basis consistent with any applicable federal requirements.

(3) The Community development department will review a land exchange application and present its review together with its recommendation to the president, and in the absence of the president, the vice president, who shall have the authority to determine whether or not the exchange is in the best interest of the Community, and if such a determination is made, the president or vice president may agree to proceed with such an exchange.

(Code 1981, § 17-58; Code 2012, § 17-58; Ord. No. SRO-353-2010, 10-21-2010; Ord. No. SRO-402-2012, § 17-58, 5-30-2012)

Secs. 17-205—17-233. Reserved.

ARTICLE VI. FORCIBLE ENTRY AND DETAINER

Sec. 17-234. 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:

Allottee or *allottees* means a person or persons to whom land has been allotted in individual ownership under the trusteeship of the United States Government pursuant to 25 USC ch. 9.

Community leasing authority means the Community Council which has, under article VII, section 1(d) of the Constitution of the Community, the authority to lease and otherwise grant to private parties and public bodies the right to use tribal land and to use, explore, develop and extract natural resources of the Community, subject to such requirements of approval by the secretary of interior or other officials as may be required by federal law.

Fee owner means any person owning land within the exterior boundaries of the Community in fee simple absolute.

Landlord means an allottee or allottees, Community leasing authority, fee owner, and beneficiary or mortgagor after a foreclosure or trustee's sale under the mortgage Ordinance No. SRO-198-95, adopted May 3, 1995, codified herein as divisions 2 and 3 of article XI of this chapter including, but not limited to, a leasehold mortgage under section 184 of the housing loan guarantee program.

Tenant means any person who has possession of the real property of a landlord as a result of an agreement with such other person or entity allowing such possession, whether or not such agreement has terminated.

(Code 1976, § 15.1; Code 1981, § 17-61; Code 2012, § 17-61; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-208-95, § 2, 8-30-1995; Ord. No. SRO-402-2012, § 17-61, 5-30-2012)

Sec. 17-235. Forcible entry.

A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he or she:

(1) Makes an entry into any lands except in cases where entry is given by law.

(2) Makes such an entry by force.

(3) Willfully and without force, holds over any lands after termination of the time for which such lands were let to him, her or to the person under whom he or she claims, after demand made in writing for the possession thereof by the person entitled to such possession.

(Code 1976, § 15.2; Code 1981, § 17-62; Code 2012, § 17-62; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-208-95, § 2, 8-30-1995; Ord. No. SRO-402-2012, § 17-62, 5-30-2012)

Sec. 17-236. Forcible detainer.

There is a forcible detainer if:

(1) A tenant at will or by sufferance, after termination of his or her tenancy or after written demand of possession by his or her landlord, or a tenant from month to month or a lesser period whose rent is due and unpaid, or a mortgagee or beneficiary under a mortgage or deed of trust after a foreclosure or trustee's sale pursuant to Ordinance No. SRO-198-95 codified herein as divisions 2 and 3 of article XI of this chapter, fails or refuses for five days after demand in writing to surrender and give possession to his or her landlord.

(2) The tenant of a person who has made a forcible entry refuses for five days after written demand to give possession to the person upon whose possession the forcible entry was made.

(3) A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.

(4) A person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord for five days after written demand, after the term expires. If the term expires while a writ of forcible entry applied for by the tenant is pending, the landlord may, at his or her own cost and for his or her own benefit, prosecute in the name of the tenant.

(Code 1976, § 15.3; Code 1981, § 17-63; Code 2012, § 17-63; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-208-95, § 2, 8-30-1995; Ord. No. SRO-402-2012, § 17-63, 5-30-2012)

Sec. 17-237. Immateriality of time possession obtained by tenant.

It is not material whether a tenant received possession from his or her landlord or became his or her tenant after obtaining possession.

(Code 1976, § 15.5; Code 1981, § 17-64; Code 2012, § 17-64; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-64, 5-30-2012)

Sec. 17-238. Complaint and answer; service and return.

(a) When a party aggrieved files a complaint of forcible entry or forcible detainer, in writing and under oath, with the clerk of the Community court, summons shall immediately issue commanding the person against whom the complaint is made to appear and answer the complaint at a time and place named, not more than six nor less than three days from the date of the summons.

(b) The complaint shall contain a description of the premises of which possession is claimed in sufficient detail to identify them, and shall also state the facts which entitle plaintiff to possession and authorize the action.

(c) The summons shall be served at least two days before the return day, and return made thereof on the day assigned for trial.

(Code 1976, § 15.6; Code 1981, § 17-65; Code 2012, § 17-65; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-65, 5-30-2012)

Sec. 17-239. Demand for jury; trial procedure.

(a) The clerk shall at the time of issuing the summons, if requested by plaintiff, issue a venire to the chief of police commanding him or her to summon a jury of six persons, qualified jurors of the Community, to appear on the day set for trial to serve as jurors in the action. The venire shall be served and returned on the day assigned for trial.

(b) If the plaintiff does not request a jury, the defendant may do so when he or she appears, and the jury shall be summoned in the manner set forth in subsection (a) of this section.

(Code 1976, § 15.7; Code 1981, § 17-66; Code 2012, § 17-66; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-66, 5-30-2012)

Sec. 17-240. Trial and issue; postponement of trial.

(a) On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into.

(b) If a jury is demanded, it shall return a verdict of guilty or not guilty of the charge as stated in the complaint. If a jury is not demanded, the action shall be tried by the court.

(c) For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed three days.

(Code 1976, § 15.8; Code 1981, § 17-67; Code 2012, § 17-67; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-67, 5-30-2012)

Sec. 17-241. Judgment; writ of restitution; limitation on issuance.

(a) If the defendant is found guilty, the court shall give judgment for the plaintiff for restitution of the premises and for costs and, at the plaintiff's option, for all rent found to be due and unpaid at the date of judgment; such reasonable attorney's fees as shall have been provided in any agreement between the parties or if none shall exist, such reasonable attorney's fees as the court shall adjudicate, damages as shall be proven, and shall grant a writ of restitution.

(b) If the defendant is found guilty, and the plaintiff does not exercise the option set out in subsection (a) of this section for a judgment for rent, attorney's fees and damages, if any, the court shall, upon motion of the plaintiff, set a hearing to determine sums due for rent, attorneys' fees and damages within 30 days of said motion.

(c) If the defendant is found guilty, and there existed between the parties a lease agreement which has by its terms not expired, the plaintiff may upon motion, and from time-to-time, request that the court set a time for hearing to determine the amount of damages which have accrued, if any, since the time of judgment on rent damages, or since the time of judgment or any next prior motion pursuant to this section, and at such hearing shall determine such damages, if any, and enter judgment thereon giving credit for mitigation of damages.

(d) If the defendant is found not guilty, judgment shall be given the defendant against the plaintiff for costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a writ of restitution shall issue in favor of defendant.

(e) No writ of restitution shall issue until the expiration of five days after the rendition of judgment.

(Code 1976, § 15.9; Code 1981, § 17-68; Code 2012, § 17-68; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-68, 5-30-2012)

Sec. 17-242. Appeal to Community court of appeals; notice; bond.

(a) Either party may appeal from the Community court to the Community court of appeals by giving notice as in other civil actions in accordance with chapter 4 and filing with the Community court within five days after rendition of the judgment a bond in an amount equal to double the yearly value or rental of the premises in dispute.

(b) The yearly value or rental of the premises in dispute shall be determined by the court for the purpose of fixing the amount of the bond.

(Code 1976, § 15.10; Code 1981, § 17-69; Code 2012, § 17-69; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-69, 5-30-2012; Ord. No. SRO-415-2013, § 17-69, 3-1-2013)

Sec. 17-243. Stay of proceedings on judgment; record on appeal.

When an appeal bond is ordered and filed with the Community court to stay further proceedings on the judgment, the trial court clerk shall prepare a transcript of all entries in the action and transmit it, together with all the original papers, to the clerk of the court of appeals in accordance with chapter 4.

(Code 1976, § 15.11; Code 1981, § 17-70; Code 2012, § 17-70; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-70, 5-30-2012; Ord. No. SRO-415-2013, § 17-70, 3-1-2013)

Sec. 17-244. Trial and judgment on appeal; writ of restitution.

(a) On trial of the action in the court of appeals, the appellee, if out of possession and the right of possession is adjudged to him or her, shall be entitled to damages for withholding possession of the premises during pendency of the appeal and the court shall also render judgment in favor of appellee and against appellant and the sureties on his or her bond for damages proved and costs.

(b) The writ of restitution or execution shall be issued by the clerk of the Community court and shall be executed by the chief of police as in other actions.

(Code 1976, § 15.12; Code 1981, § 17-71; Code 2012, § 17-71; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-71, 5-30-2012)

Sec. 17-245. Proceedings no bar to certain actions.

The proceedings under a forcible entry or forcible detainer shall not bar an action for trespass, damages, waste, rent or mesne profits.

(Code 1976, § 15.13; Code 1981, § 17-72; Code 2012, § 17-72; Ord. No. SRO-26-74, 5-1-1974; Ord. No. SRO-402-2012, § 17-72, 5-30-2012)

Secs. 17-246—17-268. Reserved.

ARTICLE VII. OUTDOOR ADVERTISING SIGNS*

Sec. 17-269. Title.

This article shall be known as the "Outdoor Advertising Signs Ordinance."
(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-270. Purpose.

The purpose of this article is to:

(1) Provide economic opportunities of advertising adjacent to freeways and high traffic roadways in locations and in a manner that has the least amount of impact on surrounding land uses, especially residential uses;

(2) Promote Community safety and welfare;

(3) Protect the visual qualities of the Community's landscape;

(4) Prevent a cluttered appearance due to the number and proximity of outdoor advertising and business signs;

(5) Limit the number, location, height, size, brightness and operation of outdoor advertising signs; and

(6) Designate Salt River Community Property Development and Asset Management Company (DEVCO) as the exclusive owner, manager and developer of outdoor advertising signs within the SRPMIC.

(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-271. Applicability.

The provisions of this article shall apply to the construction, erection, alteration, use, relocation or removal of all outdoor advertising signs located within the Community.
(Ord. No. SRO-497-2018, 10-25-2017)

*__Editor's note—__Ord. No. SRO-497-2018, adopted Oct. 25, 2017, repealed Art. VII and enacted a new article as set out herein. The former Art. VII, §§ 17-269—17-278, pertained to similar subject matter and derived from §§ 17-101—17-110 of the 1981 Code; §§ 17-101—17-110 of the 2012 Code; Ord. No. SRO-123-89, §§ I—IX, adopted May 24, 1989; Ord. No. SRO-242-99, § 1, adopted Nov. 18, 1998; Ord. No. SRO-133-91, § 1, adopted Oct. 10, 1990; Ord. No. SRO-402-2012, §§ 17-101—17-110, adopted May 30, 2012; and Ord. No. SRO-468-2015, adopted July 1, 2015.

Sec. 17-272. 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:

Electronic outdoor advertising sign means a digital outdoor advertising sign that incorporates an electronic panel that can electronically change the image displayed on the sign remotely or automatically. This also may be referred to as an internally illuminated outdoor advertising sign.

Freeway pylon sign means a Community approved freestanding pylon or monument sign, oriented towards a freeway, which is at least 30 feet in height identifying a project, development, or the tenant(s) within a building.

Legal requirements mean all statutes, laws, rules, orders, regulations, conditions, policies, procedures, codes, standards, permits, fees, taxes and ordinances and general police powers (including without limitation judicial powers, judgments, decrees and injunctions) of the Community and applicable federal governmental entities currently in place or hereafter from time to time adopted by the Community, all as the same may be adopted, amended, modified, replaced or superseded from time to time.

Outdoor advertising sign means any (static or digital) sign or structure which is designed and maintained for the purpose of soliciting public support, or directing public attention to the sale, lease, hire or use of any object, product, service or function, the sale, hiring, or use of which is not involved in the primary or principal use of the parcel upon which such sign structure is located. "Billboard" shall have the same meaning as outdoor advertising sign. outdoor advertising sign does not mean or include signs regulated by the zoning ordinance.

Sign extension means that part of a graphic or word that protrudes beyond the normal rectangular billboard outline.

Sign face means the portion of the sign that displays the image information and any other advertising copy.

Static outdoor advertising sign means an outdoor advertising sign that displays a single image and the image does not change unless changed manually. These signs typically are externally illuminated.

Sunrise means the moment when the upper edge of the disk of the sun is on the eastern horizon.

Sunset means the moment when the upper edge of the disk of the sun is on the western horizon.
(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-273. General provisions.

(a) *General compliance.* Outdoor advertising signs shall adhere to the provisions of this article, the approved sign permit, and all other applicable legal requirements.

(b) *Exclusivity.* DEVCO is the exclusive developer of outdoor advertising signs within the SRPMIC. As the exclusive developer, DEVCO shall be responsible for the establishment, placement, maintenance, management and removal of all outdoor advertising signs within the SRPMIC.

(c) *Administration.* This article is administered by the Community Development Department (CDD) director or designee.

(d) *Sign maintenance.*

(1) Outdoor advertising signs shall be maintained in a safe, clean and neat condition and in conformance with this article.

(2) Signs that are damaged, malfunctioning (e.g., displaying a partial or incomplete message, displaying flickering, blinking or partial images), deteriorated or vandalized shall be repaired to like-new condition within 30 days of such damage.

(3) Signs that are damaged to such an extent that they may pose a safety hazard to the public, as observed by the owner or as determined by the CDD director, shall be repaired to safe, clean and neat condition or removed immediately.
(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-274. Outdoor advertising sign permit.

An approved outdoor advertising sign permit is required prior to displaying, placing, erecting, relocating, installing or modifying an outdoor advertising sign.

(1) Application for an outdoor advertising sign permit shall be submitted to the engineering and construction services (ECS) department in the format and with the information required on the forms provided by the engineering and construction services department.

(2) The application shall be reviewed by the Community for compliance with this article, the adopted building codes and other applicable legal requirements in accordance with engineering and construction services permitting practices. A sign permit may only be issued for sign improvements that are found to comply with this article, any required development review approvals and applicable codes.
(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-275. Continuance of nonconforming outdoor advertising signs.

Outdoor advertising signs constructed before the effective date of this article and which do not comply with the provisions of this article shall be allowed to continue, provided that these outdoor advertising signs complied with the previously adopted article and satisfy the criteria for active use as set forth in subsection (1) below, and adhere to the provisions in subsections (2) through (4) below:

(1) An outdoor advertising sign shall be considered active if it is being used and/or marketed for use for advertisement as a part of the active portfolio of the owner. A sign that is inactive for a period of six months or more shall be removed.

(2) An outdoor advertising sign shall be maintained in accordance with section 17-273(d) of this article.

(3) An outdoor advertising sign may not be enlarged, relocated, altered, reconstructed or replaced except in compliance with this article and as amended.

(4) At the time of removal, an outdoor advertising sign shall adhere to the requirements of section 17-279.

(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-276. Standards for outdoor advertising signs.

(a) *Number.* The maximum number of outdoor advertising signs that may be constructed within SRPMIC is 25.

(b) *Location.* All signs shall be placed at locations identified on a comprehensive sign plan for outdoor advertising signs, as approved by resolution by the Community Council in a public meeting.

(1) Static outdoor advertising signs shall:

a. Be located along an arterial street, highway or freeway (as defined in the Community's transportation plan).

b. Be located within 100 feet of the roadway right-of-way, except for State Routes 101 and 202 in which case shall be located within 500 feet of the right-of-way.

c. Not be located within the areas designated as open space or preserve in the SRPMIC General Plan.

d. Be located no less than 1,000 feet from an existing or approved outdoor advertising sign or approved freeway pylon sign on the same side of a roadway as measured in a line parallel to the roadway and drawn between such existing or approved sign and the proposed new static outdoor advertising sign. This spacing requirement does not apply to signs located on different roadways.

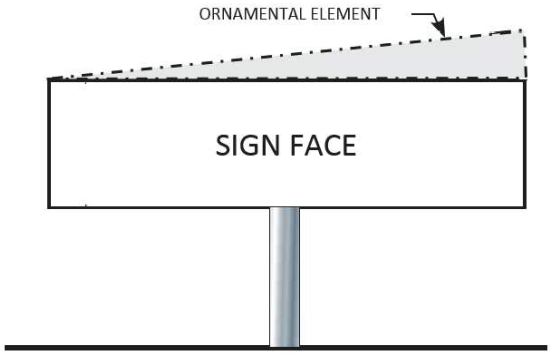
(2) Electronic outdoor advertising signs shall:

a. Be located within 500 feet of State Routes 101 or 202.

b. Be located within areas designated as commercial mixed use, industrial or natural resource in the SRPMIC General Plan.

c. Be no less than 1,000 feet from an existing or approved outdoor advertising sign or approved business freeway monument sign located on the same side of the freeway as measured in a line parallel to the roadway and drawn between such existing sign or approved sign and the proposed new electronic outdoor advertising sign. This spacing requirement does not apply to signs located on different roadways.

(c) *Design.* Permanent ornamental features that the extend above or around the sign face or sign's supporting pole or column may be subject to a development review process, as determined by the zoning administrator in accordance with the Community's zoning ordinance.



(d) *Setback.*

(1) No portion of the sign shall be closer to the right-of-way than five feet.

(2) No portion of the sign shall encroach into:

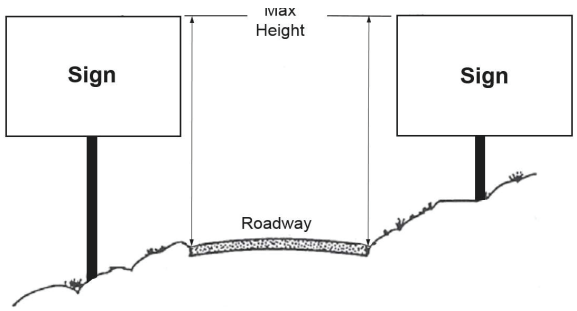
a. Adjacent land not part of the billboard lease.

b. Roadway right-of-way easement.

c. Utility easement unless specifically allowed and approved by the easement holder.

d. Airspace above a building intended for occupancy.

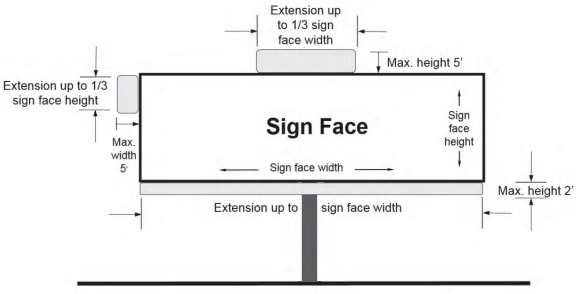
(e) *Maximum sign height.* The top of any outdoor advertising sign face shall not exceed a maximum height of 30 feet when oriented to an arterial street or highway and 40 feet when oriented to a freeway. All height measurements shall be measured from the grade of the nearest travel lane of the adjacent freeway or street.



(f) *Sign extensions.* Signs may include extensions outside of the regular billboard outline and these areas are not counted as part of the maximum allowed sign height, sign face or size. Sign extensions are permitted to extend from the sign face as follows:

(1) One or more sign extensions measuring up to five feet may be placed above the sign face for up to one-third of the width of the sign face.

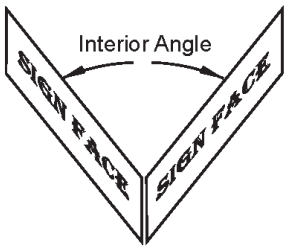
(2) One or more sign extensions measuring up to five feet may be placed on one side of the sign face for up to one-third of the height of the sign face. Sign extensions may only be placed on one side of the sign at any given time.



(3) One sign extension located along the bottom of the sign face measuring up to two feet along the entire width of the sign is allowed for a sign owner or management company logo.

(g) *Maximum size.* The area of any outdoor advertising sign face shall not exceed 672 square feet. For purpose of measurement, the area of only one side of a multi-faced sign shall be included in the measurement of sign area if the internal angle between the sign faces is 50 degrees or less. If the internal angle between sign faces on a multi-faced sign is more than 50 degrees, the area of both adjacent sign faces shall be included as the area of the sign face.

(h) *Orientation.* Signs shall be oriented to reduce the visual impact on residential areas as viewed from the east if adjacent to State Route 101 or from the north if adjacent to State Route 202. Sign faces located east of Arizona State Route 101 or north of State Route 202 shall be angled towards the freeway no less than 20 degrees away from perpendicular to the adjacent freeway center line ("V" shaped). Double faced signs located on the west side of State Route 101 shall be placed back-to-back without a "V" shape.



(i) *Movement.* No outdoor advertising signs or sign structures or parts thereof shall move by any means.

(j) *Sound.* No outdoor advertising signs shall emit sound.

(k) *Materials and installation.* Materials used in the construction of outdoor advertising signs shall conform to the requirements of the Salt River Pima-Maricopa Indian Community, be installed in accordance with any required permits and are subject to required inspections.

