TITLE 3
BUSINESS REGULATIONS

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CHAPTER 3-01
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SECTION 3-01-001-0001 WHOLESALE CONCERNS:

A. Defined: "Wholesale sales" shall mean only such sales as are made to retail dealers for the purpose of resale in the original package or kind.

B. License Tax: There is hereby levied and shall be collected a license tax from the persons, natural or artificial, engaging in and carrying on a wholesale business herein specified within the corporate limits of the City, payable annually, in the following amounts:

Auto accessories and parts	$20.00
Grocers, confections and tobaccos	$20.00
Fruits and vegetables (fresh)	$20.00
Ice cream and frozen confections	$20.00
Oil, gasoline and greases	$20.00
Meats	$20.00

C. Application of Tax: Where a business may be classified under more than one of the above designations, only the principal business shall be subject to license and tax. (Ord. 1794, 03/02/93)

(Ord. No. 1794, Ren&Amd, 03/02/93, 3-01-001-0007)

SECTION 3-01-001-0002 LICENSE TAXES:

There is hereby levied and shall be collected a license tax from the persons, natural or artificial, engaging in and carrying on any pursuit, business, trade, occupation or employment herein specified within the corporate limits of the City in the following amounts, payable annually, except as otherwise provided, in the following schedule:

Agent or canvasser, for every kind of merchandise except books and pictures	$20.00
Abstract company	$20.00
Accountants, public	$20.00
Architecture	$20.00
Assaying	$20.00
Astrology	$20.00
Attorneys (each individual)	$20.00
Auctioneers	$20.00
Banking, loan and discount	$20.00
Barber shop	$20.00
Beauty parlor	$20.00
Bootblack stands, per chair	$20.00
Book or picture agent or canvasser	$20.00
Chiropractors	$20.00
Circuses, carnivals or tent shows	
Circus, menagerie or ring show for each exhibition or performance	$50.00
Traveling tent show, not classified as circus	$25.00
Each side show in connection with circus or tent show, for each performance	$10.00
Other traveling show, public exhibition of amusement not shown in licenses theater, for which admission is charged, for each performance	$15.00
Each merry-go-round, ferris wheel or other ride separate or in connection with carnival	$ 5.00
Circuses, carnivals, tent shows and other shows mentioned in the above provisions who shall show on grounds outside the City limits shall be assessed for all parades, bands, concerts or other methods used to attract attention to such show on the streets of the City, a license fee equivalent to the license fee which would have been charged and paid had such show been conducted within the corporate limits	
Coin-operated amusement devices, each	$ 5.00
Collection agencies, not including attorneys at law	$20.00
Commission merchants	$20.00
Dentists	$20.00
Engineers; public civil, electrical or mining	$20.00
Fortune teller, palmist or clairvoyant	$20.00
Laundry, steam	$20.00
Other	$20.00
Money lenders or finance company	$20.00
Optometrists or opticians	$20.00
Osteopaths	$20.00
Pawnbrokers	$20.00
Photographers, itinerant	$20.00
Physicians and surgeons, other medical practitioners (each person)	$20.00
Real Estate dealers and agents	$20.00
Surveyors	$20.00

Tailoring, cleaner or dyer $20.00

Telephone service providers: an annual license tax of two percent (2%) shall be paid on the gross proceeds of all sales of telephone services by any provider who uses any City right-of-way. Said license tax shall be paid to the City at the end of each quarter. Gross proceeds of all sales shall include business done exclusively within the City and the State of Arizona, and will exclude any business done to or from points outside the State and telephone services provided to all U.S. governmental units.

Any other business or occupation not specifically provided for in this Code shall pay an annual license fee of twenty dollars $20.00). (Ord. 370, 5-9-50; amd. Ord. 461, 8-4-59)

All licenses provided in this Section shall be paid on a prorated basis if application for a new business is made by the licensee prior to June 30 of each year. For the purposes of such proration the tax provided shall be deemed to be a quarterly tax and the amount paid to be assessed for such application shall include the quarter in which the application is made and all subsequent quarters to June 30 succeeding. Proration will not effect those businesses listed for day or monthly fees. (Ord. 1794, 03/02/03)

(Ord. No. 1794, Ren&Amd, 03/02/93, 3-01-001-0009) (Ord. No. 2004-26, Amended 01/10/05)

SECTION 3-01-001-0003 LICENSE TAX COLLECTOR:

The office of the Tax Collector of the City is hereby created, the Tax Collector to be appointed by the City Manager as other officers are appointed. (Ord. 1794, 03/02/93)(Ord. No. 1794, Renumbered, 03/02/93, 3-01-001-0010)

SECTION 3-01-001-0004 COLLECTION OF LICENSE TAXES:

All license taxes required by this Code shall be payable in advance to the Tax Collector in City Hall. Annual license taxes shall be due and payable on July 1 of each year. No demand shall be necessary therefor, but every person subject to pay a license shall attend the office of the Tax Collector and pay the same before engaging in any business or pursuit herein enumerated and shall keep such license conspicuously posted in his place of business. (Ord. 1794, (03/02/93)(Ord. No. 1794, Renumbered, 03/02/93, 3-01-001-0011)

SECTION 3-01-001-0005 APPLICATION FOR LICENSE:

Every person desiring a license to carry on any trade, business or occupation, shall make application therefor to the Tax Collector, which

application shall state the business, trade or occupation for which said license is sought, the names of the persons interested in such business, trade or occupation, and the place or house where the same is to be carried on, which application shall be filed with the said Collector at or before the time of issuing such license, and no license shall be issued or granted until the amount required to be paid therefor shall have been paid to the Collector. (Ord. 1794, 03/02/93)
(Ord. No. 1794, Renumbered, 03/02/93, 3-01-001-0012)

SECTION 3-01-001-0006 TERM OF LICENSE:

Except as otherwise provided herein, no license shall be granted for a lesser nor a greater period of one year, and all annual licenses shall expire as of June 30 succeeding the date of issuance. (Ord. 1794, 03/02/93)(Ord. No. 1794, Renumbered, 03/02/93, 3-01-001-0013)

SECTION 3-01-001-0007 TRANSFER OF LICENSES:

All licenses issued under the terms of this Chapter shall be nontransferable between owners or locations. (Ord. 1794, 03/02/93)

(Ord. No. 1794, Enacted, 03/02/93)

SECTION 3-01-001-0008 LICENSES FOR DIFFERENT LOCATIONS:

If any person shall conduct any business, trade or occupation requiring a license at different locations within the City, each location shall be treated as a separate business for the purposes of this Chapter and such person shall take out a license for each place where such business is carried on. (Ord. 1794, 03/02/93)

(Ord. No. 1794, Ren&Amd, 03/02/93, 3-01-001-0014)

SECTION 3-01-001-0009 REVOCATION OF LICENSE:

The Tax Collector shall be authorized to revoke the City license if the person licensed shall have violated the conditions under which the license shall have been issued, or whenever in the opinion of the Council it shall be deemed expedient to revoke such license, and from the time of said revocation of such license shall be utterly void and of no effect and the amount paid therefor shall be forfeited to the City. (Ord. 1794, 03/02/93)(Ord. No. 1794, Ren&Amd, 03/02/93, 3-01-001-0016)

SECTION 3-01-001-0010 LICENSE REGISTER:

The Tax Collector shall keep a register in which he shall enter the names of each and every person licensed, the date of the license, the

purpose for which granted, the amount paid therefor, and the date when the same shall expire. All money collected for licenses shall be paid over to the Treasurer as soon as received by the Tax Collector, who shall take the Treasurer's receipt therefor.