(l) *Sign illumination.*

(1) Externally illuminated, static outdoor advertising signs shall:

a. Not be intermittent, flashing, animated or varying in intensity. If located in the line of vision of any traffic signal, no red, green or yellow illumination shall be used.

b. Light fixtures shall be fully shielded, full cut off or hooded and shall be mounted so the source of illumination is not visible from outside the area leased for the sign. Spillover light past the sign face shall be minimized using LED lighting or similar-state-of-the-art lighting.

c. Not exceed a maximum luminance of 100 nits.

d. Be turned off between 11:00 p.m. and sunrise if located along State Routes 101 and 202 and 10:00 p.m. and sunrise if located on an arterial street.

(2) Internally illuminated or electronic outdoor advertising signs shall comply with the following standards.

a. *Displays.*

1. Shall include only non-animated static images.

2. Each image shall be displayed ("dwell") for a minimum of eight seconds.

3. Message transitions shall be completed in no less than one second. Fade in and out or dissolve from one message to the next are acceptable transitions.

4. The message or transition shall not use flashing, intermittent or moving lights, scrolling, fly-in, pixilation, or any attention-getting process.

5. Messages shall not be continued in sequential images. Messages requiring more than one image shall be considered the same as exceeding the dwell time for that message and are prohibited.

b. *Hours of operation.* Signs may be illuminated between sunrise and 11:00 p.m. Signs illumination shall be extinguished between 11:00 p.m. and sunrise, except to provide Amber Alerts or other governmental emergency notices.

c. *Illumination.*

1. Electronic outdoor advertising signs, displays and devices shall be equipped with an automatic control that monitors the ambient light levels and time of day and adjusts the signs luminance to brightness levels that conform to subsection 2. below.

2. The sign shall not exceed the following maximum luminance:

Time of Day	*Maximum Sign Luminance*
Sunset to 11:00 p.m.[1]	300[2] nits (candela per square meter)
Sunrise to sunset	5000[2] nits
[1] Between 11:00 p.m. and sunrise, the sign illumination shall be extinguished.	
[2] The level of luminance shall not exceed the maximum sign luminance level or 300 nits above average vertical ambient background light around the sign in nits, whichever is less.	

3. The sign manufacturer shall provide written certification to the CDD director at the time of application for a permit that the sign is equipped with automatic controls that have been set to operate the sign in conformance with subsections 1. and 2. above.

4. In the event of a malfunction such that partial or incomplete messages are displayed or the sign is operating out of compliance with this article, the sign shall be turned off until it is repaired or adjusted to comply.

(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-277. Variance to standards for outdoor advertising signs.

An outdoor advertising sign that varies from the location including spacing, height, size, and orientation requirements in section 17-276 may be granted approval by the Community Council following a Community hearing process by the land management board and the Community Council, and upon the council making the required findings, as described in this section.

(1) *Variance application.*

a. An application to vary certain outdoor advertising sign standards shall be submitted on the forms provided by CDD.

b. Applications for dimensional variances must include applicable consents from the landowners of the subject property in accordance with the Indian Land Consolidation Act (ILCA), unless the applicant has an approved lease, designation of land use or other land use authorization for an outdoor advertising sign.

c. After reviewing the information provided with the application, CDD will prepare a letter response identifying any issues related to the application or the Community's legal requirements; the need for additional information or studies; or modifications or corrections required. The letter will be provided to the applicant in approximately 30 business days from the time of receipt of a complete application. Subsequent reviews, if needed, will be completed within approximately 15 business days from the date of receipt.

(2) *Community hearing notification.*

a. Community notice as described in this section shall precede the Community hearings by the land management board and Community Council. Community hearing notices shall contain:

1. The name of the applicant or owner.

2. A description of the subject property location.

3. A description of the proposed request.

4. The designation of the hearing body.

5. The time, date and place of the hearing.

6. Applicant and Community staff contact information.

b. Notification delivery. Notice of the hearing shall be mailed or delivered in person at least seven calendar days prior to the date of the hearing to:

1. The applicant.

2. The landowners and all authorized spokespersons of the allottee landowners of the land that is the subject of the application.

3. The allottee landowners of record of land within one-half mile radius of the site that is the subject of the application or the authorized spokesperson for such landowners.

c. The CDD director shall be responsible for providing notification of the Community hearings.

1. Notice in addition to those listed in this section may be provided at the discretion of the CDD director.

2. The Community Council or the CDD director may require additional Community input through neighborhood or district meetings prior to acting on the application. The applicant will be notified prior to the date of a neighborhood meeting.

3. When more than six months have passed since the most recent hearing, Community

notification shall be provided before any new Community hearing.

(3) *Land management board Community hearing.*

a. The variance application shall be reviewed by the land management board at a Community hearing prior to the Community hearing by the Community Council, unless otherwise waived pursuant to chapter 17, section 17-5(e), as amended.

b. Upon completion of the preliminary and formal application review processes, CDD staff shall forward the application staff report and related submitted information to the land management board.

c. Within 15 calendar days from the time the application is transmitted to the land management board, the land management board shall set a Community hearing and within 30 calendar days shall hold a Community hearing at which the applicant shall present the proposal and address any questions.

d. Questions and comments related to the application may be made in person or in writing to the land management board.

e. At the Community hearing, the land management board may continue the application to a future date to review or obtain additional information.

f. The land management board shall consider the same findings to be considered by the Community Council applicable to the application.

g. Within 30 calendar days of the conclusion of the Community hearing, the land management board shall make its recommendation to approve, approve with conditions or revisions, or deny the application, and forward a report containing information supporting the recommendation to the council, the CDD director and the applicant.

(4) *Community Council Community hearing.*

a. Within 20 business days after the receipt by the Community Council of the report of the land management board, the application shall be placed on an available date of a regular Community Council agenda for a Community hearing, allowing adequate time for preparation of required documents, legal review and Community notice.

b. The Community Council may, at its discretion, approve, approve with conditions or revisions, or deny the application, or may continue the application to a future date or set a meeting date at which it will make its decision.

c. The Community development department will provide written notice of the Community Council decision to the applicant within ten business days after the decision.

d. The notice of decision shall contain a brief summary of the decision and any conditions of approval.

e. Decisions of the Community Council are final.

(5) *Variance findings.* A variance to certain standards for outdoor advertising signs may be permitted upon the Community Council finding that:

a. Approval of the variance will not be detrimental to residential areas of the Community. Factors to consider may include visual intrusion from light or changes in light levels, glare and light trespass.

b. The variance is reasonably compatible with the existing light and activity levels in the surrounding areas.

c. The variance will not block the visibility or reduce the effectiveness of existing, approved, or planned business sign(s) for development located within the Community.

d. The proposed sign will not unreasonably impede or detract from desired views to mountains or other visually important features worthy of protection.

e. For a height variance: The applicant has provided adequate information to prove that the height of the sign face shall only be as high as necessary to be visible from a distance of 1,320 feet by a person traveling in a passenger automobile on the closest travel lane on the same side of the roadway as the sign. Such height shall be determined on a case by case basis using empirical observations such as by use of a crane positioned at the proposed location and photographic sign simulations at five-foot height increments starting at the allowed height up to the requested height, and research data by a qualified professional, as approved by the Community development department director.

f. Granting of the variance will not be detrimental to the public safety and welfare.

g. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant.

(Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-278. Prohibitions.

(a) No outdoor advertising sign may be placed on top of, cantilevered over or otherwise suspended above any building or structure.

(b) No outdoor advertising sign shall be located within or encroach upon any public right-of-way.

(c) Existing landscaping on land outside of the sign leased premises shall not be cut to allow visibility to an outdoor advertising sign without permission and coordination with the land owner. (Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-279. Required removal.

An outdoor advertising sign for which a current approved sign permit or approved lease is not in effect or for which a sign permit or lease has expired and is not renewed or under current negotiations for renewal shall be removed within 90 days from such expiration and non-renewal. (Ord. No. SRO-497-2018, 10-25-2017)

Sec. 17-280. Violation, enforcement.

(a) *Enforcement.* The code enforcement officer shall enforce this article.

(1) Notice of violation. Upon finding that a violation of this article, the sign permit, or other applicable legal requirements exists, a notice of violation shall be served upon the responsible person by hand-delivery or certified mail. Notice is deemed complete for delivery of certified mail five calendar days after mailing and for hand-delivery on the date of delivery.

a. Notice shall include a description of the violation, the location of the violation and action required to remedy the violation. Notice shall include a reasonable date to resolve the violation, taking into account relevant information related to the violation.

(2) Notification of remedy. The responsible person shall notify the code enforcement officer when the violation has been remedied. Remediation will be considered complete when verified by the code enforcement officer.

(3) The code enforcement officer is authorized to grant extensions of the date and time for remediation upon good cause shown. Extensions of time to remedy shall be made in writing.

(b) *Appeal.* An appeal from the notice of violation shall be filed with the Council secretary within ten business days of the date of the notice of violation was served. The appeal shall be in writing and shall include a statement of reasons for the appeal and supporting documentation. Once the appeal is filed, the Community Council shall determine whether a meeting with the responsible person and the code enforcement officer is necessary; if no meeting is warranted, the Community Council shall decide and issue a written decision on the appeal. The decision of the Community Council shall be final.

(c) *Judicial enforcement.* It is a civil violation for any person to violate the provisions of this article and for any person to fail to procure a permit. Said person shall be guilty of a civil offense and shall be subject to a civil fine not exceeding $5,000.00 per violation and may be subject to a mandatory injunction or other remedies available at law including removal of any illegal signs.
(Ord. No. SRO-497-2018, 10-25-2017)

Secs. 17-281—17-304. Reserved.

ARTICLE VIII. UNIFORM ROAD AND UTILITY CORRIDORS

Sec. 17-305. Policy.

It is the policy of the Community to establish uniform road and utility corridors within the Community so that road and utility services can be supplied to Community residents without undue delay.
(Code 1981, § 17-121; Code 2012, § 17-121; Ord. No. SRO-153-92, § 1, 6-3-1992; Ord. No. SRO-402-2012, § 17-121, 5-30-2012)

Sec. 17-306. 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:

Arterial street means a roadway with a 110-foot-wide right-of-way.

Collector street means a roadway with an 80-foot-wide right-of-way.

Local street means a roadway with a 50-foot-wide right-of-way.

Monument line means the linear center of a roadway and utility corridor from which all distances and widths on either side of the right-of-way are measured and which correspond to lines of the rectangular survey system including meridian, base, township, range and section lines.

Private road or driveway and *roadway* has the same meaning as set out in section 17-62, and are adopted by reference.

Utility corridor means a designated area underneath and/or parallel to a roadway in which gas, water, sewer, storm drain, telephone, and electric power or other similar pipes or lines are installed beneath or above the ground surface.
(Code 1981, § 17-122; Code 2012, § 17-122; Ord. No. SRO-153-92, § 2, 6-3-1992; Ord. No. SRO-402-2012, § 17-122, 5-30-2012)

Sec. 17-307. Utilization of roadway rights-of-way.

Roadway rights-of-way shall serve as utility corridors for the installation of gas, water, sewer, storm drain, telephone, and electric power and other similar pipes or lines.
(Code 1981, § 17-123; Code 2012, § 17-123; Ord. No. SRO-153-92, § 3, 6-3-1992; Ord. No. SRO-402-2012, § 17-123, 5-30-2012)

Sec. 17-308. Width standards for roadway and utility corridor rights-of-way.

All construction or improvement of roadways or utility corridors within acquired rights-of-way shall conform to the following specifications:

(1) For utility poles carrying electric power or telephone lines, or for buried electric power lines, the distance from the monument line for arterial streets, for collector streets, and for local streets shall be specified by such implementing regulations as the Community development department promulgates.

(2) For pipes carrying water, the distance from the monument line for arterial streets, for collector streets, and for local streets shall be as specified by such implementing regulations as the Community development department promulgates.

(3) For buried major telephone trunk lines, the distance from the monument line for arterial, collector, and local streets shall be as specified by such implementing regulations as the Community development department promulgates.

(4) Sewer and storm drain pipes shall be buried beneath roadway surfaces at a depth sufficient to ensure complete safety at a distance measured from the pipe's center of as many feet from the monument line as the Community development department shall specify in such implementing regulations as it promulgates.

(5) Pipes carrying gas shall be buried at such distances from the monument line as accords with accepted industry practice and standards of safety.

(6) Open-channel irrigation or drainage ditches shall be located either outside of or on the outer right-of-way boundary lines of rights-of-way which are at a distance from the monument line for arterial streets, for collector streets, and for local streets as the Community development department shall specify in such implementing regulations as it promulgates.

(Code 1981, § 17-124; Code 2012, § 17-124; Ord. No. SRO-153-92, § 4, 6-3-1992; Ord. No. SRO-402-2012, § 17-124, 5-30-2012)

Sec. 17-309. Procedure for request of right-of-way easements.

All requests, proposals, and applications for right-of-way easements for roadways and utility corridors shall comply with and conform to the provisions of section 17-11 and any other applicable provisions of this Community Code of Ordinances.

(Code 1981, § 17-125; Code 2012, § 17-125; Ord. No. SRO-153-92, § 5, 6-3-1992; Ord. No. SRO-402-2012, § 17-125, 5-30-2012)

Sec. 17-310. Limitations of grantees.

Only the may be the grantee of a utility corridor easement for right-of-way.

(Code 1981, § 17-126; Code 2012, § 17-126; Ord. No. SRO-153-92, § 6, 6-3-1992; Ord. No. SRO-402-2012, § 17-126, 5-30-2012)

Sec. 17-311. Effect of corridor grant of right-of-way.

Upon the issuance of a grant of right-of-way for a utility corridor, the Community Council may grant easements within the corridor for the use of utilities, gas, water, sewer, storm drain, telephone, electric power or other similar pipes or lines.

(Code 1981, § 17-127; Code 2012, § 17-127; Ord. No. SRO-153-92, § 7, 6-3-1992; Ord. No. SRO-402-2012, § 17-127, 5-30-2012)

Sec. 17-312. Regulations.

The director of the Community development department shall, from time-to-time, subject to the approval of the Community Council, prescribe rules and regulations not in conflict with this article and necessary to the administration of this article.

(Code 1981, § 17-128; Code 2012, § 17-128; Ord. No. SRO-153-92, § 8, 6-3-1992; Ord. No. SRO-402-2012, § 17-128, 5-30-2012)

Secs. 17-313—17-342. Reserved.

ARTICLE IX. HIGHWAY RIGHTS-OF-WAY

Sec. 17-343. Encroachment permit requirement.

No person or persons shall access or build a driveway or turnout onto rights-of-way abutting or running through the lands of the Community from such lands without an approved permit

from the Community development department, unless the driveway or turnout is built on a nonarterial road within a residential area.
(Code 1981, § 17-141; Code 2012, § 17-141; Ord. No. SRO-181-95, § A, 10-12-1994; Ord. No. SRO-402-2012, § 17-141, 5-30-2012)

Sec. 17-344. Scope.

The provisions of this article include permit application procedures, permit processing procedures, initial placement, adjustment, relocation, reconstruction and replacement for use in all highway rights-of-way within the Community as limited in section 17-343.
(Code 1981, § 17-142; Code 2012, § 17-142; Ord. No. SRO-181-95, § B, 10-12-1994; Ord. No. SRO-402-2012, § 17-142, 5-30-2012)

Sec. 17-345. Encroachment permit application procedures.

(a) *Applications delivered to Community development department.* Completed applications shall be delivered to the Community development department, which is responsible for all phases of implementing the control of encroachment permits from the initial application, review, approval, construction and final inspection.

(b) *Plans required.* Applicants shall submit a set of plans indicating highway route number, mileposts, highway engineering stations, and physical features such as building, bridges, culverts, poles and other stationary landmarks necessary to adequately describe the location. Permit applicants are encouraged to employ competent design professionals such as registered professional engineers or architects when preparing plans of a complex nature. Permit applications shall include four sets of plans on primary and secondary highways.

(c) *Application review.* All permit applications are initially submitted to the Community development department which shall conduct a comprehensive review for uniformity and consistency in compliance with industry standards, specifications and special requirements in the issuance of permits. No work is to be performed until the permit is approved.

(d) *Time limit.* 90 calendar days will be the normal time allowed for completion of construction. Time limits beyond 90 days' time may be granted as determined by the Community development department.

(e) *Time extension.* Applicants may apply to the Community development department for a time extension beyond the allotted time indicated on the permit.

(f) *Bonding.*

(1) Performance bonds or other assurances of construction shall be posted to ensure the faithful performance of a permittee's obligation. The amount shall be equal to one-half the amount of the cost of the work and any other possible financial loss to the Community.

(2) The performance bonds shall be executed by the applicant as principal with a corporation duly authorized to transact surety business in the State of Arizona. The bond shall be in favor of the Community, shall be continuous in form, and shall be limited to the face amount of the bond. The bond shall be released upon satisfactory performance and acceptance of the work or may be canceled after the applicant has provided other security satisfactory to the Community development department which will cover the obligations.

(3) In instances where an applicant is issued numerous small permits throughout the year, he or she may post a continuing bond to cover work under more than one permit. The continuing bond shall be of a value sufficient to cover all work under construction by the permittee at any time and shall be satisfactory to the Community development department.

(4) The bonding requirement may be waived when it can be determined by the Community development department that adequate protection is provided the department to ensure satisfactory completion of the construction.

(g) *Access.*

(1) No access will be granted in limited access highways beyond that legally established.

(2) Access from highway rights-of-way will be permitted in accordance with uniform and appropriate standards.

(3) Median openings may be allowed on divided highways provided they conform to the Community development design guidelines regarding the design and spacing of such openings.

(4) Permits shall be only for the construction of a new turnout or driveway or changing the location of an existing driveway. Permits shall not be issued for the purpose of providing a parking area or for servicing vehicles on a highway right-of-way.

(5) Landowners of adjacent properties requiring a joint driveway may apply jointly, or one may apply for both with the written, notarized consent of the other.

(6) All standards and policies are public instruction and will be supplied to prospective applicants on request.

(h) *Landscaping.*

(1) The highway roadside is an integral unit of a total highway facility. The term "roadside" generally refers to the area between the outer edge of the roadway and the right-of-way boundary. These include all unpaved areas within the right-of-way.

(2) All plans and specifications shall be sufficiently complete and detailed for easy analysis and compliance inspection and shall be submitted in accordance with the Community's development design guidelines.

(3) Reserved.

(4) Reserved.

(5) Plants shall not be used where they may encroach upon drainageways and impede their functional value or increase maintenance. It shall be the responsibility of the permit applicant to ensure that all landscaping is maintained after construction.

(i) *Hydraulics.* At the discretion of the Community development department the following information compiled by a qualified engineer shall be submitted by permit applicants if it appears that changes may be made in drainage condition if the application is granted:

(1) A narrative report including a description of the existing drainage conditions, the proposed revisions and the effect of the proposed changes on existing conditions;

(2) Maps and/or drawings sufficient to show all pertinent features of the proposed modifications. This may include site maps, drainage area maps, contour maps, grading plans, structure profiles, channel profiles, etc.;

(3) Hydrologic and hydraulic calculations when applicable for design discharge, headwater elevations, tailwater elevations, flow depths and flow velocities in channels.

(j) *Utilities.*

(1) *Applications.* All applicants whose proposed access to rights-of-way intersects or may intersect existing or proposed utilities shall include utility plans with the application. Utility plans shall adequately show such features as pavement and right-of-way lines in relation to proposed facilities and shall clearly indicate the location, size, and depth of existing buried utilities.

(2) *Jack or bore.* When approved, pipes, conduit or other utilities shall be jacked or bored through beneath paved area. Pits may be placed in the median for boring, jacking or driving of pipes or conduits under divided roadways. The pit areas shall be completely fenced or barricaded and placed at a minimum distance of 30 feet from the edge of shoulder. Pavement cuts shall be considered only when jacking, boring or

other alternatives are proved impractical and then only when approved by the Community development department.

(Code 1981, § 17-143; Code 2012, § 17-143; Ord. No. SRO-181-95, § C, 10-12-1994; Ord. No. SRO-402-2012, § 17-143, 5-30-2012; Ord. No. SRO-468-2015, 7-1-2015)

Sec. 17-346. Minimum setback.

(a) *50 mph or greater design speed.*

(1) Minimum setback of a fixed object from the edge of the traffic lane should be 30 feet unless one of the following reasons will allow for a lesser distance:

a. Cuts of three to one or steeper: obstacles are allowed ten feet behind the point of vertical intersection at the toe of the slope.

b. Where concrete barriers, walls, abutments, or other rigid obstructions are used: fixed objects may be placed four feet behind the obstructions.

c. Where flexible guardrail (box-beam, W-beam, or cable) is used: six to 20 feet behind the face of the guardrail, depending upon the type.

d. Where there are barrier curbs (five inches or more vertical face) near a traveled land: six feet behind the face of the curb; adjacent to a parking lane no definite setback distance.

(2) Where limited right-of-way or the necessity for planting would result in less clearance, all factors in the particular problem area should be weighed to decide if a special exception is warranted.

(b) *50 mph or less design speed.*

(1) Minimum setback of a fixed object from the edge of the traffic lane may be 25 feet unless one of the reasons set forth under subsection (a) of this section will allow for a lesser distance.

(2) On curves, adequate sight distance for the design speed of the highway must be maintained.