(Ord. 1794, 03/02/93)(Ord. No. 1794, Renumbered, 03/02/93, 3-01-001-0017)

SECTION 3-01-001-0011 MISDEMEANOR DECLARED:

Any person, natural or artificial, engaging in the operations of any business for which a license is required by this Chapter without first having obtained such license, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars ($100.00) nor more than three hundred dollars ($300.00) for each offense, and shall also be compelled to pay the amount of the license chargeable against that business for the minimum period named in the Section of this Chapter covering that business; provided, however, that each day's operation of any said business or amusement without the license herein required shall constitute a separate offense. (Ord. 1794, 03/02/93)

(Ord. No. 1794, Ren&Amd, 03/02/93, 3-01-001-0018)

CHAPTER 3-02
PAWNBROKERS, SECONDHAND AND JUNK DEALERS

SECTIONS:

3-02-001-0001	**DEFINITIONS:**
3-02-001-0002	**PAWNBROKERS REPORT:**
3-02-001-0003	**SECONDHAND, JUNK DEALERS REPORT:**
3-02-001-0004	**REPORTS TO BE IN ENGLISH:**
3-02-001-0005	**ALTERING MERCHANDISE:**
3-02-001-0006	**COMPLIANCE REQUIRED:**

SECTION 3-02-001-0001 DEFINITIONS:

PAWNBROKER: For the purpose of this Chapter a "pawnbroker" is defined to be a person, firm, association or corporation engaged in conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself, or for any other person, firm, association or corporation, receiving as security for the repayment thereof pawns or pledges of personal property or the business of purchasing personal property and selling or agreeing to resell such articles to vendors, their personal representatives or their assigns, at prices agreed upon at or before the time of such purchase, whether such business be the principal or sole business so carried on, managed or conducted, or merely incidental to in connection with or a branch or department of some other business or businesses.

PAWNSHOP: A "pawnshop" is defined to be any room store or place in which a business as defined above is engaged in, carried on or conducted

SECONDHAND DEALER: For the purpose of this Chapter, a "secondhand dealer" is defined to be a person, firm, association or corporation engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise or articles, whether such business be the principal or sole business so carried on, managed or conducted or be merely incidental to, in connection with or a branch or department of some other business or businesses.

JUNK DEALER: For the purpose of this Chapter a "junk dealer" is defined to be a person, firm, association or corporation having a fixed place of business within the City and engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, old rags, sacks, bottles, cans, papers, metal or other articles commonly known as "junk".

JUNK COLLECTOR: For the purpose of this Chapter a "junk collector" is defined to be a person not having a fixed place of business in the City who goes from house to house and from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as "junk".

SECTION 3-02-001-0002 PAWNBROKERS REPORT:

It shall be unlawful for any pawnbroker or any employee or agent of any pawnbroker within the City to fail, neglect or refuse to make out and deliver to the Chief of Police, within twenty four (24) hours after the receipt thereof, a full, true and complete report of all goods, wares, merchandise or articles received on deposit in pawn or pledge or by purchase.

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

SECTION 3-02-001-0003 SECONDHAND, JUNK DEALERS REPORT:

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

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

SECTION 3-02-001-0004 REPORTS TO BE IN ENGLISH:

All reports required by the provisions of this Chapter are to be made out and delivered to the Chief of Police, and shall be written or printed in the English language in a clear and legible manner.

SECTION 3-02-001-0005 ALTERING MERCHANDISE:

It shall be unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector to deface, alter, change or destroy, part with, conceal, give away, sell or dispose of any goods, wares, merchandise or article before and until one week after making out and delivering to the Chief of Police the report hereinabove required, in accordance with the provisions of this Chapter.

SECTION 3-02-001-0006 COMPLIANCE REQUIRED:

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

Each person violating any provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine and/or imprisonment, and the license of any pawnbroker, secondhand dealer, junk dealer or junk collector may be summarily revoked by the Council for any violation of the provisions of this Chapter by such pawnbroker, secondhand dealer, junk dealer or junk collector, his, their or its employees or agents, and upon any such revocation of license, all fees or taxes theretofore paid on account of such license shall be forfeited to the City. (Ord. 226, 1-12-20)

CHAPTER 3-03
PEDDLERS

SECTIONS:

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3-03-001-0005 **DEPOSITS AND FEES:**
3-03-001-0006 **PERMIT TO BE POSTED:**
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3-03-001-0011 **REVOCATION:**
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3-03-001-0013 **UNLAWFUL ACTS:**
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SECTION 3-03-001-0001 PERMIT REQUIRED:

Except as may otherwise be provided herein, it shall be unlawful for any peddler, solicitor, or fair vendor, as the same are hereinafter defined, to engage in such business within the corporate limits of the City without first obtaining a permit therefor in compliance with the provisions of this Chapter.

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0002 DEFINITIONS:

ADMINISTRATOR: The Sales Tax Administrator or his/her designee.

CASUAL SALES: Transactions which are isolated sales of goods or services by a person who is not engaged in business and does not represent himself as being in business.

CHARITABLE ORGANIZATION: A person or entity determined by the U.S. Internal Revenue Service to be a tax exempt organization qualifying as such under 501 (c) (3) of the U.S. Internal Revenue Code (26 U.S.C. 501 (c) (3); or who is or holds him(it)self out as established exclusively for a charitable purpose, as defined herein.

CHARITABLE PURPOSE: A purpose described in 501 (c) (3) of the U.S. Internal Revenue Code (26 U.S.C. 501 (c) (3); or a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation or civic purpose.

CITY: The City of Flagstaff, Arizona.

FAIR VENDOR: Any person who engages in a temporary business of displaying or selling any type of tangible personal property, and who occupies a stall, booth or other temporary structure on location in conjunction with, associated with or attendant to a prescheduled fair, convention, celebration, promotion or other public gathering, which prescheduled fair, convention, celebration, promotion or other public gathering which is not longer than fifteen (15) days in duration and of which the first public announcement is thirty (30) days or more prior to its commencement.

PEDDLER: A person who sells in the public right-of-way, or who travels from place to place selling any type of tangible personal property, including but not limited to food and drink.

PERMIT: A written warrant, license or other instrument issued by the City, granting permission or authority to engage in specific conduct not forbidden by law, but not allowed without such permission or authority.

SOLICITOR: Any person, other than a peddler, who goes uninvited from residence to residence or to only one residence within the City selling or offering to sell any type of service or any tangible personal property. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0003 APPLICATIONS:

A. Applicants for permit under this Chapter shall file with the Administrator, a sworn application in writing, on a form to be furnished by the City, at least one day prior to the date of commencement of the activity for which the permit is sought.

B. No application for a permit hereunder shall be accepted unless the applicant or his authorized employee or representative certifies in writing that he will request or accept no payment for goods or services before such goods or services have been provided or delivered.