(Code 1981, § 17-144; Code 2012, § 17-144; Ord. No. SRO-181-95, § D, 10-12-1994; Ord. No. SRO-402-2012, § 17-144, 5-30-2012)

Sec. 17-347. City-issued state permits.

Access to or from any road which is abutted by both the Community and a state municipality shall be subject to a permit granted by the Community or by the municipality in those cases in which the municipality and the Community are parties to an agreement with the Arizona department of transportation relative to the granting of access.

(Code 1981, § 17-145; Code 2012, § 17-145; Ord. No. SRO-181-95, § E, 10-12-1994; Ord. No. SRO-402-2012, § 17-145, 5-30-2012)

Sec. 17-348. Maintenance responsibility.

The adjacent property owners having access to rights-of-way described by this article shall be fully responsible for the maintenance of their driveway including the portion from the highway right-of-way line to the outside edge of the highway shoulder or curbline. This maintenance responsibility includes keeping the portion within the highway right-of-way in a safe condition for the general public. The owner shall be responsible for the maintenance of ditches, pipes, catchbasins, grates, poles, gates, aerial wires, buried cables and other structures of installations placed in connection with encroachment permits. The owner will be given ten days' notice to perform the required maintenance. After this period, the Community development department may then perform the required maintenance, and the owner shall be liable for the costs of such maintenance. If an emergency exists wherein there is an immediate hazard to the highway, the Community development department may perform the required remedial maintenance, and the owners shall be liable for all such costs incurred. The owner shall be responsible for any revisions or improvements required as a result of changed conditions of use after the permit is issued and/or after construction is completed.

(Code 1981, § 17-146; Code 2012, § 17-146; Ord. No. SRO-181-95, § F, 10-12-1994; Ord. No. SRO-402-2012, § 17-146, 5-30-2012)

Sec. 17-349. Unauthorized encroachments.

Use of highway rights-of-way shall be limited to authorized uses herein described. Persons making unauthorized uses of such right-of-way will be notified that they are in violation of this Community Code of Ordinances. If the encroachment has not been removed within the time prescribed, the Community development department may remove the unauthorized encroachment, and the person violating the right-of-way shall be liable for the cost of such removal. Parking areas and any substantial commercial or industrial activity in connection with highway rights-of-way will not be permitted.
(Code 1981, § 17-147; Code 2012, § 17-147; Ord. No. SRO-181-95, § G, 10-12-1994; Ord. No. SRO-402-2012, § 17-147, 5-30-2012)

Sec. 17-350. Rule-making authority.

The Community development department shall make rules for the proper administration of this article and shall additionally adopt regulations to administer applications for encroachment permits not subject to this article.
(Code 1981, § 17-148; Code 2012, § 17-148; Ord. No. SRO-181-95, § H, 10-12-1994; Ord. No. SRO-402-2012, § 17-148, 5-30-2012)

Secs. 17-351—17-373. Reserved.

ARTICLE X. SUBDIVISIONS

Sec. 17-374. Policy.

The purpose of this article is:

(1) To provide for the orderly growth and harmonious development of the Community;

(2) To ensure adequate traffic circulation through coordinated street systems with relation to thoroughfares, adjoining subdivisions and public facilities;

(3) To achieve individual property lots of reasonable commercial utility and livability;

(4) To secure adequate provisions for water supply, drainage, protection against flood, stormwater detention, sanitary sewage and other health and safety requirements;

(5) To ensure consideration for adequate sites for recreation areas and other public facilities; and

(6) To provide practical procedures for the achievement of this purpose.

(Code 1981, § 17-151; Code 2012, § 17-151; Ord. No. SRO-182-95, § 1, 10-12-1994; Ord. No. SRO-402-2012, § 17-15, 5-30-2012)

Sec. 17-375. Generally.

(a) *Article definitions.* All terms regarding the development of land appearing in this section shall be defined by reference to the definitions that appear in the Community's zoning ordinance.

(b) *Final plat approval procedure.* The process of final plat approval for the development of subdivisions within the Salt River Pima-Maricopa Indian Reservation, whether on tribal or allotted land, and whether for commercial or residential purposes, shall include:

(1) The initial proposal as set forth in a development master plan;

(2) Review and approval of a preliminary plat; and

(3) Review and approval of a final plat which conforms substantially to the preliminary plat, as hereinafter described.

(c) *Applicability.* This article shall be subject to and be interpreted to conform with all provisions, where applicable, of this chapter.
(Code 1981, § 17-152; Code 2012, § 17-152; Ord. No. SRO-182-95, § 2, 10-12-1994; Ord. No. SRO-402-2012, § 17-152, 5-30-2012; Ord. No. SRO-468-2015, 7-1-2015)

Sec. 17-376. Scope and contents of development master plan.

(a) A development master plan shall accompany any proposal to develop land as a commercial or residential subdivision within the Salt River Pima-Maricopa Indian Reservation. Such plan shall be submitted to the Community

development department for initial approval and authorization to proceed with the subsequent plat review and approval processes. A report consist-

ing of maps, tables, and explanatory text should be prepared for and part of any proposed development master plan.

(b) The development master plan shall be prepared by the party proposing the subdivision development to a scale and accuracy commensurate with its purpose and shall include the following information as a minimum:

(1) Designation of the various categories of proposed land uses including designation of areas proposed for residential or commercial uses.

(2) General arrangement of arterial streets and collector streets.

(3) General location of size of proposed parks and other common areas.

(4) Methods proposed for water supply, sewage disposal, fire protection, drainage and protection from floods.

(5) Major geographical features including but not limited to hills, rock outcrops, arroyos, canals, rivers, major washes and major highways.

(6) Any additional information that may be needed in order to carry out the purpose and intent of the development master plan.

(Code 1981, § 17-153; Code 2012, § 17-153; Ord. No. SRO-182-95, § 4, 10-12-1994; Ord. No. SRO-402-2012, § 17-153, 5-30-2012)

Sec. 17-377. Preliminary plat review.

(a) The preliminary plat stage of land subdivision includes detailed subdivision planning, submittal, review and approval of the preliminary plat by the Community development department. Application for final approval of the preliminary plat is made to the council upon recommendation by the Community development department, which shall review the preliminary plat as submitted to it by the Community development department.

(b) The subdivision shall be designed to comply with the requirements of the specific zoning district within which it is located. In the event that a change of zoning is necessary, the zoning application and subdivision shall be processed concurrently with the processing required under this chapter pertaining to development.

(c) The developer shall submit five copies of the preliminary plat, for purposes of review by the Community development department. The information herein required as part of the preliminary plat submitted shall be shown graphically or by note on plans, or by letter, and may comprise several sheets showing various elements of required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, not greater than 200 feet to an inch.

(d) No subdivision shall be considered by the Community development department unless there is adequate assurance that satisfactory access to the subdivision can be provided.

(Code 1981, § 17-154; Code 2012, § 17-154; Ord. No. SRO-182-95, § 4, 10-12-1994; Ord. No. SRO-402-2012, § 17-154, 5-30-2012)

Sec. 17-378. Information required on preliminary plat.

(a) All preliminary plats shall contain the following information obtained from a field survey:

(1) Proposed name of subdivision and its location by section, township and range; small scale vicinity map showing relative location of the plat; reference by dimension and bearing to section corners and quarter-section corners, and subdivision boundaries clearly identified.

(2) Name, address and phone number of engineer, surveyor, landscape architect or land planner preparing the plat, including registration number if registered.

(3) North point, scale and date of preparation, including dates of any subsequent revisions.

(4) Name, book and page numbers of the names of record allottees or lessees of adjoining parcels of unsubdivided land, if any.

(5) Existing and proposed contours established by field survey relating to USGS survey data, or other data, to be shown on

the same map as the proposed subdivision layout. Location and elevation of the benchmark used is also to be shown on the plat. Acceptable contour intervals are as follows:

a. Grades up to five percent: two feet;

b. Grades of five percent to ten percent grades: five feet;

c. Grades over ten percent: ten feet.

(6) Location by survey of streams, washes, canals, irrigation laterals, private ditches, culverts, or other water features, including direction of flow and water level elevations, and location and extent of areas subject to inundation and whether such inundation is frequent, periodic or occasional. If any portion of the land subdivided is below the elevation of the delineated floodplain, the limit of such flood and/or of the floodplain shall be shown.

(7) Whenever any stream or important surface drainage course is located in the area being subdivided, provision shall be made for an adequate easement along each side of the stream or drainage course for the purpose of widening, deepening, realigning, improving or protecting the stream for drainage purposes.

(8) Location, widths and names of all existing or platted streets or other public ways within or adjacent to the tract, existing permanent buildings, and other important features such as section lines.

(9) Existing sewers, water mains, culverts, or other underground structures within the tract and immediately adjacent thereto with pipe sizes, grades and locations indicated. Where water mains are not immediately adjacent thereto, give direction and distance to nearest such usable utility.

(10) Location, width and names of proposed streets, alleys, drainageways, crosswalks and easements including all connections to adjoining platted or unplatted tracts. A statement as to the type and extent of proposed improvements should appear on the face of the plat.

(11) Lot layout, including minimum building lines related to all streets; lot numbers, and approximate dimensions and area of proposed lots. A nonaccess easement shall be provided on all residential lots adjoining an arterial street.

(12) Designation of all land to be dedicated, provided or reserved for public or semipublic uses, with use indicated.

(13) Reference by note to source of proposed electricity, gas and telephone service and provision that such services will be underground.

(14) Sewage disposal. It shall be the responsibility of the developer to furnish the Community development department with evidence in the form of specific plans as to design and operation of sanitary sewage facilities proposed. A statement as to the type of facilities proposed shall appear on the preliminary plat. If the subdivision is for residential use, there shall be provided for every lot a clear unencumbered setback from the lot line to the nearest point in the foundation line of 35 feet, and a total unencumbered area of not less than 1,800 square feet to accommodate the system and provide for the replacement of defective units. Septic tank systems shall be planned and oriented with respect to abutting streets or alleys so as to minimize exterior plumbing changes needed to connect to a future central sewage collection system.

(15) Water supply. It shall be the responsibility of the developer to furnish the Community development department with evidence in the form of specific plans as to the facilities for supplying domestic water. A statement as to the type of facilities proposed shall appear on the preliminary plat, and shall be in conformity with the provisions of chapter 18.

(16) Stormwater disposal.

a. All existing drainage patterns affecting the land included in the proposed subdivision shall be shown. Washes must indicate the following:

1. Size of contributing drainage area, in acres.

2. Approximate length and width of contributing drainage area.

b. Type and amount of peak flow at lower boundary of the proposed subdivision, indicating the effect on neighboring property. It is the developer's responsibility to provide for drainage across the proposed subdivision for water which enters the proposed subdivision and water which falls on the area of the proposed subdivision. The developer must also properly dispose of this water in nearly as possible the same manner as before subdivision or development or by other approved means. Peak discharge at the lower boundary of the proposed subdivision shall not be increased as a result of development.

c. If any part of the stormwater flow is to be handled by an underground pipe system, the location of the inlets, tentative size and line of pipe and the outlet grade must be shown.

d. All information and calculations as required in this section must be prepared in report form by a registered professional civil engineer with five copies submitted at the time of filing the preliminary plat and must conform with the master drainage plan of the Community.

(17) Irrigation. If lots are proposed to be irrigated, all easements, the preliminary location of valves, and the tentative line of the underground pipe must be shown.

(18) Fire hydrants. The type, number and location of fire hydrants shall be shown on the preliminary plat. Subsequently submitted domestic water distribution plans shall show connections of fire hydrants.

(b) If satisfied that all objectives of this section have been met, the council, upon recommendation of the Community development department, shall determine whether to approve the preliminary plat, and if approved a notation of approval shall be stamped on the submitted copy of the plat.

(c) If the council finds that the plat requires revision, the plat shall be reconsidered by the council upon revision, resubmittal, processing and re-review by the Community development department.

(Code 1981, § 17-155; Code 2012, § 17-155; Ord. No. SRO-182-95, § 5, 10-12-1994; Ord. No. SRO-402-2012, § 17-155, 5-30-2012)

Sec. 17-379. Final plat review.

(a) The final plat stage includes submittal, review and approval of the final plat, and any improvements thereto, as required by the provisions of this section as hereinafter described. Application for approval of the final plat is made to the council, upon recommendation by the Community development department.

(b) The subdivision engineer shall submit one sepia copy of the plat to the utility agency or agencies, including the Community's irrigation coordinator if lots are to be irrigated, concerned with the installation of utilities within the subdivision. This sepia shall be submitted prior to the submittal of the final plat to the Community development department. One copy of the plat will be returned directly to the subdivision engineer and the Community development department with any required additions or corrections noted thereon from all utility companies franchised to provide services to the property.

(c) The final plat shall conform to the approved preliminary plat and any stipulations attached thereto by reviewing agencies. The plat shall be drawn to an accurate scale of not more than 200 feet to an inch.

(1) If the final plat is complete and conforms to the approved preliminary plat, it will be transmitted to all concerned depart-

ments. Upon receipt of the letters of approval from all departments concerned, the final plat will be forwarded to the council. If the final plat is not in conformance with the preliminary plat or stipulations attached thereto, it will be returned for compliance.

(2) If additional information or changes are recommended by any of the reviewing agencies, a revised final plat must be submitted to the Community development department. Referral and scheduling of a revised final plat shall be the same as that required for the original final plat.

(Code 1981, § 17-156; Code 2012, § 17-156; Ord. No. SRO-182-95, § 6, 10-12-1994; Ord. No. SRO-402-2012, § 17-156, 5-30-2012)

Sec. 17-380. Information required on final plat.

The final plat shall contain the following information:

(1) A title, which includes the name of the subdivision and its location by section, township, range and county.

(2) Name, registration number, and seal of the registered professional civil engineer or registered land surveyor preparing the plat.

(3) Name and registration number of the registered professional civil engineer responsible for the engineering that is necessary in preparation of the proposed subdivision.

(4) Scale (written and graphic), north point and date of plat preparation.

(5) Location and description of cardinal points to which all dimensions, angles, bearings and similar data on the plat shall be referenced.

(6) Any parcel or parcels within the plat boundary not included in the subdivision plat shall be accurately described by bearings and distances. Proper street and alley dedications adjacent to any proposed tracts or accepted parcels shall be provided by inclusion within the plat or by separate dedication noted on the plat.

(7) Boundaries of the tract to be subdivided fully balanced and closed, showing all bearings and distances determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof. Corners of the plat should be noted and monuments found or set should be indicated; each of two corners of the subdivision traverse shall be tied by course and distance to separate section corners or quarter section corners. Portions of any adjacent property between major road intersections shall not be excluded from within the boundaries of the subdivision when needed or required for dedication or improvements of any traffic, drainage, or flood control facility. Such areas may be indicated as excluded tracts after necessary dedications are shown.

(8) Names, centerlines, right-of-way lines, course, lengths and widths of all public streets, alleys, crosswalks and utility easements; radii, points of tangency and central angles of all curvilinear streets and alleys, and radii of all rounded street line intersections.

(9) All drainageways shall be shown on the plat.

(10) The location, width and use of all public or private utility easements shall be noted.

(11) Location and dimensions of all lots shall be shown. Lot dimensions shall be indicated for at least one side lot line and either the front or rear lot line. All minimum building setback lines which adjoin all streets shall also be shown and dimensioned. In areas subject to flooding, minimum finished first floor elevations shall be shown as may be recommended by the appropriate authority.

(12) All lots shall utilize a block and lot numbering system or be numbered consecutively throughout the plat. Exceptions,

tracts and parks shall be so designated, lettered or named, and clearly dimensioned.

(13) The record plat is to be drawn at a scale of not more than 200 feet to an inch from an accurate survey. If more than two sheets are required, a key map shall be shown on the first sheet or on a separate sheet.

(14) Certification by the registered professional civil engineer or registered land surveyor making the plat that the plat is correct and accurate, that the monuments described in it have been located or established as described and the lot corners permanently set.

(15) Minimum building lines shall be shown on the street side of all lots intended for residential use of any character and on all lots intended for commercial or industrial use. Such building lines shall not be less than required by any zoning ordinance or building line regulation applying to the property.

(Code 1981, § 17-157; Code 2012, § 17-157; Ord. No. SRO-182-95, § 7, 10-12-1994; Ord. No. SRO-402-2012, § 17-157, 5-30-2012)

Secs. 17-381—17-403. Reserved.

ARTICLE XI. ENCUMBRANCE OF LAND

DIVISION 1. GENERALLY

Secs. 17-404—17-434. Reserved.

DIVISION 2. MORTGAGES

Sec. 17-435. Jurisdiction.

The court shall have jurisdiction to resolve and adjudicate any and all issues arising under this division within this Community Code of Ordinances.

(Code 1981, § 17-201; Code 2012, § 17-201; Ord. No. SRO-198-95, § I(A), 5-3-1995; Ord. No. SRO-402-2012, § 17-201, 5-30-2012)

Sec. 17-436. Definitions.

As used in this division within this Community Code of Ordinances, the following terms shall have the meanings ascribed in this section, except where context clearly indicates a different meaning:

Mortgage means every transfer of an interest in real property, other than in trust or trust deed subject to division 3 of this article, made only as a security for the performance of another act.

Mortgagee means the financial lender.

Mortgagor means the borrower or the debtor.

Provision for assignment means a mortgage or trust deed that provides for an assignment to the mortgagee or beneficiary of the interest of the mortgagor or trustor in leases, rents, issues, profits or income from the property covered thereby, whether effective before, upon or after a default under such mortgage or trust deed or any contract secured thereby, such assignment being enforceable without regard to the adequacy of the security or the solvency of the mortgagor or trustor by any one or more of the following methods:

(1) The appointment of a receiver.

(2) The mortgagee or beneficiary taking possession of the property, or without the mortgagee or beneficiary taking possession of the property.

(3) Collecting such monies directly from the parties obligated for payment.

(4) Injunction.

Real estate and land services section means the section of the Community development department or its successor responsible for maintaining land records.

(Code 1981, § 17-202; Code 2012, § 17-202; Ord. No. SRO-198-95, § I(B), 5-3-1995; Ord. No. SRO-402-2012, § 17-202, 5-30-2012)

Sec. 17-437. Interests which may be mortgaged; formal requirements; recording.

(a) Any interest in real property within the Community held in trust by the United States for individual Indian owners or subject to a restric-

tion against alienation imposed by the United States, including, but not limited to, leaseholds, may be mortgaged, except that the mortgage of any interest in land shall be subject to the requirements of 25 USC 483a and other applicable federal law.

(b) A mortgage or an assignment of mortgage may be created, renewed or extended only by writing executed with the formalities required of a grant of real property, and may be acknowledged, certified and recorded in the real estate services, land title and records section, B.I.A. Albuquerque, N.M. and the real estate and land services section of the Community development department, and such recordation shall be notice of the mortgage and its priority and effect on the title to the interest in the real property to any person thereafter claiming an interest in the real property.
(Code 1981, § 17-203; Code 2012, § 17-203; Ord. No. SRO-198-95, § I(C), 5-3-1995; Ord. No. SRO-402-2012, § 17-203, 5-30-2012)

Sec. 17-438. Mortgage as lien; rights of possession.

(a) A mortgage is a lien upon everything that would pass by a grant of the property, but does not entitle the mortgagee to possession of the property unless authorized by the express terms of the mortgage. After execution of the mortgage, the mortgagor may agree to change of possession without a new consideration.

(b) Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security as if acquired before the execution.
(Code 1981, § 17-204; Code 2012, § 17-204; Ord. No. SRO-198-95, § I(D), 5-3-1995; Ord. No. SRO-402-2012, § 17-204, 5-30-2012)

Sec. 17-439. Acknowledgements of satisfaction; recording; liability for failure to acknowledge satisfaction.

(a) If a mortgagee, trustee or person entitled to payment receives full satisfaction of a mortgage or deed of trust, he or she shall acknowledge satisfaction of the mortgage or deed of trust by delivering to the person making satisfaction or by recording a sufficient release or satisfaction of mortgage or deed of release and reconveyance of the deed of trust, which release, satisfaction of mortgage or deed of release and reconveyance shall contain the docket and page number of the mortgage or deed of trust or acknowledge satisfaction as provided in subsection (c) of this section when applicable. It shall not be necessary for the trustee to join in the acknowledgement or satisfaction of mortgage or deed of release and reconveyance. The recorded release or satisfaction of mortgage or deed of release and reconveyance constitutes conclusive evidence of full or partial satisfaction and release of the mortgage or deed of trust in favor of purchaser and encumbrancers for value and without actual notice.

(b) When a mortgage or deed of trust is satisfied by a release or satisfaction of mortgage or deed of release and reconveyance, except where the record of such deed of trust or mortgage has been destroyed or reduced to microfilm, the real estate and land services section shall not on the margin of the record of the deed of trust or mortgage the book and page where the release is recorded.

(c) If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, it shall be sufficient evidence of satisfaction of any such mortgage or deed of trust for the release or satisfaction of mortgage or deed of release and reconveyance to be recorded and indexed as such. If the person acknowledging satisfaction appears in the office of the real estate and land services section without a release or satisfaction of mortgage or deed of release and reconveyance, the person shall acknowledge satisfaction on a form of instrument provided by the recorder for such purpose, which instrument shall sufficiently identify the mortgage or deed of trust by parties and by book and page of the official records. Such instrument shall be certified to by the real estate and land services section and thereupon shall be treated as a release or satisfaction of mortgage or deed of release and reconveyance and recorded and indexed as such.