C. Each permit application shall include the following or be furnished with following information:

1. Name and description of the applicant;

2. Address (permanent and local);

3. A brief description of the nature of the business and the goods and/or services to be sold;

4. If the applicant is or will be acting for or on behalf of another, the name and address of the employer or principal, together with credentials establishing the parties' exact relationship;

5. The specific days and the location for which the privilege to do business is desired. If a fixed site is to be occupied, the exact address and the name of the owner of the property in question shall be furnished along with a copy of the lease or other agreement or permit authorizing the applicant's use of such site (which, for a proposed use of the public right-of-way, shall be the applicant's encroachment permit, where required);

6. If a motor vehicle is to be used, a description of the same, the vehicle identification number, and a copy of the vehicle registration;

7. A photograph which accurately depicts the applicant;

8. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal laws, the nature of the offense and the punishment or penalty assessed therefor;

9. A statement as to whether or not the applicant intends to employ any signs advertising his merchandise. All applicants under this Chapter are subject to all other applicable provisions of the City Code, including but not limited to the provisions of Chapter 10-08, Division 001, which regulates the use of signs in the City, including use of banners, pennants and aerial displays and requires a sign permit for temporary signs;

10. A fee of twenty-five dollars ($25.00) payable to the City;

D. Each person issued a permit hereunder shall advise the Administrator in writing of any change in any of the information required by Subsection C hereof as soon as is practicable.

E. No permit issued hereunder shall be transferable.

F. Notwithstanding anything to the contrary contained herein, fair vendors shall not be required individually to obtain a permit hereunder, provided that the organizer or sponsor of the event at which the fair vendor conducts business obtains a permit for such event by submitting to the Administrator; (1) a permit fee of twenty-five ($25.00) payable to the City; (2) the fees in lieu of sales tax set forth in Section 3-03-001-0005.B hereof; and, in writing, the name and address (permanent and local, if different) of such organizer or sponsor, and a list of all fair vendors who will sell at such event, indicating which, if any of such fair

vendors hold a current City sales tax license. For all purposes of this Chapter other than this Section 3-03-001-0003 and Section 3-03-001-0005.B hereof, the fair vendors set forth in the list required of the sponsor or organization in the foregoing sentence shall be considered permittees hereunder. Notwithstanding the foregoing, no permit shall be required of the organizer or sponsor of any event organized and conducted by or for a religious or charitable purpose or organization, provided that the predominance of fair vendors selling thereat are either: Religious and/or charitable organizations; and/or engaged in making casual sales. (Ord. 1912, 06/04/96)(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0004 INVESTIGATION OF APPLICANT:

Upon receipt of a permit application hereunder, the Administrator shall review the adequacy of the same. If the application is satisfactory, a permit shall be issued by the Administrator. The Administrator shall keep a full record in his office of all permits issued. Each permit shall contain the number of the permit, the date of its issue, the nature of the business authorized to be conducted, the amount of the permit fee paid, its expiration date, the place where the permit authorizes said business to be conducted under said permit and the name of the person or persons authorized to conduct the same.

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0005 DEPOSITS AND FEES:

A. Peddlers and Solicitors: Prior to and as a condition to being issued a permit hereunder, each peddler and solicitor whose sales are or will be subject to the City's transaction privilege (sales) tax imposed by City Code Chapter 3-05, Division 004 (Article IV of the City Tax Code) shall deposit with the Administrator a sum equal to twenty-five dollars ($25.00) per day that the applicant plans to sell as a peddler and/or solicitor, but in no event more than two hundred dollars ($200.00), as prepayment of such sales tax; said deposit shall be allowed as a credit against such sales tax ultimately found due and owing by such person, and any balance exceeding such amount due as sales tax shall, upon written request from the permittee accompanied by surrender of the permit issued hereunder, be refunded. Notwithstanding anything to the contrary contained herein, any permit issued under the provisions of this Chapter shall terminate upon the issuance of any refund of the deposit required by this Section, and no such refund shall be paid without surrender of such permit. The Administrator shall have the authority to waive, in his discretion, the deposit required by this Section with respect to any person who can demonstrate continuing, prompt payment of the City's sales tax during the immediately preceding two (2) year period.

B. Fair Vendors: As a condition to being issued a permit hereunder, the sponsor or organizer of any event for which a permit is required under Section 3-03-001-0003 F. hereof each fair vendor shall pay to the City an amount equal to the product of: Fifteen dollars ($15.00); multiplied by the number of fair vendors selling at such event (other than those holding a current City sales tax license); multiplied by the number of days during which sales will be made at such event. Said amount shall be considered in lieu of the transaction privilege tax imposed by Section 3-05-004-0017 of the City Code (3-5-460 of the City's Tax Code) with respect to sales made by fair vendors (other than those holding a current City sales tax license) selling at such event. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0006 PERMIT TO BE POSTED:

Each permittee hereunder who uses a vehicle in conjunction with his permitted business shall post his permit in a conspicuous place upon such vehicle. Each person otherwise doing business under a permit issued hereunder shall keep the permit upon his person and shall exhibit the same at any time upon request. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0007 LOCATION RESTRICTIONS:

A. General. No peddler hereunder shall have any exclusive right to any location in the public right-of-way, nor shall be permitted any location within three hundred feet (300') of a public school ground, nor shall be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this Chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

B. Selling in Public Parks. Except as otherwise provided in this Subsection, no person shall sell any tangible personal property, including but not limited to food or drink, from any vehicle, pushcart, stand or other movable or temporary contrivance within any public park in this City. Notwithstanding the foregoing, the City may license one or more persons to sell food, beverage and/or other items in one or more public parks, upon such conditions as the City may prescribe: In conjunction with a special event for which an encroachment permit has been approved by the City; through a competitive bid or proposal process, such license(s) to be awarded to such responsible person(s) whose bid(s) or proposal(s) offer the highest fee(s) or percentage(s) of revenue to the City; or, as authorized by the City's Parks and Recreation Director, upon application of a private group or organization meeting in a public

park (at which no other vendor is then currently licensed) for authorization of a specific person or business to sell food and/or beverage to such group during a specified period at a specified location in such park. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0008 UNDUE NOISES PROHIBITED:

No permittee nor any person acting on a permittee's behalf, shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loudspeaker, public address or other sound amplifying system upon any of the streets, alleys, parks or other public places of the City or upon any private premises in the City where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the public thoroughfares for the purpose of attracting attention to the permittee's goods or business. This Section 3-03-001-0008 shall not apply to a reasonable and moderate bell, synthesized music or similar sound emitted from a motor vehicle in conjunction with sales therefrom of ice cream or other items with which such bell or other sound is traditionally associated. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0009 DUTY OF POLICE TO ENFORCE:

It shall be the duty of the Police Department of the City to enforce this Chapter. The Chief of Police shall report to the Administrator all convictions for violation of this Chapter, and the Administrator shall maintain a record for each permit issued and record the reports of violations therein.

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0010 TERM OF PERMITS:

Each permit issued hereunder shall include in its provisions a clearly stated termination date, which shall in no event be later than five (5) years from the date on which such permit is issued. (Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0011 REVOCATION:

A. General. Permits issued under the provisions of this Chapter may be revoked by the Administrator after notice and hearing for any of the following causes:

1. Fraud, misrepresentation or false statement contained in the application for permit;

2. Fraud, misrepresentation or false statement in the course of carrying on the permittee's business;

3. Any violation of this Chapter;

4. Conviction of any crime or misdemeanor involving moral turpitude;

5. Conducting business in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

B. Immediate Suspension. Notwithstanding the provisions of Subsection A hereof or of Section 3-03-001-0012, the Administrator may summarily suspend the permit of any person charged with an offense relating to theft, assault or other offense constituting an imminent threat to the public's health, safety or welfare, or upon any of the grounds set forth in Paragraphs 2, 4 or 5 of Subsection A hereof. Failure of a permittee to timely submit a written application for reinstatement of a permit summarily suspended hereunder shall operate as a revocation of such permit. (Ord. 1912, 06/04/96)(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0012 NOTICE OF HEARING AND APPEAL:

A. Notice of Revocation. Notice of the proposed revocation of a permit issued hereunder shall be given in writing, setting forth specifically the grounds of complaint and the time and place of a hearing to be held on such revocation. Such notice shall be mailed to the permittee at the address last provided to the Administrator at least five (5) working days prior to the date set for hearing.

B. Application for Reinstatement. Any person whose permit has been summarily suspended pursuant to the provisions of Subsection B of Section 3-03-001-0012 hereof may, at any time within thirty (30) days of such suspension, apply in writing for reinstatement of such permit. The Administrator shall, within five (5) working days of the receipt of such written application for reinstatement, provide notice of a hearing on reinstatement, in the manner set forth in Subsection A hereof.

C. Hearing. All hearings to which Subsections A and B hereof refer shall be conducted by the Administrator, who shall admit thereat all probative and reliable evidence without regard to formal rules of evidence. Such hearings shall be conducted informally with regard to procedure as well as testimony and other evidence. The permittee may be heard in person and/or by an authorized representative at such hearing.

D. Any applicant or permittee aggrieved by any action of the Administrator hereunder, in denying an application for a permit or by his decision in any hearing held hereunder, shall have the right to appeal such action to the City Council, by filing with the City Council a written statement setting forth fully the grounds for the appeal, within fourteen (14) days following the mailing of notice of the action complained of. The Council shall set a time (not later than fourteen [14] days following the date that such appeal is filed with the Council) and place for a hearing on such appeal and shall cause a notice of such hearing to be mailed to the appellant no less than five (5) working days prior to the date set for such hearing. (Ord. 1912, 06/04/06)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0013 UNLAWFUL ACTS:

It shall be unlawful for any peddler or solicitor in the course of his business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers", "No Solicitors" or the like is posted or otherwise exposed to public view, or before 8:00 A.M. or after 8:00 P.M. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

SECTION 3-03-001-0014 EXCEPTIONS:

A. General. The following activities are exempt from the requirements of this Chapter:

1. Casual sales.

2. Any person delivering, or selling subscriptions for delivery of, newspapers on a regular daily or weekly schedule.

3. Any solicitor selling or offering for sale goods or services, the sale of which is not subject to the transaction privilege tax imposed by City Code Chapter 3-05, Division 004 (Article IV of the City Tax Code).

B. Religious and Charitable Organizations: Notwithstanding anything to the contrary contained in this Chapter, any person may, for a charitable, religious or political purpose, or on behalf of any charitable, religious or political organization, entity, solicit donations of money or property and/or sell any item of literature or merchandise, provided that such person has first obtained a permit for such activity by filing with the Administrator a sworn statement including the following information:

1. Name and purpose of the cause or organization for or on behalf of which the activity is to be conducted;

2. Names and addresses of the officers and directors of the organization, if any;

3. The period during which solicitation is to be conducted;

4. A description of the solicitation or other activity to be conducted; and

5. Whether or not any commission, fees, wages or emoluments are to be paid in connection with such activity and the amount thereof.

Upon establishing that the requirements of this Subsection are satisfied, the Administrator shall, without charge, issue a permit for such activity to such person or organization. Any organization obtaining a permit under this Subsection shall furnish each of its members, employees, agents or representatives conducting activities described herein a copy of such permit and written credentials stating the name of the organization, name of agent and purpose of solicitation or other activity. The Administrator may revoke any permit issued under this Subsection in the manner, and upon any of the grounds, set forth in Section 3-03-001-0011 hereof. Notwithstanding anything to the contrary contained herein, no person or organization shall be subject to any penalty or forfeiture solely by reason of failing to obtain a permit to conduct any activity described in this Subsection for or on behalf of a bona fide charitable, religious or political organization or purpose. (Ord. 1912, 06/04/96)

(Ord. No. 1912, Amended, 06/04/96)

CHAPTER 3-04
MOTELS AND HOTELS

SECTIONS:

3-04-001-0001	**DEFINITIONS:**
3-04-001-0002	**APPLICATION OF CHAPTER:**
3-04-001-0003	**POSTING OF RATES:**
3-04-001-0004	**REGISTERS REQUIRED:**
3-04-001-0005	**FILING WITH CITY'S TAX, REVENUE AND LICENSING ADMINISTRATOR**
3-04-001-0006	**PENALTY CLAUSE**

3-04-001-0001 DEFINITIONS:

In this Chapter, unless the context otherwise requires:

CONTRACTED RATES: The term “contracted rates” means negotiated room rates that are discounted below the posted rates.

OPERATOR: The word "operator" includes a manager or any person in charge of the operation of motels, motor hotels, motor courts, motor camps, hotels and like establishments. "Operator" or "owner" includes natural persons, firms and corporations.

OUTDOOR or OUTSIDE SIGN: The term "outdoor sign" or "outside sign" means any sign visible to passers-by whether it is located within or without the building.

ROOM RATES: The term "room rates" means the rates at which rooms or other accommodations are rented to occupants.

SURCHARGE: An additional amount added to the usual room rate.

(Ord. No. 2005-06, Amended 03/01/05)

SECTION 3-04-001-0002 APPLICATION OF CHAPTER:

This Chapter shall apply to operators and owners of motels, motor hotels, motor courts, motor camps, hotels and like establishments.

SECTION 3-04-001-0003 POSTING OF RATES:

A. It is unlawful for any owner or operator of an establishment within the scope of this Chapter to post or display misleading or fraudulent room rates, or that contains any untrue, false, misleading, or fraudulent representation relating to room rates. For purposes of this Chapter, an outdoor or outside sign will be deemed misleading or fraudulent if:

1. no rooms within that establishment are available for immediate occupancy at the posted or displayed rate, unless such rooms are currently occupied and rented at the posted or displayed rate;
2. any outdoor or outside sign posting room rates for that establishment does not contain the minimum and maximum room or other rental unit rates, including surcharges. All posted room rates and surcharges on such sign shall be in type and material of the same size and prominence, which size and prominence shall be a maximum of eight inches (8") in height and shall apply to all numbers and letters used to describe features other than room rates, including but not limited to hours of operation and specific sizes of televisions. Signs stating the rate per person or bearing the legend “and up” do not comply with this section.

B. This Chapter shall be liberally construed to prevent untrue, misleading, false, or fraudulent representations relating to room rates. Nothing in this Chapter shall be construed to require establishments within the scope of this Chapter to have outdoor or outside signs, or to advertise room rates.

C. Any posted or displayed maximum rate and surcharges shall not exceed the posted or displayed minimum rate by more than thirty percent (30%).

D. Unless otherwise posted or displayed, all rates and surcharges posted or displayed shall be for an individual room with double occupancy.

E. If posting room rates not included in minimum/maximum, then the rate must be posted along with the room type and the number of rooms available.

F. Contracted rates are not included in this Ordinance.

G. Any owner or operator of any establishment within the scope of this Chapter that displays or posts room rates on any outdoor or outside sign will be subject to audit by the city annually. The owner or operator of the audited property will bear the audit cost at a rate of seventy-five dollars ($75.00) per guest room. The City may also undertake audits in response to the receipt of a complaint regarding the display, or posting of room rates or surcharges on outdoor or outside signs.

1. The City’s auditors may use a sampling methodology to determine whether an owner or operator is in violation of this chapter. If the sample indicates that there are no violations, the audit will cease.
2. Hotel and motel operators are required to make their records available to City auditors upon request. A failure to make records

available will be deemed a violation of this Chapter and will subject the violator to prosecution under this Chapter.

3. Hotel and motel operators are required to maintain records regarding room rates, surcharges, and advertising for a minimum period of one (1) year from the date they post any rate or surcharge.