(d) If satisfaction is acknowledged by an assignee, the note secured shall be produced and cancelled in the presence of the real estate and

land services section, who shall enter that fact on the margin of the record. If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, the real estate and land services section shall reduce such production and cancellation of note to a written and signed statement which shall thereafter be recorded and indexed as releases, satisfactions of mortgage and deeds of release and reconveyance are recorded and indexed. If the note secured by a mortgage or deed of trust has been lost or destroyed, the assignee, mortgagee or beneficiary shall, before acknowledging satisfaction, make an affidavit that he or she is the lawful owner of the note and that it has been paid, but cannot be produced for the reason that it has been lost or destroyed, and the affidavit shall be entered on the face or margin of the record or appended thereto. If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, such affidavit shall be recorded and indexed as releases, satisfactions of mortgage and deeds of release and reconveyance are recorded and indexed and shall have the same force and effect as a release or satisfaction of a mortgage or deed of release and reconveyance as provided in subsection (a) of this section.

(e) If a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust, which, according to its terms, recites that it secures an obligation having a stated indebtedness not greater than $500,000.00 exclusive of interest, has not been executed and recorded pursuant to subsection (a) or (c) of this section within 60 days of satisfaction of the obligation secured by such mortgage or deed of trust, then a title insurer may prepare, execute and record a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust. However, at least 30 days prior to the issuance and recording of any such release or satisfaction of mortgage or deed of release and reconveyance pursuant to this subsection, the title insurer shall mail, by certified mail with postage prepaid, return receipt requested, to the mortgagee of record or to the trustee and beneficiary of record and their respective successors in interest of record at their last known address shown of record and to any persons who, according to the records of the title insurer, received payment of the obligation at the address shown in such records, a notice of its intention to release the mortgage or deed of trust accompanied by a copy of the release or satisfaction of mortgage or deed of release and reconveyance to be recorded, which shall set forth:

(1) The name of the beneficiary or mortgagee or any successors in interest of record of such mortgagee or beneficiary and, if known, the name of any servicing agent.

(2) The name of the original mortgagor or trustor.

(3) The name of the current record owner of the property.

(4) The recording reference to the deed of trust or mortgage.

(5) The date and amount of payment, if known.

(6) A statement that the title insurer has actual knowledge that the obligation secured by the mortgage or deed of trust has been paid in full.

(f) The release or satisfaction of mortgage or release and reconveyance of deed of trust may be executed by a duly appointed attorney-in-fact of the title insurer, but such delegation shall not relieve the title insurer from any liability pursuant to this section.

(g) A release or satisfaction of mortgage or deed of release and reconveyance of deed of trust issued pursuant to subsection (e) of this section shall be entitled to recordation and, when recorded, shall constitute a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust issued pursuant to subsection (a) or (c) of this section.

(h) Where an obligation secured by a deed of trust or mortgage was paid in full prior to the effective date of this section, and no release or satisfaction of mortgage or deed of release and reconveyance of deed of trust has been issued and recorded within 60 days of the effective date of this section, a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust, as provided for in subsection (e) of this section, may be prepared and recorded.

(i) A release or satisfaction of mortgage or a release and reconveyance of deed of trust by a title insurer under the provisions of subsection (e) of this section shall not constitute a defense nor release any person from compliance with subsections (a) through (d) of this section.

(j) In addition to any other remedy provided by law, a title insurer preparing or recording the release and satisfaction of mortgage or the release and reconveyance of deed of trust pursuant to this section shall be liable to any party for actual damage, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release and satisfaction of mortgage or release and reconveyance of deed of trust.

(k) The title insurer shall not record a release and satisfaction of mortgage or release and reconveyance of deed of trust if, prior to the expiration of the 30-day period specified in this section, the title insurer receives a notice from the mortgagee, trustee, beneficiary, holder or servicing agent which states that the mortgage or deed of trust continues to secure an obligation.

(l) The title insurer may charge a reasonable fee to the owner of the land or other person requesting a release and satisfaction of mortgage or release and reconveyance of deed of trust, including, but not limited to, search of title, document preparation and mailing services rendered, and may, in addition, collect official fees.

(m) An attorney-in-fact to whom the money due on a mortgage or deed of trust is paid may execute the release provided for in this division within this Community Code of Ordinances. Such acknowledgment of satisfaction or deed of release, duly acknowledged and recorded, releases the mortgage or deed of trust and reinvests in the mortgagor or person who executed the deed of trust, or his or her legal representatives, all title to the property affected by the mortgage or deed of trust.

(n) The executor or administrator of a mortgagee or of the holder or owner of an indebtedness secured by a mortgage or deed of trust shall, if the indebtedness was paid to the decedent in his or her lifetime, acknowledge satisfaction thereof on the margin of the record of the mortgage or deed of trust, or deliver to such person a sufficient release, satisfaction of mortgage or deed of release of the mortgage or deed of trust or acknowledge satisfaction, as provided in subsection (c) of this section. If the executor or administrator, upon proof to him or her of the payment of the indebtedness to his or her decedent, does not, within 30 days, acknowledge satisfaction in the margin of the record or deliver to the person owning the property a sufficient release, satisfaction of mortgage or deed of release, or acknowledge satisfaction, as provided in subsection (c) of this section, he or she shall personally forfeit to the party aggrieved $100.00 and be personally liable for the damages thereby sustained. The executor or administrator shall not be liable to the estate of which he or she is executor or administrator for any indebtedness by mortgage or deed of trust release by him or her in accordance with this section.

(o) Liability for failure to acknowledge satisfaction.

(1) If any person receiving satisfaction of a mortgage or deed of trust shall, within 30 days, fail to record or cause to be recorded, with the recorder or real estate and land services section, a sufficient release, satisfaction of mortgage or deed of release or acknowledge satisfaction, he or she shall be liable to the mortgagor, trustor or current property owner for actual damages occasioned by the neglect or refusal.

(2) If, after the expiration of the time provided in subsection (o)(1) of this section, the person fails to record or cause to be recorded a sufficient release and continues to do so for more than 30 days after receiving a written request which identifies a certain mortgage or deed of trust by certified mail from the mortgagor, trustor, current property owner or his or her agent, he or she shall be liable to the mortgagor, trustor or current property owner for $1,000.00, in addition to any actual damage occasioned by the neglect or refusal.

(3) Any action to enforce the provisions of this section, including any action to recover amounts due under this section,

shall be brought and maintained in the individual names of, and shall be prosecuted by, persons entitled to recover under the terms thereof, and not in a representative capacity or otherwise.

(Code 1981, § 17-205; Code 2012, § 17-205; Ord. No. SRO-198-95, § I(E), 5-3-1995; Ord. No. SRO-402-2012, § 17-205, 5-30-2012)

Sec. 17-440. Foreclosure.

(a) *Foreclosure of mortgage by court action.* Mortgages of real property, notwithstanding any other provision in the mortgage, shall be foreclosed by action in a court.

(b) *Election between action on debt or to foreclose.* If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed.

(c) *Right of junior lienholder upon foreclosure action by senior lienholder.* Any time after an action to foreclose a mortgage or deed of trust is brought, and prior to the sale, a person having a junior lien on the property shall be entitled to an assignment of all the interest of the holder of the mortgage or deed of trust by paying him or her the amount secured, with interest and costs, together with the amount of any other superior liens of the same holder. The assignee may then continue the action in his or her name.

(d) *The Community as party to foreclosure actions.*

(1) The shall be made a party to any action to foreclose a mortgage upon real property located within the Community. The complaint shall set forth the nature of the estate, interest or lien allegedly claimed by the Community.

(2) When the Community is made defendant, a copy of the summons and complaint shall be served upon the Community manager of the Community.

(3) The Community may bid on the property and may purchase the property in preference to any deed in lieu of foreclosure to any person not a mortgagee or trustor in regard to the property at the price of the deed in lieu.

(e) *Judgment of foreclosure; contents; sale of property; resale.*

(1) When a mortgage or deed of trust is foreclosed, the court shall give judgment for the entire amount determined due, and shall direct the mortgaged property, or as much thereof as is necessary to satisfy the judgment, to be sold.

(2) Judgments for the foreclosure of mortgages and other liens shall provide that the plaintiff recover his or her debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject to the lien, and except in judgments against executors, administrators and guardians, that a special execution issue to the Community police department, directing it to seize and sell the property as under execution, in satisfaction of the judgment. If the property cannot be found, or if the proceeds of the sale are insufficient to satisfy the judgment, then, if so ordered by the court, the Community police department shall take the money or any balance thereof remaining unpaid out of any other property of the defendant. Any sale of real property to satisfy a judgment under this section shall be a credit on the judgment in the amount of either the fair market value of the real property or the sale price of the real property at the Community police department sale, whichever is greater.

(3) If the debt for which the lien is held is not all due, as soon as enough of the property is sold to pay the amount due, with costs, the sale shall cease, and afterward as often as more becomes due for principal and interest, the court may, on motion, order more property sold. If the property cannot be sold in portions without injury to the parties, the whole may be ordered sold in the first instance and the entire debt and costs paid, allowing a rebate of interest where proper.

(f) *Redemption of property by payment to officer directed under foreclosure judgment to sell the property.* If payment is made to the officer directed to sell mortgaged property under a foreclosure judgment, before the foreclosure sale takes place, the officer shall make a certificate of payment and acknowledge it, and the certificate shall be recorded in the office in which the mortgage or deed of trust is recorded and shall have the same effect as satisfaction entered on the margin of the record.

(g) *Sale under execution; deficiency; order of liens; writ of possession.*

(1) If the mortgaged property does not sell for an amount sufficient to satisfy the judgment, an execution may be issued for the balance against the mortgagor where there has been personal service, or the defendant has appeared in the action.

(2) If there are other liens on the property sold, or other payments secured by the same mortgage, they shall be paid in their order, and if the money secured by any such lien is not yet due, a rebate of interest, to be ascertained by the court, shall be made by the holder, or his or her lien on such property will be postponed to those of a junior date, and if there are no other liens the balance shall be paid to the mortgagor. If redemption is not made and the mortgagor or his or her assigns refuse, after expiration of the time for redemption, to deliver possession of the foreclosed property, the court shall order a writ of possession issued placing the purchaser or his or her assigns in possession.

(h) *Notation upon record that mortgage is foreclosed and judgment satisfied; effect.* When a mortgage has been foreclosed by action in court, and the judgment has been paid and satisfaction thereof entered upon the docket, the recorder or real estate and land services section, upon presentation to him or her of the certificate of the clerk of the court certifying such facts, shall note on the margin of the record of the mortgage the fact of foreclosure, giving the title of the court, title of the action and noting that the judgment docketed therein has been fully paid and satisfied. Such entry shall have the same effect as the record of discharge by the mortgagee.

(i) *Purchase money mortgage; limitation on liability.*

(1) Except as provided in subsection (i)(2) of this section, if a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of 2½ acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment; and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

(2) The balance due on a mortgage foreclosure judgment after sale of the mortgaged property shall constitute a lien against other property of the judgment debtor, general execution may be issued thereon, and the judgment may be otherwise satisfied out of other property of the judgment debtor, if the court determines, after sale upon special execution and upon written application and such notice to the judgment debtor as the court may require, that the sale price was less than the amount of the judgment because of diminution in possession, or control of the judgment debtor because of voluntary waste committed or permitted by the judgment debtor, not to exceed the amount of diminution in value as determined by such court.

(j) *Limitation on deficiency judgment on mortgage or deed of trust as collateral for consumer goods.* If both a security agreement and a mortgage or deed of trust have been given to secure

payment of the balance of the purchase price of real property and consumer goods or services or the balance of the combined purchase price of such real property and consumer goods or services, no deficiency shall lie thereunder if no deficiency would lie under the mortgage or deed of trust given under such transaction, notwithstanding any agreement to the contrary. For the purposes of this section, consumer goods and services are goods and services used or acquired for use primarily for personal, family or household purposes.
(Code 1981, § 17-206; Code 2012, § 17-206; Ord. No. SRO-198-95, § I(F), 5-3-1995; Ord. No. SRO-402-2012, § 17-206, 5-30-2012)

Sec. 17-441. Notice of default to Community.

If the trustor or the mortgagee defaults on any mortgage or deed of trust, the trustee or mortgagee is to provide immediate notice to the president of the Community and the Community shall have the absolute right, in its sole discretion, to purchase the property from the trustee or mortgagee.
(Code 1981, § 17-207; Code 2012, § 17-207; Ord. No. SRO-198-95, § I(G), 5-3-1995; Ord. No. SRO-402-2012, § 17-207, 5-30-2012)

Sec. 17-442. Recordation of documents.

All documents which must be recorded pursuant to this division within this Community Code of Ordinances must be recorded in the real estate and land services section and the Real Estate Services, Land Title and Records Section, P.O. Box 26567, Albuquerque, NM 87125-6567. All recordation of documents in the real estate services, land title and records section shall be done through the real estate and land services section.
(Code 1981, § 17-208; Code 2012, § 17-208; Ord. No. SRO-198-95, § I(H), 5-3-1995; Ord. No. SRO-402-2012, § 17-208, 5-30-2012)

Secs. 17-443—17-467. Reserved.

DIVISION 3. DEEDS OF TRUST

Sec. 17-468. Definitions.

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

Beneficiary means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his or her successor in interest.

Contract means a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty, including, but not limited to, a note, promissory note or provisions of any trust deed.

Credit bid means a bid made by the beneficiary in full or partial satisfaction of the contract or contracts which are secured by the trust deed. Such credit bid may only include an amount up to the full amount of the contract or contracts secured by the trust deed, less any amount owing on liens or encumbrances with interest which are superior in priority to the trust deed and which the beneficiary is obligated to pay under the contract or contracts or under the trust deed, together with the amount of other obligations provided in or secured by the trust deed and the costs and expenses of exercising the power of sale and sale, including the trustee's fees and reasonable attorney fees actually incurred.

Parent corporation means a corporation which owns 80 percent or more of each and every class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, 80 percent or more of its issued and outstanding guaranty capital.

Real estate and land services section means the section of the Community development department, or its successor, of the Community responsible for maintaining land records.

Trust deed or *deed of trust* means a deed executed in conformity with this article and

conveying trust property to a trustee or trustees qualified under section 17-470 to secure the performance of a contract or contracts.

Trust property means any legal, equitable, leasehold or other interest in an allotted landowner's interest in real property which is capable of being transferred, whether or not it is subject to any prior mortgages, trust deeds, contracts for conveyance of real property or other liens or encumbrances or its status as land which is held by the United States in trust for individual Indian owners or is subject to a restriction against alienation imposed by the United States.

Trustee means an individual, association or corporation qualified pursuant to section 17-470, or the successor in interest thereto, to whom trust property is conveyed by trust deed. The trustee's obligations to the trustor, beneficiary and other persons are as specified in this chapter, together with any other obligations specified in the trust deed.

Trustor means the person conveying trust property by a trust deed as security for the performance of a contract or contracts, or the successor in interest of such person.
(Code 1981, § 17-221; Code 2012, § 17-221; Ord. No. SRO-198-95, § II(A), 5-3-1995; Ord. No. SRO-402-2012, § 17-221, 5-30-2012)

Sec. 17-469. Description of property; mailing address.

(a) In deeds of trust, the legal description of trust property shall be given by one of the following methods:

(1) By the use of lot, block, tract or parcel as set forth within a recorded subdivision plat.

(2) By the use of a metes and bounds or course and distance survey.

(3) By the use of the governmental rectangular survey system with specific identification of the location within any section or sections, tract or tracts, of a township and range.

(b) The mailing address of each trustor, beneficiary, and trustee shall be specified in each deed of trust.
(Code 1981, § 17-222; Code 2012, § 17-222; Ord. No. SRO-198-95, § II(B), 5-3-1995; Ord. No. SRO-402-2012, § 17-222, 5-30-2012)

Sec. 17-470. Trustee qualifications.

(a) Except as provided in section 17-469, the trustee of a trust deed shall be:

(1) A person certified to so act by the the Community court.

(2) An association or corporation doing business under the laws of the State of Arizona as a bank, trust company, savings and loan association, credit union, insurance company, escrow agent or small loan company.

(3) A person who is a member of the state bar of Arizona.

(4) A person who is a licensed real estate broker under the laws of the State of Arizona or the Community.

(5) A person who is a licensed insurance agent under the laws of the State of Arizona or the Community.

(6) An association or corporation which is licensed, chartered or regulated by the Federal Deposit Insurance Corporation, the comptroller of the currency, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank, the National Credit Union Administration, the farm credit administration or any successors.

(7) The parent corporation of any association or corporation referred to in this subsection or any corporation all the stock of which is owned by or held solely for the benefit of any such association or corporation referred to in this subsection.

(8) Effective as of April 6, 2006, the Salt River Financial Services Institution.

(b) An individual trustee of a trust deed who qualifies under the provisions of subsection (a) of this section shall not be the beneficiary of the trust, but such restriction shall not preclude a corporate or association trustee which qualifies under the provisions of subsection (a) of this section and while acting in good faith from being the beneficiary, or after appointment from acquiring the interest of the beneficiary by succession, conveyance, grant, descent or devise.

(Code 1981, § 17-223; Code 2012, § 17-223; Ord. No. SRO-198-95, § II(C), 5-3-1995; Ord. No. SRO-402-2012, § 17-223, 5-30-2012; Ord. No. SRO-437-2014, 2-26-2014; Ord. No. SRO-516-2020, 3-4-2020)

Sec. 17-471. Appointment of successor trustee by beneficiary.

(a) If a person appointed as trustee fails to qualify, is unwilling or unable to serve, or resigns as trustee of the beneficiary, the beneficiary may appoint a successor trustee, and such appointment shall constitute a substitution of trustee.

(b) The beneficiary may at any time remove a trustee for any reason or cause and appoint a successor trustee, and such appointment shall constitute a substitution of trustee.

(c) A notice of substitution of trustee shall be recorded in the office of the Maricopa County recorder and real estate services, land title and records section of the Community development department. The beneficiary shall give written notice through registered or certified mail, postage prepaid, to the trustor.

(d) A notice of substitution of trustee shall be sufficient if acknowledged by all beneficiaries under the trust deed or their agents as authorized in writing and if prepared in substantially the following form:

Notice of Substitution of Trustee

The undersigned beneficiary hereby appoints _____ successor trustee under the trust deed executed by _____ as trustee, and recorded _____, 20____, in _____ county in book or docket _____, page _____, and recorded in the Real Estate Services Land Title and Records Section in records domiciled at _____ and legally describing the trust property as:

(Legal description of trust property)

Dated this _____ day of _____, 20____.

/s/ _____
Signature

(Acknowledgement)

(e) A notice of substitution of trustee is effective immediately on execution as prescribed by subsection (d) of this section.

(f) A person appointed as a trustee under a deed of trust may resign as trustee at any time. Any such resignation shall be without liability, provided he or she has not agreed in writing or by his or her conduct to act in such capacity. If the trustee has agreed in writing or by his or her conduct to act in such capacity, he or she may only resign in accordance with the terms of the trust deed and this division within this Community Code of Ordinances. If a trustee fails to qualify or is unwilling or unable to serve or resigns, it does not affect the validity of the deed of trust, except that no action required to be performed by the trustee under this division within this Community Code of Ordinances or under the deed of trust may be taken until a successor trustee is appointed by the beneficiary or his or her agent as authorized in writing pursuant to this section. Resignation by a trustee is made by recordation of a notice of resignation in the office of the real estate and land services section. Written notice shall be given through registered or certified mail, postage prepaid, to the trustor and the beneficiary. A notice of resignation of trustee is sufficient if acknowledged by the trustee and prepared in substantially the following form:

Notice of Resignation of Trustee

The undersigned trustee hereby resigns as trustee under the deed of trust executed by _____, as trustor, in which _____ is named beneficiary, and recorded _____, 20____, in _____ county, in book or docket _____, page _____, and recorded in the Real Estate and Land Services Section and legally describing the trust property as:

(Legal description of trust property)

Dated this _____ day of _____, 20____.

/s/ _____
Signature

(Acknowledgement)

(Code 1981, § 17-224; Code 2012, § 17-224; Ord. No. SRO-198-95, § II(D), 5-3-1995; Ord. No. SRO-402-2012, § 17-224, 5-30-2012)

Sec. 17-472. Transfers in trust of real property.

(a) Transfers of trust property may be made to secure the performance of a contract or contracts of the trustor or any other person. An interest in the trust property acquired by the trustor subsequent to the execution of the trust deed shall inure to the trustee as security for the contract or contracts for which the trust property is conveyed as if the interest or claim had been acquired before execution of the trust deed.

(b) No transfer of trust property may be made as provided for in this section except in conformity with the requirements of 25 USC 483a and other applicable federal laws.