H. All hotel and motel operators that post——or display minimum and maximum room rates for double occupancy on a sign visible from the street, shall post or display the same rates in each hotel or motel in full view of the registration desk. The rates in full view of the registration desk shall be of lettering at least two (2) inches high, and shall be located sufficiently close to the registration desk to allow a person with normal vision to read the posting or display of the minimum and maximum rate from the registration desk. Such sign must also include the telephone number of the Flagstaff Police Department for customer complaints regarding violations of this chapter in connection with the posting of room rates.

(Ord. No. 2005-06, Amended 03/01/05)

SECTION 3-04-001-0004 REGISTERS REQUIRED:

Every person who shall rent rooms or space in any rooming house or hotel within the City shall, before renting such space or room within said rooming house or hotel, first require each person desirous of occupying such space or room to register, in his own handwriting, his name and permanent address, on a certain book or register provided for said purpose by the person or persons renting said space or rooms; and every person, before occupying any space or room in any hotel or rooming house within the said City shall first register as herein provided. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor. (Ord. 237, 2-15-21)

SECTION 3-04-001-0005 FILING WITH CITY'S TAX, REVENUE AND LICENSING ADMINISTRATOR

A. Each hotel or motel operator who posts or displays rates that are visible from the street must file with the City's Tax, Revenue and Licensing Administrator ("Administrator") on approved forms, the minimum and maximum rates and surcharges to be charged by the hotel or motel operator. The hotel or motel operator shall not post or display room rates or surcharges which are different from those filed with the Administrator. The hotel or motel operator shall not rent a room at a rate or with surcharges that are different from the rates or surcharges filed with the Administrator, unless the amounts charged are less than the minimum rate for double occupancy or for surcharges filed with the Administrator.

1. Hotel or motel operators may file room rates and surcharges for posting four (4) times a year as follows: No later than August 1 for fall (October 1 through December 31); no later than November 1 for winter (January 1–through March 31); no

later than February 1 for spring (April 1 –through June 30); and no later than May 1 for summer (July 1–through September 30). Such filings shall state the minimum and maximum for each room type available in the hotel or motel, and quantity of each room type the hotel or motel has, which will be specified in the certificate of filing issued by the Administrator and which must be posted in the lobby of the hotel or motel for which the rates were filed.

2. Each filing with the Administrator shall be for the rates and surcharges to be charged in the season for which the hotel or motel operator has filed, and such rates and surcharges shall not be changed by any hotel or motel operator until the 1st day of the season for which they have filed.

B. The City Manager shall promulgate regulations for the administration of this Chapter.

C. An administration fee of twenty-five dollars ($25.00) will accompany an application to post rates and surcharges.

SECTION 3-04-001-0006 PENALTY CLAUSE

Any person or business found guilty of violating any provision of this chapter shall be guilty of a Class 1 misdemeanor. Each day that the violation continues shall be a separate offense. Conviction for a first offense under this Section shall have a minimum fine of one thousand dollars ($1,000.00). Conviction for a second offense under this Section shall have a minimum fine of two thousand dollars ($2,000.00). Conviction for a third offense and subsequent offenses under this Section shall have a minimum fine of $2,500.00. Convictions for violations of any provision of this Chapter may be punished by the foregoing fines, by imprisonment of not less than ten (10) days nor more than six (6) months, or both fine and imprisonment.

CHAPTER 3-05
PRIVILEGE AND EXCISE TAXES

DIVISIONS:

3-05-001 GENERAL CONDITIONS AND DEFINITIONS
3-05-002 DETERMINATION OF GROSS INCOME
3-05-003 LICENSING AND RECORDKEEPING
3-05-004 PRIVILEGE TAXES
3-05-005 ADMINISTRATION
3-05-006 MISCELLANEOUS PROVISIONS
3-05-007 REGULATIONS-PRIVILEGE AND EXCISE TAXES

DIVISION 3-05-001
GENERAL CONDITIONS AND DEFINITIONS

SECTIONS:

3-05-001-0100	**WORDS OF TENSE, NUMBER AND GENDER; CODE REFERENCES; AND GENERAL DEFINITIONS:**
3-05-001-0110	**DEFINITIONS; INCOME-PRODUCING CAPITAL EQUIPMENT:**
3-05-001-0115	**DEFINITIONS; COMPUTER SOFTWARE, CUSTOM COMPUTER PROGRAMMING:**
3-05-001-0120	**DEFINITIONS; FOOD FOR HOME CONSUMPTION:**

SECTION 3-05-001-0100 WORDS OF TENSE, NUMBER AND GENDER; CODE REFERENCES; AND GENERAL DEFINITIONS:

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Chapter 8.3, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
"Equivalent Excise Tax" means either:

(1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
(2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
(3) an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-1387. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 3-5-432 for such use. This definition shall not include:

(1) janitorial equipment and supplies.
(2) office equipment, office furniture, and office supplies.
(3) motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) transference of title and possession occur without the City; and
(2) the stock from which such personal property was taken was not within the corporate limits of the City; and
(3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) The order is placed from without the State of Arizona; and
(2) the order is placed by other than a resident of the State to be determined in a manner similar to "resides within the City"; and
(3) the property is delivered to the buyer at a location outside the State; and
(4) the property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
(2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
(3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
(4) drugs or medicine, including oxygen.
(5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.
(6) durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

"Qualifying Community Health Center":

(a) means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

    (1) the sole provider of primary care in the community.
    (2) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(b) includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves, or invests at least eighty per cent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved, or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

(1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
(2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.
(3) a hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.
(4) a facility that is under construction and that on completion will be a facility under Subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

(1) (Reserved)
(2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
(3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

(1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
(2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
(3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Speculative Builder" means either:

(1) an owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 3-5-416) consisting of:

(A) custom, model, or inventory homes, regardless of the stage of completion of such homes; or
(B) improved residential or commercial lots without a structure; or

(2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

(A) prior to completion; or
(B) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

(1) has passed final inspection or its equivalent; or
(2) certificate of occupancy or its equivalent has been issued; or
(3) is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the city manager or his designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections 3-5-515 and 3-5-

516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers. (Ord. 1924, 01/07/97; Ord. 1979, 10/06/98)

(Ord. No. 1979, Amended, 10/06/98); (Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-001-0110 DEFINITIONS; INCOME-PRODUCING CAPITAL EQUIPMENT:

(a) The following tangible personal property, other than items excluded in subsection (d) below, shall be deemed "income-producing capital equipment" for the purposes of this Chapter:

(1) machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining", and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

(2) mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

(3) tangible personal property, sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment; switchboards; private branch exchange equipment; microwave radio equipment, and carrier equipment including

optical fiber, coaxial cable, and other transmission media which are components of carrier systems.

(4) machinery, equipment, or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

(5) pipes or valves four inches (4") in diameter or larger and related equipment, used to transport oil, natural gas, artificial gas, water, or coal slurry. For the purpose of this section, related equipment includes: compressor units, regulators, machinery and equipment, fittings, seals, and any other parts that are used in operating the pipes or valves.

(6) aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(A) a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(B) any foreign government for use by such government outside of this State.

(C) persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This subdivision also applies to corporations that are not incorporated in this State, regardless of maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

(7) machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

(8) railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property .

(9) machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

(10) buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

(11) metering, monitoring, receiving, and transmitting equipment acquired by persons engaged in the business of providing utility services or telecommunications services; but only to the extent that such equipment is to be used by the customers of such persons and such persons separately charge or bill their customers for use of such equipment.

(12) groundwater measuring devices required under A.R.S. § 45-604.

(13) machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

(14) (Reserved)

(15) included in income producing capital equipment are liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations or research and development or job printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involving direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This subsection does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this code. Chemicals meeting the requirements of this subsection are deemed not to be expendable under subsection (d) of this Section.

(16) cleanrooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph (13) of this subsection, of semiconductor products. For purposes of this paragraph, "cleanroom" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Cleanroom:

(A) includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the cleanroom environment.

(B) does not include the building or other permanent, nonremovable component of the building that houses the cleanroom environment.

(17) machinery and equipment that are purchased by or on behalf of the owners of a soundstage complex and primarily used for motion picture, multimedia or interactive video production in the complex. This paragraph applies only if the initial construction of the soundstage complex begins after June 30, 1996 and before January 1, 2002 and the machinery and equipment are purchased before the expiration of five years after the start of initial construction. For purposes of this paragraph:

(A) "motion picture, multimedia or interactive video production" includes products for theatrical and television release, educational presentations, electronic retailing, documentaries, music videos, industrial films, cd-rom, video game production, commercial advertising and television episode production and other genres that are introduced through developing technology.

(B) "soundstage complex" means a facility of multiple stages including production offices, construction shops and related areas, prop and costume shops, storage areas, parking for production vehicles and areas that are leased to businesses that complement the production needs and orientation of the overall facility.

(18) tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(A) any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

(B) any satellite television or data transmission facility, if both of the following conditions are met:

(i) over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations parts 25 and 100.

(ii) over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For purposes of subdivision (B) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

(19) Machinery and equipment that is used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

(20) Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development that is used directly to meet or exceed rules or regulations adopted by the Federal Energy Regulatory Commission, the United States Environmental Protection Agency, the United States Nuclear Regulatory Commission, the Arizona Department of Environmental Quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

(21) Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the Telecommunications Act of 1996 (PL 104-104; 110 Stat. 56; 47 United States Code Section 336) and the Federal Communications Commission order issued April 21, 1997, 47 Code of Federal Regulations part 73. This paragraph does not exempt any of the following:

(A) Repair or replacement parts purchased for the machinery or equipment described In this paragraph.

(B) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(C) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

(b) The term "income-producing capital equipment" shall further include ancillary machinery and equipment used for the treatment of waste products created by the business activities which are allowed to purchase "income-producing capital equipment" defined in subsection (a) above.

(c) The term "income-producing capital equipment" shall further include repair and replacement parts, other than the items in subsection (d) below, where the property is acquired to become an integral part of another item itemized in subsections (a) or (b) above.

(d) The tangible personal property defined as income-producing capital equipment in this Section shall not include:

(1) expendable materials. For purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsections (a), (b), or (c) of this section regardless of the cost or useful life of that property.

(2) janitorial equipment and hand tools.

(3) office equipment, furniture, and supplies

(4) tangible personal property used in selling or distributing activities.

(5) motor vehicles required to be licensed by the State of Arizona, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection (a)(10) above without regard to the use of such motor vehicles.

(6) shops, buildings, docks, depots, and all other materials of whatever kind or character not specifically included as exempt.

(7) motors and pumps used in drip irrigation systems.

(e) For the purposes of this Section:

(1) "aircraft" includes:

(A) an airplane flight simulator that is approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations Part 121.

(B) tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

(2) "other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation. (Ord. 1851, 01/03/95, Ord. 1979, 10/06/98)

(Ord. No. 1979, Enacted, 10/06/98; Ord. No. 1979, Amended, 10/06/98)
(Ord. 2008, Amended, 11/02/1999)

SECTION 3-05-001-0115 DEFINITIONS; COMPUTER SOFTWARE, CUSTOM COMPUTER PROGRAMMING:

(a) COMPUTER SOFTWARE: Any computer program, part of such a program, or any sequence of instructions for automatic data processing equipment. Computer software which is not " custom computer programming" is deemed to be tangible personal property for the purposes of this Chapter, regardless of the method by which title, possession, or right to use the software is transferred to the user.

(b) CUSTOM COMPUTER PROGRAMMING: Any computer software which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer.

(1) The term does not include a prewritten program which is held or existing for general or repeated sale, lease, or license, even if the program was initially developed on a custom basis for in-house, or for a single customer's, use.

(2) Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the customer.

SECTION 3-05-001-0120 DEFINITIONS; FOOD FOR HOME CONSUMPTION:

(a) For the purposes of this Section only, the following definitions shall be applicable:

(1) "Eligible grocery business" means an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the Food Stamp Program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service Field Office on the effective date of this Section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the Tax Collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the food stamp program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.

(2) "Facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

(3) "Food for consumption on the premises" means any of the following:

(A) "Hot prepared food" as defined below.

(B) Hot or cold sandwiches.

(C) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.

(D) Food served with trays, glasses, dishes, or other tableware.

(E) Beverages sold in cups, glasses, or open containers.

(F) Food sold by caterers.

(G) Food sold within the premises of theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.

(H) Any items contained in subsections (a)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.

(4) "Hot prepared food" means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.

(5) "Premises" means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.

(b) "Food for home consumption" means all food, except food for consumption on the premises, if sold by any of the following:

(1) An eligible grocery business.

(2) A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.

(3) A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.

(4) A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.

(5) (Reserved)

(6) Vending machines and other types of automatic retailers.

(7) A person’s sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a county sheriff. (Ord. 1851, 01/03/95; Ord. 1979, 10/06/98)

(Ord. No. 1979, Amended, 10/06/98)

DIVISION 3-05-002
DETERMINATION OF GROSS INCOME

SECTIONS:

3-05-002-0200	**DETERMINATION OF GROSS INCOME; IN GENERAL:**
3-05-002-0210	**DETERMINATION OF GROSS INCOME; TRANSACTIONS BETWEEN AFFILIATED COMPANIES OR PERSONS:**
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3-05-002-0230	**DETERMINATION OF GROSS INCOME BASED UPON METHOD OF REPORTING:**
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3-05-002-0290	**RESERVED:**

SECTION 3-05-002-0200 DETERMINATION OF GROSS INCOME; IN GENERAL:

(a) Gross income includes:

(1) The value proceeding or accruing from the sale of property, the providing of service, or both.

(2) The total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

(3) All receipts, cash, credits, barter, exchange, reduction of/or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

(4) All other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service

rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

SECTION 3-05-002-0210 DETERMINATION OF GROSS INCOME; TRANSACTIONS BETWEEN AFFILIATED COMPANIES OR PERSONS:

In transactions between affiliated companies or persons, or in other circumstances where the relationship between the parties is such that the gross income from the transaction is not indicative of the market value of the subject matter of the transaction, the Tax Collector shall determine the "market value" upon which the City privilege and use taxes shall be levied. "Market value" shall correspond as nearly as possible to the gross income from similar transactions of like quality or character by other taxpayers where no common interest exists between the parties, but otherwise under similar circumstances and conditions.

SECTION 3-05-002-0220 DETERMINATION OF GROSS INCOME; ARTIFICIALLY CONTRIVED TRANSACTIONS:

The Tax Collector may examine any transaction, reported or unreported, if, in his opinion, there has been or may be an evasion of the taxes imposed by this Chapter and to estimate the amount subject to tax in cases where such evasion has occurred. The Tax Collector shall disregard any transaction which has been undertaken in an artificial manner in order to evade the taxes imposed by this Chapter.