(c) The trustee or beneficiary shall have a right to maintain an action against any person, including the trustor, for a claim for relief where damage or injury occurs or may occur to the trust property or interests therein, including, but not limited to, actions for damages or to prevent:

(1) Physical abuse to or destruction of the trust property, or any portion thereof.

(2) Waste, as defined by the laws of the State of Arizona.

(3) Impairment of the security provided by the trust deed. In any such action, the trustee or beneficiary, or both, shall also be entitled to recover costs and reasonable attorney's fees and shall be entitled to all remedies available. Recovery of damages under this section shall be limited to damages or injuries incurred during the time the trustor is in possession or control of the trust property.

(Code 1981, § 17-225; Code 2012, § 17-225; Ord. No. SRO-198-95, § II(E), 5-3-1995; Ord. No. SRO-402-2012, § 17-225, 5-30-2012)

Sec. 17-473. Right to transfer; fee limit; interest rate increase limit.

(a) Nothing in this division within this Community Code of Ordinances shall be construed to prevent or limit the right of a trustor to transfer his or her interest in the trust property, or authorize a beneficiary or trustee to arbitrarily withhold his or her consent to a transfer by the trustor of his or her interest in the trust property.

(b) When a trustor transfers his or her interest in the trust property, no beneficiary or trustee shall charge a fee on the transfer of more than $100.00 or one percent of the balance due on the obligation secured by the trust deed, whichever is lesser.

(c) When a trustor transfers his or her interest in the trust property, no beneficiary or trustee shall increase the interest rate on the obligation secured by such trust deed unless the transferring trustor is released from all liability thereon, and in no event shall the amount of such increase exceed 0.50 percent per annum more than the interest rate paid by the transferring trustor.

(d) This section shall be applicable only to trust property of 2½ acres or less which is not used for commercial purposes and which is limited to and utilized for dwelling units, not to exceed four single-family units.

(Code 1981, § 17-226; Code 2012, § 17-226; Ord. No. SRO-198-95, § II(F), 5-3-1995; Ord. No. SRO-402-2012, § 17-226, 5-30-2012)

Sec. 17-474. Sale of trust property; power of trustee; foreclosure of deed.

(a) By virtue of his or her position, a power of sale is conferred upon the trustee of a trust deed under which the trust property may be sold, in the manner provided in this division within this Community Code of Ordinances, after a breach or default in performance of the contract or contracts, for which the trust property is conveyed as security, or a breach or default of the trust deed. At the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property, in which event the provisions of division 2 of this article, mortgages, govern the proceedings. The beneficiary or trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust. The power of sale may be exercised by the trustee without express provision therefor in the trust deed.

(b) The trustee or beneficiary may file and maintain an action to foreclose a deed of trust at any time before the trust property has been sold under the power of sale. A sale of trust property under the power of sale shall not be held after an action to foreclose the deed of trust has been filed unless the foreclosure action has been dismissed.

(c) The power of sale of trust property conferred upon the trustee shall not be exercised before the expiration of 90 days from the recording of the notice of the sale.

(d) The trustee need only be joined as a party in legal actions pertaining to a breach of the trustee's obligation under this division within this Community Code of Ordinances or under the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions which the trustee is authorized to take by the trust deed or by this division within this Community Code of Ordinances. If the trustee is joined as a party in any other action, the trustee is entitled to be immediately dismissed and to recover costs and reasonable attorney's fees from the person joining the trustee.

(Code 1981, § 17-227; Code 2012, § 17-227; Ord. No. SRO-198-95, § II(G), 5-3-1995; Ord. No. SRO-402-2012, § 17-227, 5-30-2012)

Sec. 17-475. Notice to Community; Community right to purchase property.

The trustee shall immediately notify the president of the Community of the trustor's default and of the trustee's intention to sell the property under his or her statutory power. The Community shall have an absolute right to purchase such property from the trustee at a price equal to the balance of the indebtedness on the property, together with reasonable costs. The Community shall notify the trustee of its intention to purchase within 30 days of the notice and the Community will, at that time, tender full payment to the trustee who will deliver to the Community his or her trustee's deed. The provisions of this section through section 17-479 will not be applicable in the event of a sale to the Community.

(Code 1981, § 17-228; Code 2012, § 17-228; Ord. No. SRO-198-95, § II(H), 5-3-1995; Ord. No. SRO-402-2012, § 17-228, 5-30-2012)

Sec. 17-476. Notice of trustee's sale.

(a) The trustee shall give written notice of the time and place of sale legally describing the trust property to be sold by each of the following methods:

(1) Publication of such notice in a newspaper of general circulation in the Community and the county. Such notice shall be published at least once. The last date of publication shall not be less than ten days prior to the date of sale.

(2) Posting of such notice, at least 20 days before the date of sale in some conspicuous place on the trust property to be sold, if such can be accomplished without a breach of the peace, and at one of the places provided for posting public notices at the Community courts building.

(3) Recording of such notice in the office of the Maricopa County recorder and the real estate services land title and records section.

(4) Giving notice as provided in section 17-477, to the extent applicable.

(b) The sale shall be held at the time and place designated in the notice of sale, on a day other than a Saturday, Sunday or other legal holiday, between the hours of 9:00 a.m. and 5:00 p.m. at a specified place on the trust property, at a specified place at the Community courts building, or at a specified place at a place of business of the trustee, in Maricopa County.

(c) The notice of sale shall contain:

(1) The street address, if any, or identifiable location, as well as the legal description of the trust property.

(2) The original principal balance as shown on the deed of trust. If the amount is not shown on the deed of trust, it shall be listed as unspecified.

(3) The names and addresses, as of the date the notice of sale is recorded, of the beneficiary and the trustee, the name and address of the original trustor as stated in the deed of trust, and the signature of the trustee.

(d) The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book _____ at page _____ records of the Real Estate and Land Services Section in records described as _____, at public auction to the highest bidder at (specific place of sale as permitted by law) _____, in _____ county, in or near _____, Arizona, on _____, 20____, at ____ o'clock ____.m. of said day:

(Street address if any, or identifiable location of trust property)
(Legal description of trust property)

Original principal balance $ _____
Name and address of beneficiary _____
Name and address of original trustor _____
Name and address of trustee _____

Signature of trustee _____
Dated this _____ day of _____, 20____.

(Acknowledgment)

(e) Any error or omission in the information required by subsection (c) or (d) of this section, other than an error in the legal description of the trust property, shall not invalidate a trustee's sale if, considered as a whole, the information provided is sufficient to identify the trust property being sold. The trustee, or any person furnishing information to the trustee, shall not be subject to liability for any error or omission in the information required by subsection (c) of this section, except for the willful and intentional failure to provide such information. The provisions of this subsection are not applicable to claims made by an insured under any policy of title insurance.
(Code 1981, § 17-229; Code 2012, § 17-229; Ord. No. SRO-198-95, § II(I), 5-3-1995; Ord. No. SRO-402-2012, § 17-229, 5-30-2012)

Sec. 17-477. Request for copies of notice of sale; mailing by trustee or beneficiary; disclosure of information regarding trustee sale.

(a) A person desiring a copy of a notice of sale under a trust deed shall, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, record in the office of the real estate and land services section a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the recording record of the real estate and land services section and by stating the names of the original parties to such deed, the date of the deed was recorded, the legal description of the entire trust property, and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in the Records of the Real Estate and Land Services Section.

(Legal description of trust property)

Executed by _____ a trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____.

Dated this _____ day of _____, 20____.

/s/ _____
Signature

(Acknowledgement)

(b) Not later than 30 days after recording the notice of sale, the trustee or beneficiary shall mail, by certified or registered mail with postage prepaid, a copy of such notice with the recording date shown thereon, together with any notice required to be given by subsection (c) of this section addressed as follows:

(1) To each person whose name and address are set forth in a request for notice, which has been recorded prior to the recording of the notice of sale, directed to the address designated in such request.

(2) To each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property. Such copy of the notice shall be addressed to the person whose interest so appears at the address set forth in the document. If no address for the person is set forth in the document, the copy of the notice may be addressed in care of the person to whom the recorded document evidencing such interest was directed to be mailed at the time of its recording or to any other address of the person known or ascertained by the trustee. If the interest which appears on the records of the county recorder is a deed of trust, a copy of the notice need only be mailed to the beneficiary under the deed of trust. If any person having such an interest, or the trustor, or any person who has recorded a request for notice, desires to change the address to which notice shall be mailed, such change shall be accomplished by a request as provided under this section.

(c) The trustee or beneficiary shall, within five days after the recordation of such notice of sale, mail by certified or registered mail, with postage prepaid, a copy of any notice of sale to each of the persons who were parties to the trust deed except the trustee. The copy of the notice mailed to the parties need not show the recording date the notice was recorded. Such notice shall be addressed to the mailing address specified in the trust deed. In addition, notice to each such party shall contain a statement that a breach or nonperformance of the trust deed or the contract or contracts secured by the trust deed or both has occurred, and setting forth the nature of such breach or nonperformance and of the beneficiary's election to sell or cause to be sold the trust property under the trust deed, and the additional notice shall be signed by the beneficiary or his or her agent. A copy of such additional notice shall also be sent with the notice provided for in subsection (b)(2) of this section to all persons whose interest in the trust property is subordinate in priority to that of the deed of trust, along with a written statement that the interest may be subject to being terminated by the trustee's sale. The written statement may be contained in the statement of breach or nonperformance.

(d) No request for a copy of a notice recorded pursuant to this section, nor any statement or allegation in any such request, nor any record thereof, shall affect the title to the trust property or be deemed notice to any person that a person requesting a copy of a notice of sale has or claims any interest in, or claim upon, the trust property.

(e) At any time that the trust deed is subject to reinstatement pursuant to section 17-481, but not sooner than 30 days after recordation of the notice of trustee's sale, the trustee shall, upon receipt of a written request, provide, if actually known to the trustee, the following information relating to the trustee's sale and the trust property:

(1) The unpaid principal balance of the note or other obligation which is secured by the deed of trust.

(2) The name and address of record of the owner of the trust property as of the date of recordation of the notice of trustee's sale.

(3) A list of the liens and encumbrances upon the trust property as of the date of recordation of the notice of trustee's sale. If the trustee elects to charge a fee for providing the information requested, the fee shall not exceed 1/20 of the amount the trustee may charge pursuant to section 17-481(b)(5), except the trustee shall not be required to accept a fee less than $20.00, but may accept a lesser fee at the trustee's

discretion. The trustee, or any other person furnishing information pursuant to this subsection to the trustee, shall not be subject to liability for any error or omission in providing the information requested, except for the willful and intentional failure to provide information in the trustee's actual possession.

(f) At any time during the day of sale, but prior to the sale or on the last business day preceding the day of sale, the trustee shall provide to any person who requests it a good faith estimate of the maximum credit bid the beneficiary shall be entitled to make at the sale.

(g) In providing information pursuant to subsections (e) and (f) of this section, the trustee may, without obligation or liability for the accuracy of completeness of the information, respond to oral requests, respond orally or in writing or provide additional information not required by such subsections. With respect to property which is the subject of a trustee's sale, the beneficiary of such deed of trust or the holder of any prior lien may, but shall not be required to, provide information concerning such deed of trust or any prior lien which is not required by subsection (e) or (f) of this section and may charge a reasonable fee for providing the information. The providing of such information by any beneficiary or holder of a prior lien shall be without obligation or liability for the accuracy or completeness of the information.
(Code 1981, § 17-230; Code 2012, § 17-230; Ord. No. SRO-198-95, § II(J), 5-3-1995; Ord. No. SRO-402-2012, § 17-230, 5-30-2012)

Sec. 17-478. Sale by public auction; postponement of sale.

(a) On the date and at the time and place designated in the notice of sale, the trustee shall offer to sell the trust property at public auction for cash to the highest bidder. The attorney or agent for the trustee may conduct the sale and act at such sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid, in lieu of cash, at such sale. The trustee shall require every bidder, except the beneficiary, to provide a $1,000.00 deposit, in a form satisfactory to the trustee, as a condition of entering a bid. Every bid shall be deemed an irrevocable offer until the sale is completed, except that a subsequent bid by the same bidder for a higher amount shall cancel that bidder's lower bid. To determine the highest price bid, the trustor or beneficiary present at the sale may recommend the manner in which the known lots, parcels or divisions of the trust property be sold. The trustee shall conditionally sell the trust property under each recommendation, and, in addition thereto, shall conditionally sell the trust property as a whole. The trustee shall determine which conditional sale or sales result in the highest total price bid for all of the trust property. The trustee shall return deposits to all but the bidder or bidders whose bid or bids result in the highest bid price. The sale shall not be deemed completed until the purchaser pays the price bid in a form satisfactory to the trustee.

(b) The person conducting the sale may, for any cause deemed in the interest of the beneficiary or trustor, or both, postpone or continue the sale from time-to-time, or change the place of the sale to any other location authorized pursuant to this chapter by giving notice of the new date, time and place by public declaration at the time and place last appointed for the sale. Any new sale date shall be a fixed date within 90 calendar days of the date of the declaration. No other notice of the postponed, continued or relocated sale is required, except as provided in subsection (c) of this section.

(c) A sale shall not be complete if the sale as held is contrary to, or in violation of, any federal statute in effect because of an unknown or undisclosed bankruptcy. A sale so held shall be deemed to be continued to a date, time and place announced by the trustee at the sale and shall comply with subsection (b) of this section or, if not announced, shall be continued to the same place and at the same time 30 days later, unless the thirtieth day falls on a Saturday, Sunday or other legal holiday, in which event it shall be continued to the first business day thereafter. In the event a sale is continued because of an unknown or undisclosed bankruptcy, the trustee shall notify, by registered or certified mail with postage prepaid, all bidders who provide their names, addresses

and telephone numbers in writing to the party conducting the sale of the continuation of the sale. (Code 1981, § 17-231; Code 2012, § 17-231; Ord. No. SRO-198-95, § II(K), 5-3-1995; Ord. No. SRO-402-2012, § 17-231, 5-30-2012)

Sec. 17-479. Payment of bid; deliverance of deed.

(a) The purchaser at the sale, other than the beneficiary to the extent of his or her credit bid, shall pay the price bid by no later than 5:00 p.m. of the following day, other than a Saturday or legal holiday. If the purchaser fails to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee, in his or her sole discretion, shall either continue the sale to reopen bidding or immediately offer the trust property to the second highest bidder, who shall purchase the trust property at his or her bid price. The deposit of the purchaser who fails to pay the amount bid by him or her shall be forfeited, and shall be treated as additional sale proceeds to be applied in accordance with subsection 17-480(a). If the second highest bidder does not pay his or her bid price by 5:00 p.m. of the next day, excluding Saturdays, Sundays and other legal holidays, after the property has been offered to him or her by the trustee, the trustee shall either continue the sale to reopen bidding or offer the trust property to each of the prior bidders on successive days, excluding Saturdays, Sundays and other legal holidays, in order of their highest bid, until a bid price is paid, or, if there is no other bidder, the sale shall be deemed to be continued to a time and place designated by the trustee. If the sale is continued, the trustee shall provide notice of the continuation of the sale by registered and certified mail, with postage prepaid, to all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale. In addition to the forfeit of his or her deposit, a purchaser who fails to pay the amount bid by him or her is liable to any person who suffers loss or expenses as a result, including attorney's fees. In any subsequent sale of trust property, the trustee may reject any bid of that person.

(b) The price bid shall be paid at the office of the trustee or his or her agent, or any other reasonable place designated by the trustee. The payment of the bid price may be made at a later time if agreed upon in writing by the trustee. Upon receipt of payment, in a form satisfactory to the trustee, the trustee shall execute and deliver his or her deed to the purchaser. The trustee's deed shall raise the presumption of compliance with the requirements of the deed of trust and this division within this Community Code of Ordinances relating to the exercise of the power of sale and the sale of the trust property, including recording, mailing, publishing and posting of notice of sale and the conduct of the sale. Such deed shall constitute conclusive evidence of the meeting of such requirements in favor of purchasers or encumbrances for value and without actual notice. Knowledge of the trustee shall not be imputed to the beneficiary.

(c) The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and of all persons claiming the trust property sold by or through them, including all interest or claim in the trust property acquired subsequent to the recording of the deed of trust and prior to delivery of the trustee's deed. Such conveyance shall be absolute, without right to redemption and clear of all liens, claims or interests having a priority subordinate to the deed of trust.
(Code 1981, § 17-232; Code 2012, § 17-232; Ord. No. SRO-198-95, § II(L), 5-3-1995; Ord. No. SRO-402-2012, § 17-232, 5-30-2012)

Sec. 17-480. Disposition of proceeds of sale.

(a) The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and reasonable attorney's fees actually incurred.

(2) To the payment of the contract or contracts secured by the trust deed.

(3) To the payment of all other obligations provided in or secured by the trust deed.

(4) To the junior lienholds or encumbrances in order of their priority. After payment in

full to all junior lienholders and encumbrancers, payment shall be made to the trustor.

(b) The trustee may, in his or her discretion, instead of any one or more of the applications specified in subsection (a) of this section, elect to deposit the balance of such proceeds with the clerk of the Community court. Upon deposit of the balance of such monies, the trustee shall be discharged from all responsibility for acts performed in good faith according to the provisions of this article, and the clerk shall deposit the amount with the Community treasurer subject to order of the Community court upon the application, by civil action, of any interested party.
(Code 1981, § 17-233; Code 2012, § 17-233; Ord. No. SRO-198-95, § II(M), 5-3-1995; Ord. No. SRO-402-2012, § 17-233, 5-30-2012)

Sec. 17-481. Default in performance of contract secured; reinstatement; cancellation of recorded notice of sale.

(a) If, prior to the maturity date fixed by the contract or contracts, all or a portion of a principal sum or interest of the contract or contracts secured by a trust deed becomes due or is declared due by reason of a breach or default in the performance of the contract or contracts or of the trust deed, the trustor or his or her successor in interest, any person having a subordinate lien or encumbrance of record thereon, or any beneficiary under a subordinate trust deed may, subject to section 17-475, before 5:00 p.m. on the last day other than a Saturday, Sunday or other legal holiday before the date of sale or the filing of an action to foreclose the trust deed, reinstate by paying to the beneficiary, the trustee or the trustee's agent, in a form acceptable to the beneficiary or the trustee, the entire amount then due under the terms of the contract or contracts or trust deed, other than such portion of the principal as would not then be due had no default occurred, by curing all other defaults and by paying the amounts due under subsection (b) of this section.

(b) The beneficiary shall notify the trustee of the performance and the name of the person who performed such conditions. The proceedings shall be dismissed and the contract or contracts and trust deed shall be deemed reinstated and in force as if no breach or default had occurred upon performance of such of the following which may be applicable:

(1) Payment of the entire amount then due.

(2) Payment of costs and expenses incurred in enforcing the terms of such contract or trust deed.

(3) Payment of reasonable attorney's fees actually incurred, in an amount not to exceed $250.00 or 0.50 percent of the entire unpaid principal sum secured, whichever is greater.

(4) Payment of the recording fee for cancellation of notice of sale.

(5) Payment of the trustee's fees, in an amount not to exceed $250.00 or 0.50 percent of the entire unpaid principal sum secured, whichever is greater.

(c) Fees charged pursuant to subsection (b)(3) of this section shall not duplicate or include fees charged for services rendered under subsection (b)(5) of this section. Upon request, the trustee shall provide to the trustor, or any person entitled to notice pursuant to subsection 17-477(b), at any time that the trust deed is subject to reinstatement, a good faith estimate of the sums which appear necessary to reinstate the trust deed, separately specifying costs, fees, accrued interest, unpaid principal balance and any other amounts which are required to be paid as a condition to reinstatement of the trust deed.

(d) If the trust deed is reinstated as provided in subsection (b) of this section, the trustee shall have a cancellation of the notice of sale recorded in the Maricopa County recorder's office and in the real estate services land title and trust section. A trustee who, for 30 days after reinstatement, fails to have proper notice of the cancellation of the notice of sale recorded is liable, to the person who performed the conditions resulting in reinstatement, for all actual damages resulting from such failure.

(e) An acknowledged recorded cancellation of a recorded notice of sale under a trust deed shall be sufficient if it is in substantially the following form:

Cancellation of Notice of Sale

The undersigned hereby cancels the notice of sale recorded _____, 20____, on trust property legally described as:

(Legal description of trust property)

which notice of sale refers to a trust deed executed by _____ as trustor, in which _____ is named a beneficiary and _____ as trustee, and recorded in the Records of the Real Estate and Land Services Section.

Dated this _____ day of _____, 20____.

/s/ _____
Signature

(Acknowledgement)

(Code 1981, § 17-234; Code 2012, § 17-234; Ord. No. SRO-198-95, § II(N), 5-3-1995; Ord. No. SRO-402-2012, § 17-234, 5-30-2012)

Sec. 17-482. Action to recover balance after sale or foreclosure on property under deed.