SECTION 3-05-002-0230 DETERMINATION OF GROSS INCOME BASED UPON METHOD OF REPORTING:

The method of reporting chosen by a taxpayer, as provided in Section 3-05-005-0520, necessitates the following adjustments to gross income for all purposes under this Chapter:

(a) Cash Basis: When a person elects to report and pay taxes on a cash basis, gross income for the reporting period shall include:

(1) The total amounts received on "paid in full" transactions, against which are allowed all applicable deductions and exclusions; and

(2) All amounts received on accounts receivable, conditional sales contract, or other similar transactions, against which no deductions and no exclusions from gross income are

allowed. Interest on finance contracts may be deducted if separately itemized on all books and records.

(b) Accrual Basis: When a person elects to report and pay taxes on an accrual basis, gross income shall include all gross income for the applicable period regardless of whether receipts are for cash, credit, conditional, or partially deferred transactions, and regardless of whether or not any security document or instrument is sold, assigned, or otherwise transferred to another. Persons reporting on the accrual basis may deduct bad debts, provided that:

(1) The amount deducted for the bad debt must be deducted from gross income of the month in which the actual charge-off was made, and only to the extent that such amount was actually charged off, and also only to the extent that such amount is or was included as taxable gross income; and

(2) If any amount is subsequently collected on such charged-off account, it shall be included in gross income for the month in which it was collected, without deduction for expense of collection. (Ord. 1924, 01/07/97)

SECTION 3-05-002-0240 EXCLUSION OF CASH DISCOUNTS, RETURNS, REFUNDS, TRADE-IN VALUES, VENDOR-ISSUED COUPONS, AND REBATES FROM GROSS INCOME:

(a) The following items are not included in gross income:

(1) Cash discounts allowed by the vendor for timely payment, but only discounts allowed against taxable gross income.

(2) The value of property returned by customers to the extent of the amount actually refunded either in cash or by credit and the amount refunded was included in taxable gross income.

(3) The trade-in allowance for tangible personal property accepted as payment, not to exceed the full sales price for any tangible personal property sold, when the full sales price is included in taxable gross income. Trade-in allowances are not allowed for manufactured buildings taxable under Section 3-05-004-0427.

(4) When coupons issued by a vendor are later accepted by the vendor as a discount against the transaction, the discount may be excluded from gross income as a cash discount. Amounts credited or refunded by a vendor for redemption of coupons issued by any person other than the vendor may not be excluded from gross income.

(5) Rebates issued by the vendor to a customer as a discount against the transaction may be excluded from gross income as cash discount. Rebates issued by a person other than the

vendor may not be excluded from gross income, even when the vendee assigns his right to the rebate to the vendor.

(6) In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

(b) If the amount specified in subsection A. above is credited by a vendor subsequent to the reporting period in which the original transaction occurs, such amount may be excluded from the taxable gross income of that subsequent reporting period, but only to the extent that the excludable amount was reported as taxable gross income in that prior reporting period. (Ord. 1924, 01/07/97)

SECTION 3-05-002-0250 EXCLUSION OF COMBINED TAXES FROM GROSS INCOME; ITEMIZATION, NOTICE, LIMITATIONS:

A. When Tax is Separately Charged and/or Collected: The total amount of gross income shall be exclusive of combined taxes only when the person upon whom the tax is imposed shall establish to the satisfaction of the Tax Collector that such tax has been added to the total price of the transaction. The taxpayer must provide to his customer and also keep a reliable record of the actual tax charged or collected, shown by cash register tapes, sales tickets, or other accurate record, separating net transaction price and combined tax. If at any time the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts billed or collected on account of combined taxes, the claimed taxes collected may not be excluded from gross income, unless such records are completed and/or clarified to the satisfaction of the Tax Collector.

1. Remittance of all tax charged and/or collected. When an added charge is made to cover City (or combined) privilege and use taxes, the person upon whom the tax is imposed shall pay the full amount of the City taxes due, whether collected by him or not, and in the event he collects more than the amount due he shall remit the excess to the Tax Collector. In the event the Tax Collector cannot ascertain from the records kept by the taxpayer the total or amounts of taxes collected by him, and the Tax Collector is satisfied that the taxpayer has collected taxes in an amount in excess of the tax assessed under this Chapter, the Tax Collector may determine the amount collected and collect the tax so determined in the manner provided in this Chapter.

2. Itemization. A taxpayer, in order to be entitled to exclude from his gross income any amounts paid to him by customers for combined taxes passed on to the customer, must prove that he has provided his customer with a written record of the

transaction showing at a minimum the price before the tax, the combined taxes, and the total cost. This shall be additional to the record required to be kept under subsection (A) above.

B. When Tax Has Been Neither Separately Charged Nor Separately Collected: When the person upon whom the tax is imposed shall establish by means of invoices, sales tickets, or other reliable evidence, that no added charge was made to cover combined taxes, the taxpayer may exclude tax collected from such income by dividing such taxable gross income by one (1.00) plus a decimal figure representing the effective combined tax rate expressed as a fraction of one (1.00).

SECTION 3-05-002-0260 EXCLUSION OF FEES AND TAXES FROM GROSS INCOME; LIMITATIONS:

A. There shall be excluded from gross income of vendors of motor vehicles those motor vehicle registration fees, license fees and taxes, and lieu taxes imposed pursuant to Title 28, Arizona Revised Statutes in connection with the initial purchase of a motor vehicle, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser of the motor vehicle by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met. For the purpose of the exclusion provided by this subsection only, the terms vendor and vendee shall also apply to a lessor and lessee respectively, of a motor vehicle if, in addition to all other requirements of this subsection, the lease agreement specifically requires the lessee to pay such fees or taxes, and such amounts are separately itemized in the documentation provided to the lessee.

B. There shall be excluded from gross income of vendors at retail of heavy trucks and trailers, the amount attributable to Federal excise taxes imposed by 26 U.C.S. Section 4051, but only to the extent that the provisions of Division 003, relating to recordkeeping, have been met.

C. There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Division 003, regarding recordkeeping, are met.

1. Emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-1472. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;

2. The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-1472;

3. Federal excise taxes on communications services as imposed by 26 U.S.C. §4251;

4. Car rental surcharge imposed pursuant to A.R.S. Section 48-4234;

5. Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. §4001(.01);

6. Waste tire disposal fees, imposed pursuant to A.R.S. Section 44-1302.

D. There shall be excluded from gross income of vendors of motor vehicle dealer documentation fees, but only to the extent that such fees have been separately itemized and collected from the purchaser of the motor vehicle by the vendor.

(Ord. 1924, 01.07/97); (Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-002-0265 RESERVED:

SECTION 3-05-002-0266 EXCLUSION OF MOTOR CARRIER REVENUES FROM GROSS INCOME:

There shall be excluded from gross income the gross proceeds of sale or gross income derived from any of the following:

(a) A motor carrier's use on the public highways in this State if the motor carrier is subject to a fee prescribed in A.R.S. Title 28, Chapter 16

(b) Leasing, renting or licensing a motor vehicle subject to and upon which the fee has been paid under A.R.S. Title 28, Chapter 16.

(c) The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle, to a motor carrier who is subject to a fee prescribed in A.R.S. Title 28, Chapter 16 and who is engaged in the business of leasing, renting or licensing such property.