(a) Except as provided in subsections (f) and (g) of this section, within 90 days after the date of sale of trust property under a trust deed pursuant to section 17-474, an action may be maintained to recover a deficiency judgment against any person directly, indirectly or contingently liable on the contract for which the trust deed was given as security, including any guarantor of or surety for the contract and any partner of a trustor or other obligor which is a partnership. In any such action against such a person, the deficiency judgment shall be for an amount equal to the sum of the total amount owed the beneficiary as of the date of the sale, as determined by the court, less the fair market value of the trust property on the date of the sale, as determined by the court, or the sale price at the trustee's sale, whichever is higher. A written application for determination of the fair market value of the real property may be filed by a judgment debtor with the court in the action for a deficiency judgment or in any other action on the contract which has been maintained. Notice of the filing of an application and the hearing shall be given to all parties to the action. The fair market value shall be determined by the court at a priority hearing upon such evidence as the court may allow. The court shall issue an order crediting the amount due on the judgment with the greater of the sales price or the fair market value of the real property. The term "fair market value" means the most probable price, as of the date of the execution sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under

duress. Any deficiency judgment recovered shall include interest on the amount of the deficiency from the date of the sale at the rate provided in the deed of trust or in any of the contracts evidencing the debt, together with any costs and disbursements of the action.

(b) If a trustee's sale is a sale of less than all of the trust property or is a sale pursuant to one of two or more trust deeds securing the same obligation, the 90-day time limitations of subsection (a) of this section shall begin on either the date of the trustee's sale of the last of the trust property or be sold or the date of sale under the last trust deed securing the obligation, whichever occurs last.

(c) The obligation of a person who is not a trustor to pay, satisfy or purchase all or a part of the balance due on a contract secured by a trust deed may be enforced, if the person has so agreed, in an action regardless of whether a trustee's sale is held. If, however, a trustee's sale is held, the liability of a person who is not a trustor for the deficiency is determined pursuant to subsection (a) of this section and any judgment for the deficiency against the person shall be reduced in accordance with subsection (a) of this section. If any such action is commenced after a trustee's sale has been held, it is subject, in addition, to the 90-day time limitations of subsections (a) and (b) of this section.

(d) If no action is maintained for a deficiency judgment within the time period prescribed in subsections (a) and (b) of this section, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the obligation and no right to recover a deficiency in any action shall exist.

(e) Except as provided in subsection (f) of this section, the provisions of this division within this Community Code of Ordinances do not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage. In an action for the foreclosure of a deed of trust as a real property mortgage, the provisions of division 2 of this article are applicable.

(f) A deed of trust may, by express language, validly prohibit the recovery of any balance due after trust property is sold pursuant to the trustee's power of sale, or the trust deed is foreclosing in the manner provided by law for the foreclosure of mortgages on real property.

(g) If trust property of 2½ acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses.

(Code 1981, § 17-235; Code 2012, § 17-235; Ord. No. SRO-198-95, § II(O), 5-3-1995; Ord. No. SRO-402-2012, § 17-235, 5-30-2012)

Sec. 17-483. Recordkeeping.

The real estate and land services section shall keep all of the records required to be filed or filed with such section pursuant to this division within this Community Code of Ordinances in a uniform system of recording and shall maintain an index of such documents by the name of the parties listed on such documents, and legal description.

(Code 1981, § 17-236; Code 2012, § 17-236; Ord. No. SRO-198-95, § II(P), 5-3-1995; Ord. No. SRO-402-2012, § 17-236, 5-30-2012)

Sec. 17-484. Limitation on action or sale of trust property.

The trustee's sale of trust property under a trust deed shall be made, or any action to foreclose a trust deed as provided by law for the foreclosure of mortgages on real property shall be commenced, within the period prescribed by the law of the Community for the commencement of an action on the contract secured by the trust deed.

(Code 1981, § 17-237; Code 2012, § 17-237; Ord. No. SRO-198-95, § II(Q), 5-3-1995; Ord. No. SRO-402-2012, § 17-237, 5-30-2012)

Sec. 17-485. Transfer of secured contract.

The transfer of any contract or contracts secured by a trust deed shall operate as a transfer of the security for such contract or contracts.
(Code 1981, § 17-238; Code 2012, § 17-238; Ord. No. SRO-198-95, § II(R), 5-3-1995; Ord. No. SRO-402-2012, § 17-238, 5-30-2012)

Sec. 17-486. Notice from instruments recorded; assignment of a beneficial interest.

Except as otherwise provided in this section, a trust deed, substitution of trustee, notice of resignation of trustee, assignment of a beneficial interest under a trust deed, notice of sale, cancellation of notice of sale, trustee's deed, deed of release, and any instrument by which a trust deed is subordinate or waived as to priority, if acknowledged as provided by law, shall, from the time of being recorded, impart notice of the content to all persons, including subsequent purchasers and encumbrancers, for value. The recording of an assignment of the beneficial interest in a trust deed shall not be deemed notice of such assignment to the trustor, his or her heirs or personal representatives, so as to invalidate any payment made by them, or any of them, to the person previously holding the note, bond, or other instrument evidencing the contract or contracts secured by the trust deed.
(Code 1981, § 17-239; Code 2012, § 17-239; Ord. No. SRO-198-95, § II(S), 5-3-1995; Ord. No. SRO-402-2012, § 17-239, 5-30-2012)

Sec. 17-487. Rights of trustee and attorney.

(a) In carrying out his or her duties under the provisions of this division within this Community Code of Ordinances or any deed of trust, a trustee, shall, when acting in good faith, have the absolute right to rely upon any written direction or information furnished to him or her by the beneficiary.

(b) An attorney for the beneficiary shall also be qualified to act as attorney for the trustee or to be the trustee.
(Code 1981, § 17-240; Code 2012, § 17-240; Ord. No. SRO-198-95, § II(T), 5-3-1995; Ord. No. SRO-402-2012, § 17-240, 5-30-2012)

Secs. 17-488—17-512. Reserved.

ARTICLE XII. DEVELOPMENT FEES*

Sec. 17-513. Policy and purpose.

(a) *Policy.* It is the policy of the Community that new development pay its fair share of public facility costs through development fees, which will be used to finance, defray, or reimburse all or a portion of the costs incurred by the Community for public improvements necessitated by and provided to serve such development.

(b) *Purpose.* The purpose of this article is to provide for the assessment and payment of development fees by applicants for new development such that the fair share of new development's impacts on public facilities are mitigated and adequate public facilities may be provided in a timely manner to new development.
(Code 1981, § 17-251; Code 2012, § 17-251; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-251, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-514. Findings.

The Community Council recognizes that growth and development in the Community will require that the capacity of the Community's public facilities be expanded in order to maintain adequate levels of service, and that without a funded program for public facility improvements, new growth and development will have to be limited to ensure that the health, safety and welfare of the members of the Community are not compromised.

(1) The Community Council has completed a study, including periodic updates thereto, establishing the type, amount, and cost of projected public facility improvements needed to serve new development.

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*__Editor's note—__Ord. No. SRO-512-2019, repealed the former Art. XII, §§ 17-513—17-533, and enacted a new Art. XII as set out herein in §§ 17-513—17-533. The former art. XII pertained to similar subject matter; prior legislative history has been retained as applicable in the history notes following sections.

(2) The regulatory framework set forth in this article, which requires new development to pay reasonable development fees, requires new development to pay only its fair share of the costs of capital capacity of new public facilities created by new growth and development.

(3) The technical data, findings, and conclusions herein are based on the Community general plan, as amended, the "Technical Report," and other relevant studies and reports providing detailed background for the establishment of appropriate development fees.

(Code 1981, § 17-252; Code 2012, § 17-252; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-252, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-515. Adoption of technical report as basis of development fees.

The Community hereby adopts and incorporates by reference the report entitled "Land Use Assumptions, Infrastructure Improvements Plan, and Development Fee Report" dated October 1, 2019 prepared by TischlerBise for the Salt River Pima-Maricopa Indian Community, which supports the amounts and reasonableness of the development fees implemented by this article.

(Code 1981, § 17-253; Code 2012, § 17-253; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-253, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-516. Interpretations of article.

Interpretation of the provisions of this article shall be made by the director based on, among other things, the policies, purposes, and findings set forth [in] sections 17-513 and 17-514, the technical report upon which development fees implemented herein are based, the Community's Constitution, and other applicable laws governing development fees.

(Code 1981, § 17-254; Code 2012, § 17-254; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-254, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-517. Effect on other regulations and requirements.

(a) This article may not be construed to alter, amend, or modify any provision of this Community Code of Ordinances. Other provisions of this Community Code of Ordinances shall be operative and remain in full force and effect notwithstanding any contrary provisions, definitions, or intentions that are or may be expressed or implied in this article.

(b) The payment of development fees shall not entitle the applicant to a building or construction permit, tenant improvement permit, certificate of occupancy, or other final Community approval unless all land use, zoning, planning, building code, fire code and other applicable requirements, standards, and conditions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of development fees required by this article.

(c) This article shall not affect, in any manner, the permissible use of property, density, or intensity of development, design and improvement standards, or other applicable standards or requirements of the Community's zoning ordinance, design review requirements and this Community Code of Ordinances.

(Code 1981, § 17-255; Code 2012, § 17-255; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-255, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-518. 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:

Accessory use means a land use incidental to or subordinate to, but on the same lot or parcel as a principal land use and necessary to the convenience of those engaged in the principal use, which use may be conducted in an accessory building or structure.

Capital improvements.

(1) The term "capital improvements" includes, but is not limited to, costs associated

with the planning, design, and construction of new or expanded public facilities, which have a life expectancy of three or more years, and the land acquisition, easements, land improvement, design, and engineering related thereto. The term "capital improvements" also include, but is not limited to, the following costs as they relate to the provision of public facilities:

a. The cost of all labor and materials;

b. The cost of all lands, right-of-way, property, rights, easements and franchises acquired, including costs of acquisition or condemnation;

c. The cost of all plans and specifications;

d. The cost of new equipment;

e. The cost of all construction, new drainage facilities in conjunction with new buildings and structures, and public facility site improvements;

f. The cost of relocating utilities to accommodate new construction;

g. The cost of engineering and master plans;

h. The cost of all land surveying and soils and materials testing; and

i. The cost of mitigating negative impacts of construction including natural resource impacts, environmental impacts, noise impacts, air quality impacts, cultural resources impacts and Community impacts.

(2) The term "capital improvements" does not include site-related capital improvements, routine and periodic maintenance expenditures, personnel, training or other operating costs.

Capital improvements program (CIP) means a schedule of planned public facility capital improvements, which indicates the estimated costs and timing for planned capital improvements, including Community master plans, infrastructure improvements plans, and other capital planning schedules and budgetary documents.

Capital improvements program advisory committee (CIPAC) means a multidisciplinary staff team of the SRPMIC, designated by the Community manager, responsible for compiling project needs, reviewing cost estimates, preparing budget requests and planning a program schedule.

Community means the Salt River Pima-Maricopa Indian Community.

Community manager means the Community manager or the Community manager's designee.

Developer means a person, corporation, organization, or other legal entity undertaking development, or the developer's authorized agent.

Development means any construction or expansion of a building or structure, or any changes in the use of any building or structure or land use that will generate additional impacts on the Community's public facilities.

Development fee means a fee imposed pursuant to this article.

Development fee service area means a geographic area, including all or a designated portion of the Community, from which development fees are collected and for the benefit of which development fees are spent, pursuant to the specific provisions of this article.

Director means the director of the Community development department or the director's designee.

Encumber means to legally obligate or otherwise commit to use by vendor contract or purchase order. Encumber includes obligations and commitments of funds deposited in development fee accounts, as well as obligations and commitments of capital improvement account funds, earmarked for reimbursement from development fee accounts, by public facility.

Essential public services means services or buildings owned, managed, or operated by or in the interest of a governmental entity, which provides a function critical to the health, safety, and welfare of the public, but which is not

proprietary in nature. The term "essential public services" may specifically include, but not be limited to, schools, water and sewer services, emergency services, publicly owned housing, and public safety facilities and services.

Fee payer means a person undertaking development who pays a development fee in accordance with the terms of this article.

New development means development for which a building permit, construction permit, tenant improvement permit, certificate of occupancy, or other Community approval is issued after the effective date of this article. The term "new development" includes intensifications of existing land uses.

Noncommencement means the cancellation of construction activity making a material change in a structure, or the cancellation of any other development activity making a material change in the use or appearance of land.

Nonresidential development means those land uses that are not for residential purposes.

Offset means a credit, payment, reimbursement, or waiver of development fees due, given pursuant to the terms of this article as a result of the dedication, construction or funding of an offset-eligible improvement.

Offset agreement means an executed, binding agreement between an applicant and the Community and other necessary parties, which provides for offsets against development fees in exchange for offset-eligible improvements provided by the applicant or the applicant's agent.

Offset-eligible improvement means a capital improvement constructed, dedicated, or funded by a party other than the Community, pursuant to the requirements of this article, and which is not a site-related capital improvement.

Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having joint or common interest, or any other legal entity.

Public facilities means storm drainage, street, water, wastewater, and public safety facilities for which development fees are collected pursuant to this article, which are not site-related capital improvements.

Public facilities capital costs means the costs of providing capital improvements for public facilities.

Public safety development fee means the development fee imposed upon new development by this Article in order to offset new development's fair share impact on public safety facilities.

Public safety facilities means capital improvements necessary to provide Community law enforcement and fire protection service capacity to new development, consistent with the technical report.

Residential development means development intended for permanent housing.

Site-related capital improvements means a capital improvement, whether on or off site, necessary to provide direct access to a particular proposed development or to address impacts attributable solely to a proposed development; including, but not limited to, direct access improvements, driveways, turn lanes, acceleration or deceleration lanes, medians and median openings, curb cuts, sidewalks, signalization primarily serving a particular development, signage, frontage roads, and on-site water, wastewater and storm drainage improvements, which are not on the CIP. The term "site-related capital improvements" includes any relocation of utilities that are required to accommodate the proposed development.

Storm drainage development fee means the development fee imposed upon new nonresidential development by this article in order to offset nonresidential development's fair share impact on storm drainage facilities.

Storm drainage facilities means capital improvements necessary to provide storm drainage service capacity to new development, consistent with the technical report, which estimates the demand for storm drainage facilities created by nonresidential land uses only.

Street facilities development fee means the development fee imposed upon new nonresidential

development by this Article in order to offset nonresidential development's fair share impact on street facilities.

Street facilities means capital improvements necessary to provide roadway capacity to new nonresidential development, consistent with the technical report, which estimates the demand for street facilities created by nonresidential land uses only.

Technical report means the report entitled "Land Use Assumptions, Infrastructure Improvements Plan, and Development Fee Report," prepared by TischlerBise, which report supports the amounts and reasonableness of the development fees imposed by this article.

Temporary uses means uses that are required in the construction phase of development or are uniquely short-term or seasonal in nature, including, but not limited to: contractor's project offices, project sales offices, seasonal sales of trees or farm produce, carnivals, and tent meetings.

Wastewater development fee means the development fee imposed upon new development by this article in order to offset new development's fair share impact on wastewater facilities.

Wastewater facilities means capital improvements necessary to provide wastewater capacity to new development, consistent with the technical report.

Water development fee means the development fee imposed upon new development by this article in order to offset new development's fair share impact on water facilities.

Water facilities means capital improvements necessary to provide potable water capacity to new development, consistent with the technical report.

(Code 1981, § 17-256; Code 2012, § 17-256; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-256, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-519. Applicability of this article; exemptions.

(a) *Affected area.* Except as expressly provided in this section, this article shall apply to all new development within the Community, based on the development fee service areas described in Sections 17-527 through 17-531.

(b) *Type of development affected.* Development fees shall be paid by new development, unless the proposed development specifically is not subject to or is exempt from the terms of this article, or has received an offset pursuant to Section 17-522.

(c) *Type of development not affected.* The following types of development shall not be required to pay development fees for a particular public facility type, pursuant to this article:

(1) The replacement of a destroyed or partially destroyed building or structure, with a new building or structure of the same size and use;

(2) Developments or redevelopments that do not increase the demand for a particular public facility, based on the demand factors and methodology used in the technical report;

(3) Developments that are the subject of a development agreement or other binding agreement with the Community, or a condition of development approval, which agreement or condition would result in a contribution or payment by an applicant in excess of the applicant's proportionate share or which is in direct conflict with this article, but only to the extent of such excessive contribution or payment, or conflict; or

(4) Temporary uses.

(d) *Exemptions.*

(1) No development fees shall be required for the following land uses:

a. Agriculture;

b. Essential public services;

c. Residential development;

d. For up to 1,000 square feet of outdoor dining; or

e. Tribal government.

(2) For uses exempt by this subsection (d) only, funding sources other than development fee revenues will be used, as necessary and appropriate, to fund improvements to public facilities such

that the level of service standards in the technical report are maintained. No development fee shall exceed new development's proportionate share capital capacity costs as a result of these exemptions. On an annual basis, the Community will assess the need for these payments during the annual review of the development fee program and applicable CIPs, pursuant to Section 17-526.

(e) *Appeals.* Pursuant to Section 17-533, if an applicant has filed an appeal and bond or other surety, no development fee shall be required prior to resolution of the appeal, in accordance with the final written determination by the Community manager or hearing officer.

(Code 1981, § 17-257; Code 2012, § 17-257; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-257, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-520. Application; calculation, collection of development fees; administrative fees.

(a) *Calculation.*

(1) The amount of development fees owed for each type of development project shall be in accordance with Sections 17-527 through 17-531.

(2) A development fee shall be assessed for each use within the proposed development, except that accessory uses shall be assessed at the same rate as the principal land use.

(3) Where the specific use for a new development is not known at the time of building or construction permit issuance, the development fee required for the most intense use allowed within the relevant zoning district shall be paid upon the issuance of the building or construction permit. Upon the issuance of a tenant improvement permit or certificate of occupancy, whichever is first required to establish the actual use, the development fee shall be adjusted by a partial reimbursement by the Community, if applicable, based on the actual land use and the fee schedules set forth in Sections 17-527 through 17-531.

(4) If the proposed land use is not listed in the fee schedules set forth in Sections 17-527 through 17-531, the director shall determine whether the proposed use is similar in demand to a listed use, based on the factors, assumptions, and methodologies set forth in the technical report, the North American Industry Classification System, the ITE Trip Generation Manual, the Land-Based Classification Standards (APA), and other relevant and generally-accepted indicators of land use intensity. The director also may consult with other department heads or outside professionals in making this determination, based on the factors, assumptions, and methodology set forth in the technical report and other relevant documentation.

(5) If the proposed land use represents an expansion or intensification of an existing land use, the development fee shall be equal to the difference between the existing land use and the proposed land use. However, no refund of development fees will be made for the conversion of an existing land use to a less intense proposed use.

(6) Transition provision. If a new development received final approval of a design review application or submitted a complete design review application prior to the effective date of the fees set forth in Sections 17-527 through 17-531 of this article and the building permit for vertical building construction is issued within 16 months of to the effective date of the fees, which building permit neither lapses nor is renewed beyond the initial six-month period, development fees shall be calculated based upon the fee amounts in effect immediately prior to the effective date. Development fees calculated based upon the previously effective fee schedule will be calculated for all categories of development fees. A development for

which the building permit lapsed or is renewed beyond the initial six-month period shall pay the full fees set forth in Section 17-527 through 17-531 of this article; the transition provision shall not apply.

(b) *Collection.*

(1) Development fees shall be paid, in the amounts set forth in Sections 17-527 through 17-531 or as determined by the Director pursuant to Section 17-520(a) of this article, at the time of issuance of a building permit, construction permit, tenant improvement permit, certificate of occupancy, or other Community approval of new development.

(2) Development fees will not be received by the Community prior to the time of issuance of a building permit, construction permit, tenant improvement permit, certificate of occupancy, or other Community approval of new development, which is necessary for the developer to establish an actual land use on a property.

(c) *Administrative fees.* In order to offset the Community's costs to administer development fees, an administrative fee equal to two percent of the total development fees due shall be paid at the time development fees are paid.
(Code 1981, § 17-258; Code 2012, § 17-258; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-258, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-521. Individual assessment of development fee.

(a) At the request of applicant, an individual assessment may be used to determine whether a fair share of the public facilities costs necessitated by the proposed development will be less than the fees in the fee schedules set forth in Sections 17-527 through 17-532 or as determined by the director pursuant to Section 17-520(a). The individual assessment shall be calculated according to the methodology used for the particular public facility in the technical report and the costs of the individual assessment shall be borne by the applicant.

(b) The individual assessment analysis shall be funded by the applicant and prepared by qualified professionals in the fields of planning and engineering, impact analysis, and economics, as deemed appropriate to the circumstances of the assessment selected by applicant and reasonably approved by the director.

(c) With the individualized assessment, the applicant shall submit an administrative fee of $1,000.00 for costs incurred by the Community to have the study evaluated. If the costs to the Community exceed $1,000.00, the director will assess the additional costs to the applicant, along with documentation verifying the costs incurred. The director will not issue a final decision until all documented costs have been paid by the applicant. If the costs to the Community to have the assessment evaluated are less than $1,000.00, the Community will refund any balance to the applicant at the time of the director's final determination.

(d) Within 30 working days of receipt of an individual assessment analysis, the director shall determine if the individual assessment analysis is complete and that the required $1,000.00 administrative fee has been paid. If the director determines the application is not complete or the administrative fee has not been paid, the director shall send a written statement specifying the deficiencies to the person submitting the application. Until the deficiencies are corrected and all fees paid, the director shall take no further action on the application.

(e) When the director determines the individual assessment analysis is complete and the fees paid, the director shall review it within 45 working days. The director shall approve the proposed fee if he or she determines that the data, factors, and methodology used to determine the proposed development fee are professionally acceptable and fairly assess the costs for capital improvements to the Community's public facilities systems that are necessitated by the proposed development if the facilities are to be maintained at levels of service in the technical report. If the director determines that the data, factors, or methodology are unreasonable, the proposed fee shall be denied, the director shall provide a

summary of the reasons for its determination, and the developer shall pay the development fees according to section 17-520.
(Code 1981, § 17-259; Code 2012, § 17-259; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-259, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-522. Offsets against development fees due.

(a) *Applicability; eligibility.*

(1) *Applicability.* This section shall apply to any request for an offset submitted on or after the effective date of this article.

(2) *Eligibility.*

a. Offsets may be provided pursuant to either an offset agreement with the Community Council, as provided herein, or by the director pursuant to a documented condition of development approval.

b. Offsets may be granted only for offset-eligible improvements scheduled by the Community to commence construction within five years of the approval of an offset agreement or the condition of approval, which offset-eligible improvement is included on a CIP or for which the Community Council agrees by resolution to add to a CIP during its immediately subsequent annual CIP review.

c. Offsets shall be given only for the same category of public facility as the offset-eligible improvement.

d. Nothing in this subsection precludes the Community from entering into an agreement with an applicant in order to clarify the timing and manner of providing offset-eligible improvements pursuant to a documented condition of development approval.

(b) *Requirements and procedures for development fee offsets.* Applications for offsets must be made on a form provided by the CIPAC for such purposes. Unless the offset is sought pursuant to a documented condition of development, the offset application must be accompanied by a proposed offset agreement as provided herein.

(1) *Procedure.*

a. Upon receipt of a complete application, the CIPAC, Community general counsel, and other appropriate staff must review the application, as well as such other information and evidence as may be deemed relevant.

b. Within 60 calendar days of the receipt of a complete application, the director must either:

1. Forward a report to the Community Council as to whether an offset is proper based on the provisions of this article; or

2. Provide written comments or objections to the applicant with respect to the application for an offset or the offset agreement.

c. Within 60 calendar days of the receipt from the director's report, and based on the terms of the proposed offset agreement, the provisions of this article, the CIP, the general plan, adopted Community budget, and the technical report, the Community Council must make a final decision to accept, reject or accept with conditions the proposed offset application regarding the dedication, construction or funding of an offset-eligible capital improvement in exchange for an offset against development fees owed.

(2) *Calculation of the value of offset.*

a. The value of any offset shall be calculated as the lower of the following:

1. The amount of the development fees due; or

2. The actual verified costs of dedication or construction.

b. This section does not apply to any reimbursements, credits, or refunds for capital improvements provided by an applicant, which exceed the value of the offset pursuant to subsection (b)(2)a of this section. However, this section does not prohibit the Community from agreeing to such excess reimbursements, credits, or refunds, at its sole discretion, by separate agreement.

c. Actual verified costs shall be calculated as follows:

1. *Facilities and equipment associated with the offset-eligible improvement.* Actual cost of construction or equipment, as evidenced by receipts or other sufficient documentation provided by the developer of the offset-eligible improvement and verified by the CIPAC. For projects yet to be built, sufficient documentation may include three bids prepared for and submitted by the applicant or an outside cost estimate commissioned by the Community.

2. *Dedication of land associated with the offset-eligible improvement.* The fair market value of the land as determined by a certified property appraiser hired and paid for by the developer. If the CIPAC rejects the developer's appraisal, the Community may hire and pay for a second appraiser to appraise the property. If either party rejects the second appraisal, a third appraisal may be performed by an appraisal, a third appraisal may be performed by an appraiser chosen by the first and second appraisers, the costs of which are to be shared equally by the Community and the developer. The third appraisal is binding on both parties. All appraisals must be consistent with generally-accepted appraisal techniques.

(3) *Offset agreement requirements.* No capital improvement may be accepted in exchange for an offset except pursuant to a documented condition of development approval or an executed offset agreement between the Community and the provider of the offset-eligible improvement, which agreement shall include the following:

a. A schedule for the initiation, completion, and dedication, as applicable, of proposed offset-eligible improvements;

b. The agreed to offset mechanism including, but not limited to, credits, waivers, payments and reimbursements;

c. The amount of the development fees, by type, proposed to be offset by the Community;

d. The timing of any offset that will be issued by the Community, with any necessary conditions or limitations;

e. The method of accounting for offsets;

f. Terms related to the assignment or transfer of the burdens and benefits conferred under the agreement;

g. A provision that all construction will be in accordance with Community specifications and all regulations set forth in this Community Code of Ordinances; and

h. Such other terms and conditions as deemed necessary by the Community to effectuate the provisions of this article.

(c) *Recordation; assignability.* Not later than ten working days after the execution of the offset agreement, the Community shall record a copy of the agreement with the secretary of the Community Council. Recordation constitutes notice of the offset agreement to all persons. The burdens and benefits conferred under the offset

agreement shall be assigned or transferred to other parties only as provided in the offset agreement.

(d) *Transferability.* Offsets granted pursuant to this section, including credits against future development fee payments, may be transferred from the applicant to property owners within the original development without further approval by the Community. No other transfer of offsets shall be allowed except as expressly provided in an offset agreement.

(Code 1981, § 17-260; Code 2012, § 17-260; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-260, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-523. Use of funds collected; development fee accounting.

(a) Development fees collected pursuant to this article shall be used solely for the purpose of acquisition, expansion, and development of capital improvements included in the CIP applicable to each public facility, or for which the council agrees by resolution to include within the CIP. Development fees may not be used for site-related capital improvements. Allowable expenditures include, but are not limited to:

(1) Public facilities and public facilities capital costs;

(2) Repayment of monies transferred or borrowed from any budgetary fund of the Community which were used to fund the acquisition, expense, and development of public facilities for new development;

(3) Payment of principal and interest and costs of issuance under any bonds or other indebtedness issued by the Community to provide funds for acquisition, expansion, and development of public facilities;

(4) Refunds granted pursuant to Section 17-524;

(5) Updates to the technical report as required by this article; and

(6) Offset-eligible improvements, pursuant to Section 17-522.

(b) Development fees collected for each public facility category must be spent for the benefit of new development within the development fee service areas described in Sections 17-527 through 17-532. Incidental benefits accruing to nonfee payers as a secondary result or minor consequence of the provision of facilities to those paying development fees or to existing development do not invalidate the use of development fee revenues pursuant to this article.

(c) Development fees collected shall be spent or encumbered for the construction of public facilities within ten years of the date of collection. Development fees shall be considered spent or encumbered in the order received by the Community on a first-in, first-out basis.

(d) In order to ensure that development fee revenues are earmarked and spent solely for the expansion of public facilities necessary to offset the impacts of new development, the following provisions apply:

(1) The Community shall establish an external bank account into which all collected development fees will be deposited, separate from the general fund and all other Community funds. Administrative fees shall not be deposited into this account.

(2) In order to track the collection and expenditures of development fees, the Community also shall establish an internal revenue fund for development fees, with an internal accounting methodology such that the Community may at all times identify the amount of development fees previously spent and remaining, by public facility type and service area.

(3) Amounts withdrawn from a development fee account must be used solely in accordance with the provisions of this article. Amounts retained in a development fee account shall not be used for any expenditure that would be classified as a maintenance, operations, or repair expense, or to address existing deficiencies in public facilities.

(Code 1981, § 17-261; Code 2012, § 17-261; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-261, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-524. Refunds.

(a) Upon application, development fees shall be returned to the fee payer if the approved development is canceled due to non-commencement of construction or the Community approval expires or is revoked before the funds have been spent or encumbered. Refunds may be made in accordance with this section provided the fee payer, or the fee payer's authorized agent, files a petition for a refund within one year from the date of non-commencement, expiration, or revocation. Applicable administrative fees already collected will be retained by the Community.

(b) Upon application, in the event development fees are not spent or encumbered by the Community within ten years from the date of collection, the Community shall refund the amount of the fee to the fee payer, or the fee payer's authorized agent, provided a petition for a refund is filed within one year from the expiration of the ten-year timeframe.

(c) A refund application shall include the following information:

(1) Evidence that the development fee was paid for the property, the date of payment, and the amount paid; and

(2) Other information deemed by the director to be reasonably necessary in order to determine compliance with the provisions of this section, based on the circumstances of the refund request.

(d) Within 30 working days of receipt of a refund application, the director shall determine if it is complete. If the director determines the refund application is not complete, the director shall send a written statement specifying the deficiencies by mail to the person submitting the refund application. Unless the deficiencies are corrected, the director shall take no further action on the refund application.

(e) When the director determines the refund application is complete, the director shall review it within 30 working days, and shall approve the proposed refund if he or she determines that a refund is appropriate based on the criteria of this section.

(f) Except for refunds granted pursuant to subsection (b) of this section, an administrative fee equal to $500.00 shall be paid at the time the refund application is submitted in order to offset the Community's costs to process the refund application.

(Code 1981, § 17-262; Code 2012, § 17-262; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-262, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-525. Updating; annual adjustments.

(a) *Updates.*

(1) At least once every five years, the Community shall update the technical report that provides the basis for the development fees imposed under this article.

(2) Prior to adopting development fees pursuant to a technical report update, the Community Council will hold a public hearing and will give published notice in the Community newspaper at least 30 calendar days prior to the public hearing.

(b) *Automatic Indexing of Impact Fee Schedules.*

(1) Unless the Community Council directs that one, several or all impact fee schedules not be increased, the impact fee schedules shown in Sections 17-527 through 17-531 shall be adjusted by the Community Development Director in August each calendar year based on the methodology described below. Any adjustments to the impact fee schedules made pursuant to this section shall be effective the first day of October. The Community Development Director shall post notice of a change to impact fee schedules on or before the first business day of September.

(2) The base for computing any adjustment to an impact fee schedule is the May index for the prior calendar year and the May index for the current calendar year. The percentage change in the impact fee shall be equal to the percentage change

in the appropriate index from the prior year to the current year. The formula is:

ADJUSTED IMPACT FEES = EXISTING IMPACT FEE X (MAY INDEX CURRENT YEAR / MAY INDEX PRIOR YEAR)

(3) The automatic indexing of the Street, Public Safety, Storm Drainage, Water and Wastewater Fee Schedules shall employ the Construction Cost Index published by McGraw-Hill's Engineering News-Record (ENR) magazine or other index or computation with which it is replaced in order to obtain substantially the same result as would be obtained using the Construction Cost Index.

(Code 1981, § 17-263; Code 2012, § 17-263; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-263, 5-30-2012; Ord. No. SRO-407-2013, 10-17-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-526. Annual statement; capital improvements program.

(a) *Annual statement.* The director will prepare a statement that shall address, among other things, the following:

(1) The amount assessed by the Community for each category of development fee.

(2) The balance of each development fee account maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

(3) The amount of development fee monies spent on and/or planned for public facility capital improvement projects and the location of each project.

(b) *Capital improvements program.* At least annually, the CIPAC will review current CIPs for each public facility for which development fees are collected, and shall address, among other things, the following:

(1) Reviewing planned capital improvements to ensure level of service (LOS) standards are maintained, based on the technical report and any exemptions made pursuant to Section 17-519(d);

(2) Ensuring that planned capital improvements, to be funded with the development fees revenues, reflect the proportionate impact of new development;

(3) Ensuring that development fee revenues are spent on capital improvements that benefit new development, as provided for in this article;

(4) Proposing amendments to the CIPs related to offsets granted or to be granted pursuant to this article;

(5) Confirming that development fee revenues are scheduled for expenditure or encumbrance as provided in [sections] 17-523 and 17-524; and

(6) Other matters related to the efficient implementation of this article and its ongoing lawful application to new development.

(Code 1981, § 17-264; Code 2012, § 17-264; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-264, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-527. Storm drainage development fee.

(a) *Storm drainage development fee service area.* The development fee services areas for storm drainage development fees shall be the following geographic areas:

(1) *North of Arizona Canal service area.* The areas indicated as north of the Arizona Canal, in Figure 1 set forth in this subsection.

(2) *South of Arizona Canal service area.* The areas indicated as south of the Arizona Canal, in Figure 2 set forth in this subsection.

Figure 1

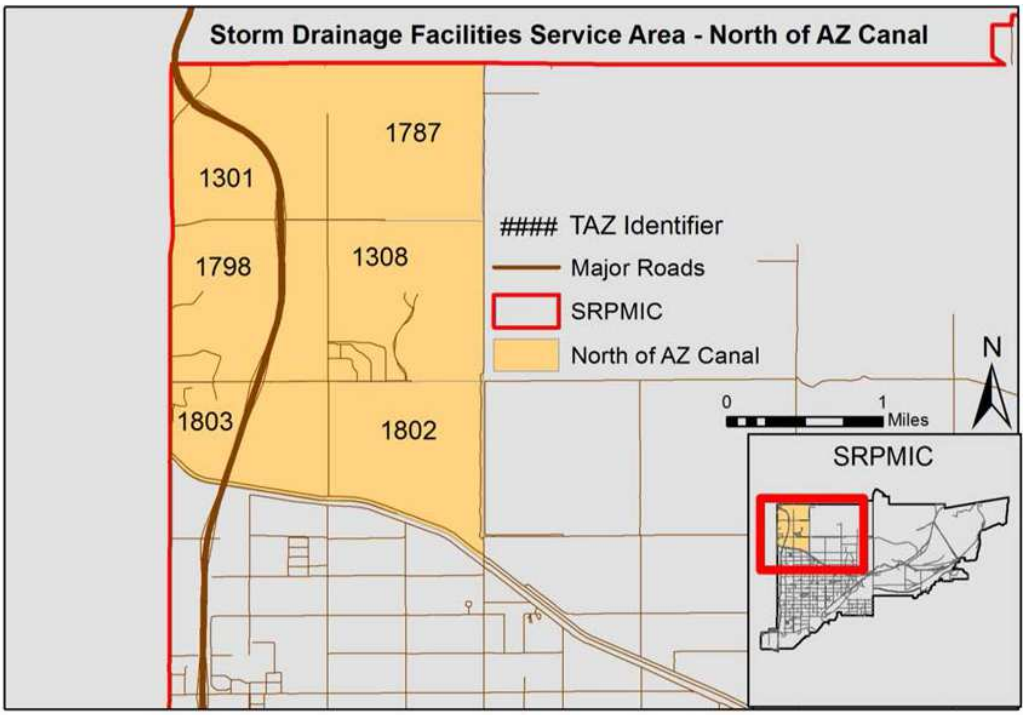
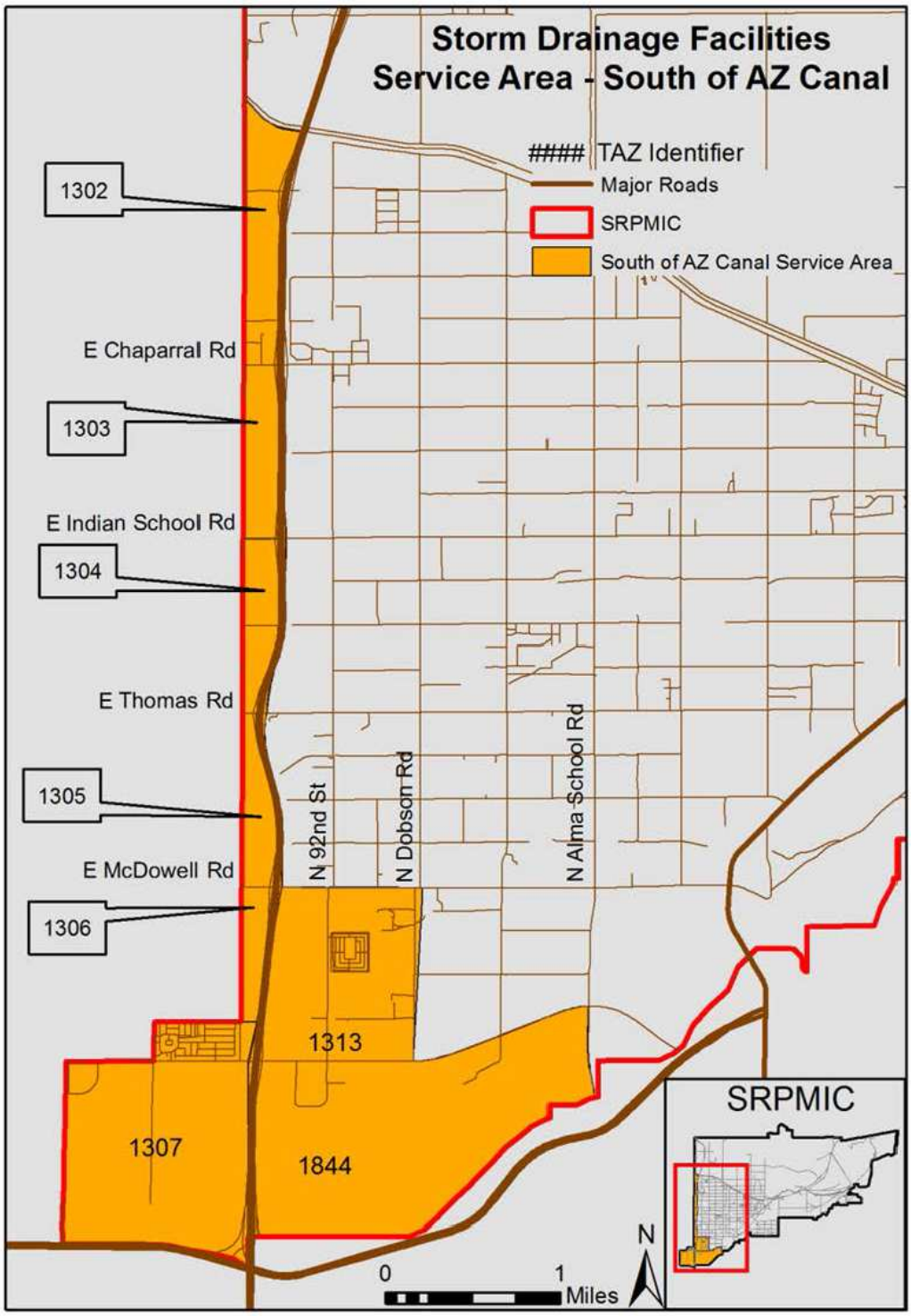

Storm Drainage Facilities Service Area - North of AZ Canal
1787
1301
1798
1308
1803
1802
TAZ Identifier
Major Roads
SRPMIC
North of AZ Canal
N
0
1
Miles
SRPMIC

Figure 2


Storm Drainage Facilities
Service Area - South of AZ Canal
TAZ Identifier
Major Roads
SRPMIC
South of AZ Canal Service Area
1302
E Chaparral Rd
1303
E Indian School Rd
1304
E Thomas Rd
1305
E McDowell Rd
1306
N 92nd St
N Dobson Rd
N Alma School Rd
1313
1307
1844
SRPMIC
N
0
1
Miles

(3) Development fees for storm drainage facilities shall be collected only within these service areas and said fee revenues shall be spent only to the benefit of new development within the service area from which fees are collected.

(b) *Storm drainage development fee schedule.* Storm drainage development fees shall be assessed and collected from new nonresidential development only, pursuant to all applicable provisions of this article, in accordance with the development fee service areas described in subsection (a) of this section and the following fee schedule:

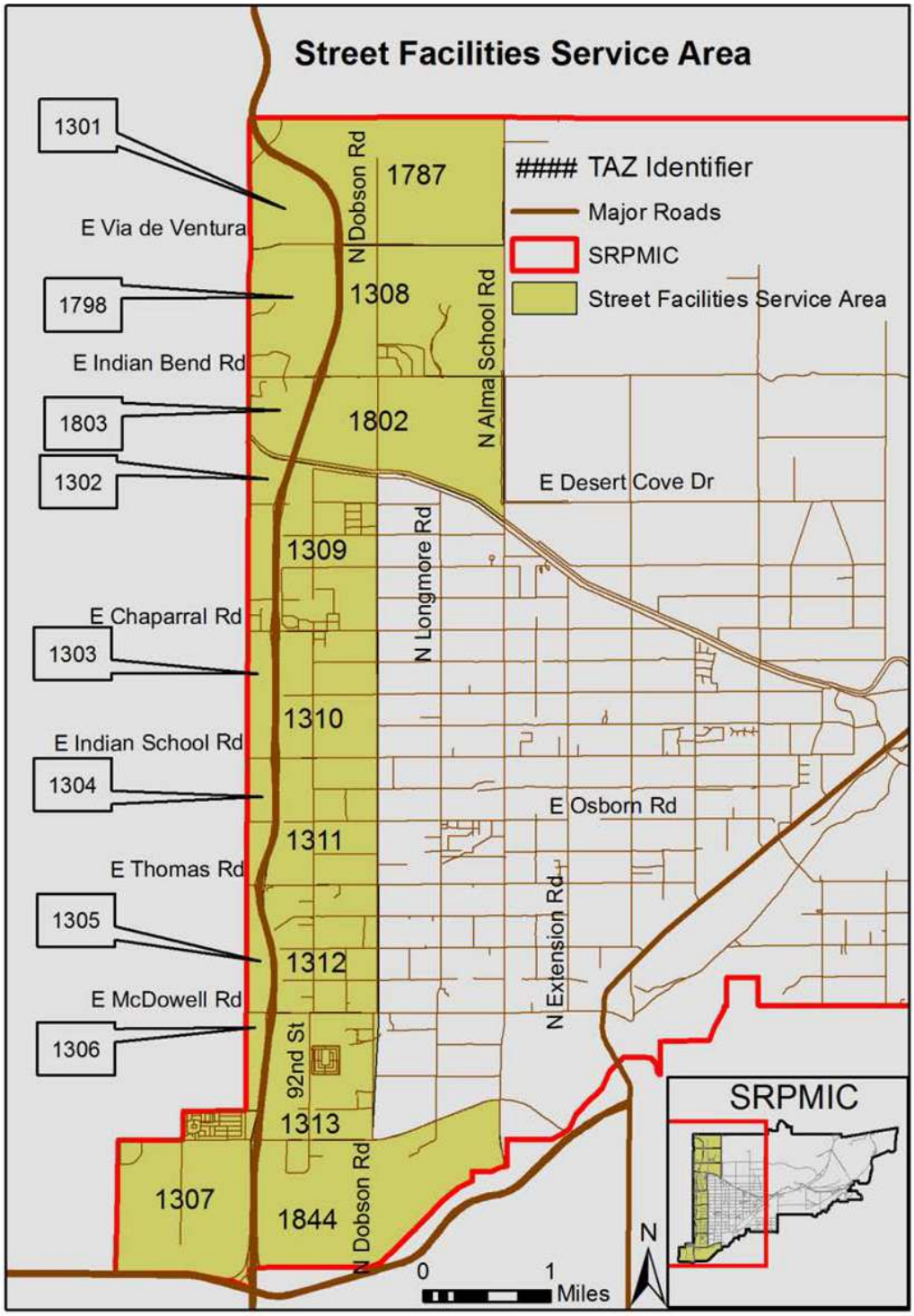
Nonresidential Development	**Development Fee (per gross acre of land)**	
Development Type	**North of AZ Canal**	**South of AZ Canal**
Commercial	$1,672	$4,322
Commercial Recreation	$659	$1,673
Office and Other Service	$1,672	$4,322
Industrial	$1,814	$4,693
Institutional	$1,672	$4,322
Hotel	$1,672	$4,322

(c) *Storm drainage development fee account.* There shall be established two internal revenue accounts, under which all storm drainage development fees collected shall be kept, a north of Arizona Canal account and a south of Arizona Canal account. Storm drainage development fee revenues collected from each development fee service area described in subsection (a) of this section shall be accounted for according to the service area from which they were collected. Other than any interest that accrues on the accounts, no other funds shall be maintained in the storm drainage development fee accounts.
(Code 1981, § 17-265; Code 2012, § 17-265; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-265, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-528. Street development fee.

(a) *Street development fee service area.* The development fee services area for street development fees shall be the area indicated in Figure 3 set forth in this subsection:

Figure 3


Street Facilities Service Area
TAZ Identifier
Major Roads
SRPMIC
Street Facilities Service Area
1301
1798
1803
1302
1303
1304
1305
1306
1307
1787
1308
1802
1309
1310
1311
1312
1313
1844
E Via de Ventura
E Indian Bend Rd
E Chaparral Rd
E Indian School Rd
E Thomas Rd
E McDowell Rd
E Desert Cove Dr
E Osborn Rd
N Dobson Rd
N Alma School Rd
N Longmore Rd
N Extension Rd
92nd St
SRPMIC
N
0
1
Miles

(b) Development fees for street facilities shall be collected only within this service area and said fee revenues shall be spent only to the benefit of new development within this service area.

(c) *Street development fee schedule.* A street development fee shall be assessed and collected from new nonresidential development only, pursuant to all applicable provisions of this article, in accordance with the following fee schedule:

Development Type	**Development Fee (per gross square foot)**
Commercial	$9.28
Office and Other Service	$4.02
Industrial	$2.54
Institutional	$5.11
Hotel (per room)	$2,693

(d) *Street development fee account.* There shall be established an internal revenue account, under which all street development fees collected shall be kept. Other than any interest that accrues on the account, no other funds shall be maintained in the street development fee account. Street development fee revenues shall be spent only on street facilities and street capital costs as provided in this article.

(Code 1981, § 17-266; Code 2012, § 17-266; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-266, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

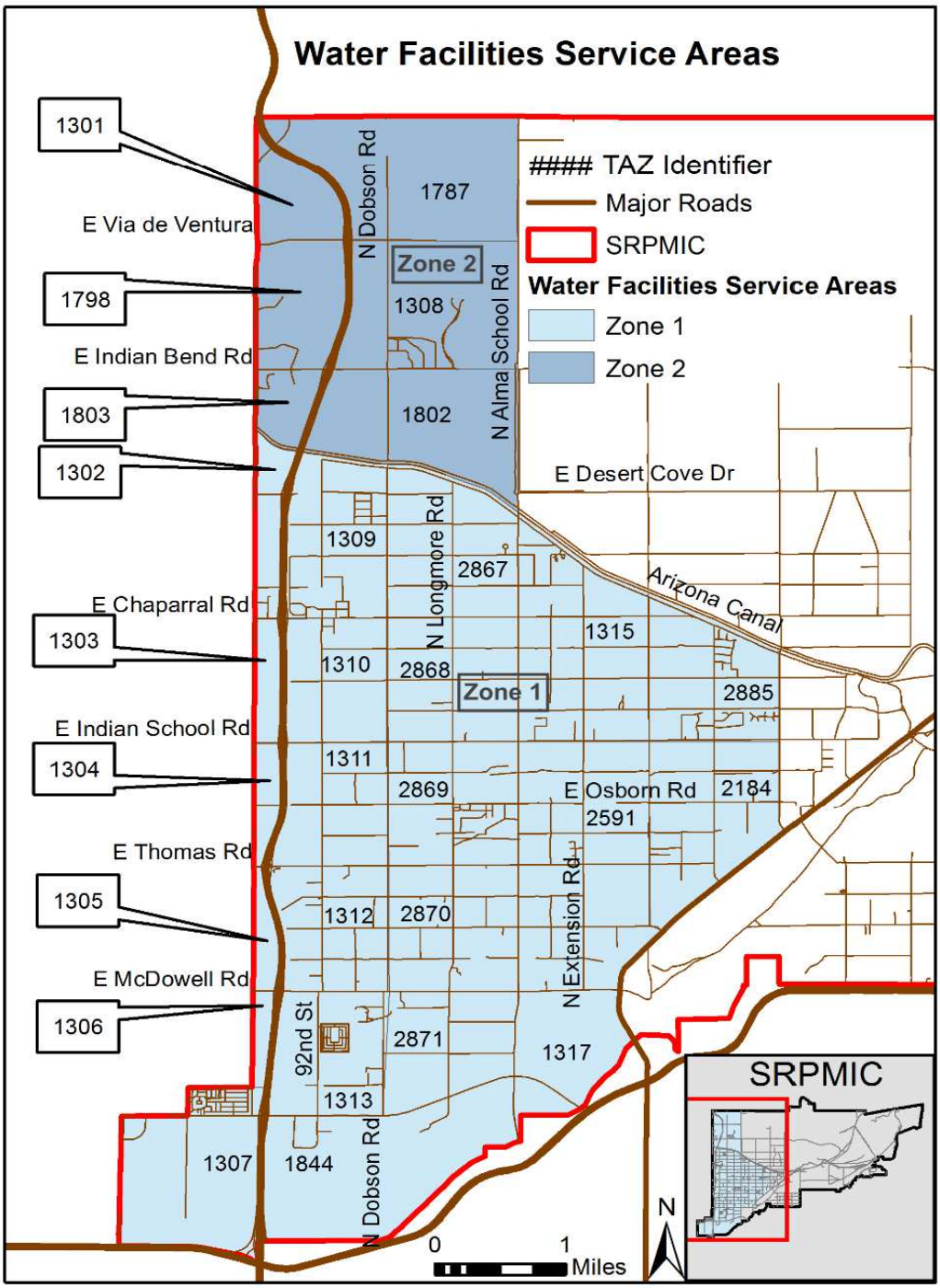
Sec. 17-529. Water development fee.

(a) *Water development fee service area.* The development fee services areas for water facilities development fees shall be the following geographic areas:

(1) *Zone 1 area.* The area indicated as Zone 1 is located south of the Arizona Canal, in Figure 4 set forth in this subsection.

(2) *Zone 2 area.* The area indicated as Zone 2 is located north of the Arizona Canal, in Figure 4 set forth in this subsection.

Figure 4


Water Facilities Service Areas
TAZ Identifier
Major Roads
SRPMIC
Water Facilities Service Areas
Zone 1
Zone 2
1301
E Via de Ventura
1798
E Indian Bend Rd
1803
1302
E Chaparral Rd
1303
E Indian School Rd
1304
E Thomas Rd
1305
E McDowell Rd
1306
1307
1844
1313
1312
1311
1310
1309
1308
1787
1802
1315
2885
2184
2591
2869
2870
2871
2868
2867
1317
Zone 2
Zone 1
N Dobson Rd
N Alma School Rd
N Longmore Rd
N Extension Rd
92nd St
E Desert Cove Dr
Arizona Canal
E Osborn Rd
SRPMIC
N
0
1
Miles

(b) Development fees for water facilities shall be collected only within these service areas and said fee revenues shall be spent only to the benefit of new development within these service areas.

(c) *Water development fee schedule.* A water development fee shall be assessed and collected from new nonresidential development, pursuant to all applicable provisions of this article, in accordance with the development fee service areas described in subsection (a) of this section and the following fee schedule:

Nonresidential Development		*Development Fee (per meter)*	
Meter Size (inches)	*Capacity Ratio**	*Zone 1*	*Zone 2*
1.00	1.00	$8,164	$6,671
2.00	3.20	$26,126	$21,348
3.00	6.40	$52,251	$42,697
4.00	10.00	$81,643	$66,714
6.00	20.00	$163,286	$133,428
8.00	32.00	$261,257	$213,485

*Capacity ratios by meter size are from the American Water Works Association (AWWA), M6 Water Meters-Selection, Installation, Testing and Maintenance, 5th Ed.

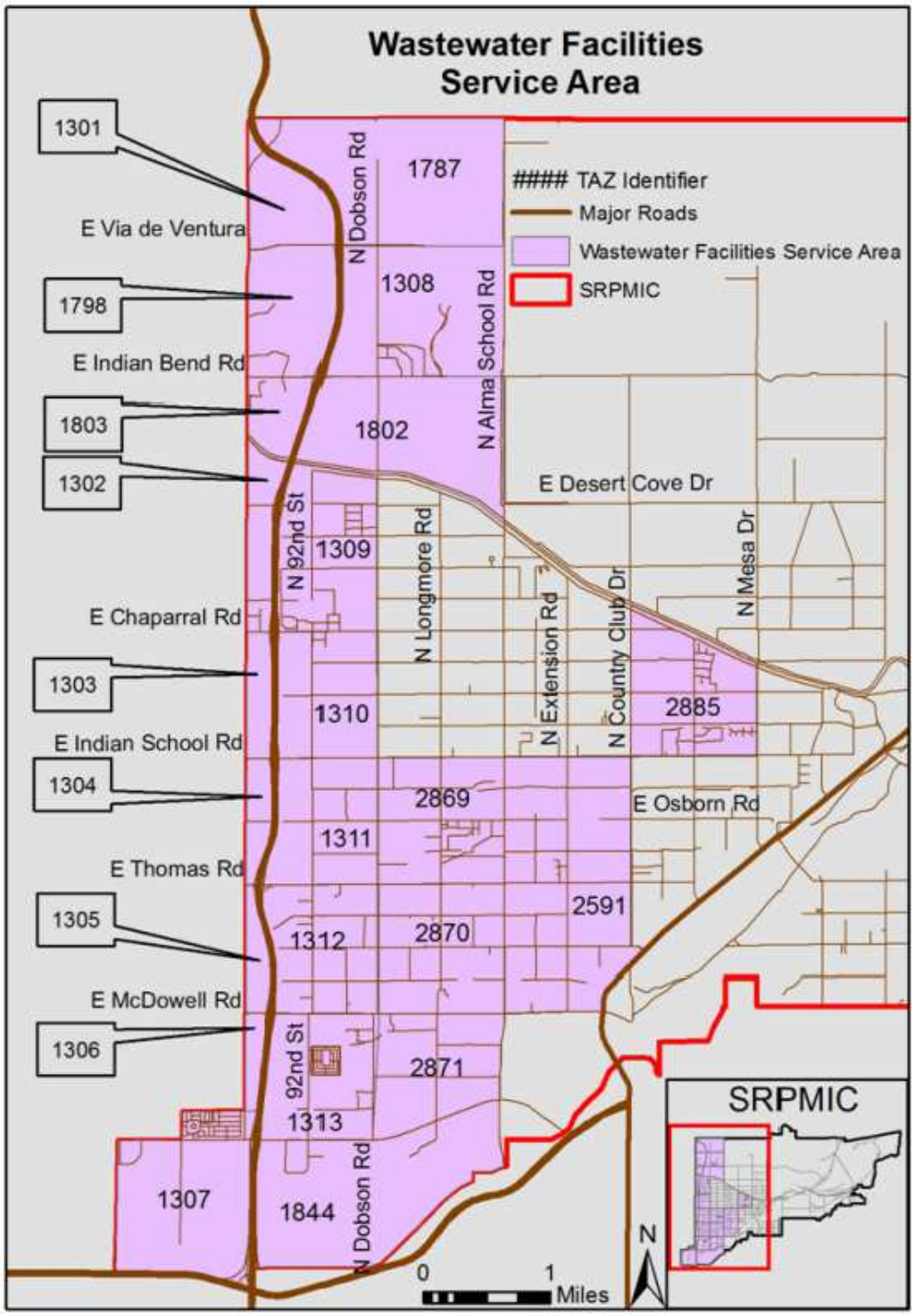
(d) *Water development fee account.* There shall be established an internal revenue account, under which all water development fees collected shall be kept. Other than any interest that accrues on the account, no other funds shall be maintained in the water development fee account. Water development fee revenues shall be spent only on water facilities and water capital costs as provided in this article.

(Code 1981, § 17-267; Code 2012, § 17-267; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-267, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-530. Wastewater development fee.

(a) *Wastewater development fee service area.* The development fee services areas for wastewater facilities development fees shall be the area indicated as such in Figure 5:

Figure 5


Wastewater Facilities Service Area
TAZ Identifier
Major Roads
Wastewater Facilities Service Area
SRPMIC
1301
E Via de Ventura
1798
E Indian Bend Rd
1803
1302
E Chaparral Rd
1303
E Indian School Rd
1304
E Thomas Rd
1305
E McDowell Rd
1306
1307
1787
1308
1802
1309
1310
1311
1312
1313
1844
2869
2870
2871
2591
2885
N Dobson Rd
N Alma School Rd
N 92nd St
N Longmore Rd
N Extension Rd
N Country Club Dr
N Mesa Dr
E Desert Cove Dr
E Osborn Rd
0
1
Miles
N
SRPMIC

(b) Development fees for wastewater facilities shall be collected only within these service areas and said fee revenues shall be spent to the benefit of new development only within these service areas.

(c) *Wastewater development fee schedule.* A wastewater development fee shall be assessed and collected from new development, pursuant to all applicable provisions of this article, in accordance with the following fee schedule:

Meter Size (inches)	Capacity Ratio*	Development Fee (per meter)
1.00	1.00	$5,726
2.00	3.20	$18,322
3.00	6.40	$36,644
4.00	10.00	$57,256
6.00	20.00	$114,512
8.00	32.00	$183,220

*Capacity ratios by meter size from the American Water Works Association (AWWA), M6 Water Meters-Selection, Installation, Testing and Maintenance, 5th Ed.

(d) *Wastewater development fee account.* There shall be established an internal revenue account, under which all wastewater development fees collected shall be kept. Other than any interest that accrues on the account, no other funds shall be maintained in the wastewater development fee account. Wastewater development fee revenues shall be spent only on wastewater facilities and wastewater capital costs as provided in this article.

(Code 1981, § 17-268; Code 2012, § 17-268; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-268, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-531. Public Safety development fee.

(a) *Public safety development fee service area.* The development fee service area for public safety development fees shall include all lands within the Community. Except as expressly provided otherwise by this article, development fees for public safety facilities shall be collected only within this service area and said fee revenues shall be spent only to the benefit of new development within this service area.

(b) *Public safety development fee schedule.* A public safety development fee shall be assessed and collected from new development, pursuant to all applicable provisions of this article, in accordance with the following fee schedule:

Development Type	Development Fees (per gross square foot)
Commercial	$3.49
Office and Other Service	$1.37
Industrial	$0.86
Institutional	$1.74
Hotel (per room)	$1,013

(c) *Public safety development fee account.* There shall be established an internal revenue account, under which all public safety development fees collected shall be kept. Other than any interest that accrues on the account, no other funds shall be maintained in the public safety development fee account. Public safety development fee revenues shall be spent only on public safety facilities and public safety capital costs as provided in this article.

(Code 1981, § 17-269; Code 2012, § 17-269; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-269, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-532. Appeals.

(a) *Initiation.*

(1) An appeal from a final determination made by the director or other Community official may be made within 30 calendar days of the time the official's determination has been communicated to the applicant.

(2) An appeal shall be made on a form provided by the director and filed with the Community executive secretary.

(3) The appeal will be decided by the Community manager, or by a hearing officer appointed by the Community manager, as provided in this section.

(4) The filing of an appeal does not stay the imposition or the collection of the development fee as calculated by the Community unless an appeal bond or other sufficient surety, satisfactory to the office of the general counsel and the Community treasurer has been provided. If no such bond or other surety has been accepted by the Community, the applicant must pay all development fees owed prior to filing an appeal.

(5) The bond or other surety shall not be released in whole until the Community manager or hearing officer either grants the appeal and determines in writing that no additional development fees are thereafter owed by the applicant or the applicant pays all development fees owed following the written determination regarding the appeal by the Community manager or hearing officer. The bond may provide for partial draws on bond funds or partial releases by the Community.

(6) If the appeal form is accompanied by a bond or other sufficient surety, in an amount equal to the development fee calculated by the director to be due, a building permit, construction permit, tenant improvement permit, certificate of occupancy, or other Community approval of new development, which is necessary for the developer to establish an actual land use on a property may be issued to the new development, pending the outcome of the appeal.

(b) *Hearing on the appeal.* The Community manager or hearing officer shall set the appeal for hearing and shall notify the applicant in writing of the date, time, and location of the hearing.

(c) *Burden of proof.* The appellant has the burden of proof to demonstrate that the decision of the director or other Community official is erroneous, based on the terms of this article, the Community Constitution, or other applicable law.

(d) *Decision.*

(1) The Community manager or hearing officer must:

a. Determine whether there is an error in an order, article requirement, or decision of a Community official in the enforcement of this article; and/or

b. Based on the information provided, reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the Community official appealed, and make such order, requirement, decision, or determination as necessary, including recommending amendments to the provisions of this article to the council.

(2) The Community manager or hearing officer must render a decision on the appeal within 60 calendar days after the receipt by the Community executive secretary of the appeal application form.

(3) Should the appeal result in a determination that development fees paid should be refunded in whole or in part to the applicant, the written decision of the Community manager or hearing officer shall so indicate and shall direct appropriate Community staff to make the refund consistent with the final decision.

(4) Should the appeal be rejected, any development fees not paid, but secured by bond or other surety, shall be paid in full within 30 calendar days of the written decision of the Community manager or hearing officer, unless the written decision provides otherwise. If all development fees owed pursuant to the final decision are not paid within 30 calendar days, the Community may draw an amount of the bond funds equal to the amount of development fees owed. The availability of this remedy does not preclude the Community from seeking or

enforcing any other lawful remedy necessary to enforce the provisions of this article.

(Code 1981, § 17-271; Code 2012, § 17-271; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-271, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)

Sec. 17-533. Violation; penalty.

When required to provide information pursuant to this article, all persons shall act in good faith and provide correct and accurate information. Furnishing false information to any official or agent of the Community charged with the administration of this article on any matter relating to the administration of this article, including without limitation the furnishing of materially false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this article. Any person, firm, or corporation that violates any of the provisions of this article shall be guilty of a misdemeanor. Persons determined to have falsified information to any official or agent of the Community shall be fined in an amount not to exceed $5,000.00 and may have their Community business license revoked. Firms or corporations or other entities determined to have falsified information to an official or agent of the Community shall be fined not to exceed $20,000.00. Each violation shall be considered a separate offense, and fined as described in this section.

(Code 1981, § 17-272; Code 2012, § 17-272; Ord. No. SRO-348-09, 5-13-2009; Ord. No. SRO-402-2012, § 17-272, 5-30-2012; Ord. No. SRO-512-2019, 8-28-2019)