(d) For the purposes of these exclusions, "motor carrier" includes a motor vehicle weighing 26,000 pounds or more, a lightweight motor vehicle which weighs 12,001 pounds to 26,000 pounds and a light motor vehicle weighing 12,000 pounds or less, which pay the fee prescribed in A.R.S. Title 28, Chapter 16. (Ord. 1979, 10/06/98)

(Ord. No. 1979, Amended, 10/06/98)

SECTION 3-05-002-0270 EXCLUSION OF GROSS INCOME OF PERSONS DEEMED NOT ENGAGED IN BUSINESS:

A. For the purposes of this Section, the following definitions shall apply:

1. FEDERALLY EXEMPT ORGANIZATION: An organization which has received a determination of exemption, or qualifies for such exemption, under 26 U.S.C. Section 501(c) and rules and regulations of the Commissioner of Internal Revenue pertaining to same, but not including a "governmental entity", "nonlicensed business", or " public educational entity".

2. GOVERNMENTAL ENTITY: The Federal government, the State of Arizona, any other state, or any political subdivision, department, or agency of any of the foregoing; provided further that persons contracting with such a governmental entity to operate any part of a governmentally adopted and controlled program to provide urban mass transportation shall be deemed a governmental entity in all activities such person performs when engaged in said contract.

3. NONLICENSED BUSINESS: Any person conducting any business activity for gain or profit, whether or not actually realized, which person is not required to be licensed for the conduct or transaction of activities subject to the tax imposed under this Chapter.

4. PROPRIETARY CLUB: Any club which has qualified or would otherwise qualify as an exempt club under the provisions of 26 U.S.C. Section 502(c)(7), (8), and (9), notwithstanding the fact that some or all of the members may own a proprietary interest in the property and assets of the club.

5. PUBLIC EDUCATIONAL ENTITY: Any educational entity operated pursuant to any provisions of Title 15, Arizona Revised Statutes.

B. Transactions which, if conducted by any other person, would produce gross income subject to tax under this Chapter shall not be subject to the imposition of such tax if conducted entirely by a public educational entity; governmental entity, except "proprietary activities" of municipalities as provided by regulation; or nonlicensed business.

C. Transactions which, if conducted by any other person, would produce gross income subject to the tax under this Chapter shall not be

subject to the tax if conducted entirely by a federally exempt organization or proprietary club with the following exceptions:

1. Transactions involving proprietary clubs and organizations exempt under 26 U.S.C. Section 501(c)(7), (8), and (9), where the gross revenue of the activity received from persons other than members and bona-fide guests of members is in an amount in excess of fifteen percent (15%) of total gross revenue, as prescribed by regulation. In the event this fifteen percent (15%) limit is exceeded, the entire gross income of such entity shall be subject to the applicable tax.

2. Gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512, including all statutory definitions and determinations, the rules and regulations of the Commissioner of Internal Revenue, and the administrative interpretations and guidelines.

3. Reserved

D. Except as may be provided elsewhere in this Chapter, transactions where customers are exempt organizations, proprietary clubs, public educational entities, governmental entities, or nonlicensed businesses shall be deemed taxable transactions for the purpose of the imposition of taxes under this Chapter, notwithstanding that property so acquired may in fact be resold or leased by the acquiring person to others. In the case of sales, rentals, leases, or licenses to proprietary clubs or exempt organizations, the vendor may be relieved from the responsibility for reporting and paying tax on such income only by obtaining from its vendee a verified statement that includes:

1. A statement that when the property so acquired is resold, rented, leased, or licensed, that the otherwise exempt vendee chooses, or is required to pay City privilege tax or an equivalent excise tax on its gross income from such transactions and does in fact file returns on same; and

2. The privilege license number of the otherwise exempt vendee; and

3. Such other information as the Tax Collector may require.

E. Franchisees or concessionaires operating businesses for or on behalf of any exempt organization, governmental entity, public educational entity, proprietary club, or nonlicensed business shall not be considered to be such an exempt organization, club, entity, or nonlicensed business, but shall be deemed to be a taxpayer subject to the provisions of this Chapter, except as provided in the definition of governmental entity, regarding urban mass transit.

F. Reserved.

SECTION 3-05-002-0280 EXCLUSION OF TRANSACTIONS WITH SPECIFIED GOVERNMENTAL AGENCIES:

Notwithstanding provisions contained elsewhere in this Chapter, "gross income" derived from transactions that would be deemed taxable, if conducted with or for other customers or consumers, shall be deemed exempt from the taxes imposed by this Chapter when the customer or consumer is (effective 07/01/01, Ordinance No. 2001-04):

A. Reserved.

B. Reserved.

C. Reserved.

D. Reserved.

E. Reserved.

(Ord. 2001-04, Amended, 01/16/2001; Ord. 2000-29, Amended, 11/21/2000)

SECTION 3-05-002-0285 RESERVED:

SECTION 3-05-002-0290 RESERVED:

DIVISION 3-05-003
LICENSING AND RECORDKEEPING

SECTIONS:

3-05-003-0300	**LICENSING REQUIREMENTS:**
3-05-003-0305	**SPECIAL LICENSING REQUIREMENTS:**
3-05-003-0310	**LICENSING; DURATION OF LICENSE, TRANSFERABILITY, DISPLAY:**
3-05-003-0315	**RESERVED:**
3-05-003-0320	**LICENSING; CANCELLATION, REVOCATION:**
3-05-003-0330	**OPERATING WITHOUT A LICENSE:**
3-05-003-0350	**RECORDKEEPING REQUIREMENTS:**
3-05-003-0360	**RECORDKEEPING; CLAIM OF EXCLUSION, EXEMPTION, DEDUCTION, OR CREDIT, DOCUMENTATION, LIABILITY:**
3-05-003-0370	**INADEQUATE OR UNSUITABLE RECORDS:**

SECTION 3-05-003-0300 LICENSING REQUIREMENTS:

A. The following persons shall make application to the Tax Collector for a privilege license, accompanied by a nonrefundable fee of twenty-five dollars ($25.00), and no person shall engage or continue in business or engage in such activities until he shall have such a license:

1. Every person desiring to engage or continue in business activities within the City upon which a privilege tax is imposed by this Chapter.

2. Reserved.

3. Reserved.

B. A person engaged in more than one activity subject to City privilege and use taxes at any one business location is not required to obtain a separate license for each activity; provided that, at the time such person makes application for a license, he shall list on such application each category of activity in which he is engaged. The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.

C. Limitation: The issuance of a privilege license by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.

(Ord. 1851, 01/03/95)

SECTION 3-05-003-0305 SPECIAL LICENSING REQUIREMENTS:

A. Partnerships: Application for a privilege license for a partnership engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaged in business as partners, limited or general, shall be in the name of the partnership.

B. Corporations: Application for a privilege license for a corporation engaging or continuing in business in the City shall provide, as a minimum, the names and addresses of both the chief executive officer and chief financial officer of the corporation. Licenses issued to persons engaged in business as corporations shall be in the name of the corporation.

C. Multiple Locations or Multiple Business Names: A person engaged in or conducting one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment.

D. Licenses Shall not be Issued Until all Legal Requirements are Met: It shall be a condition precedent to the issuance of a license that all statutes, ordinances, regulations, and other requirements affecting the public peace, health, and safety be complied with in total.

SECTION 3-05-003-0310 LICENSING; DURATION OF LICENSE, TRANSFERABILITY, DISPLAY:

A. Except as provided in Section 3-05-003-0320, the privilege license shall be valid until request for cancellation and/or surrender of the license by the licensee or expiration through cessation by the licensee of the business activity for which it was issued.

B. The privilege license shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.

C. Any licensee who permits his license to expire through cancellation as provided in Section 3-05-003-0320, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for license, shall be granted a new license as an original applicant and shall pay the current license fee. Any licensee who loses or misplaces his privilege license which is still in effect shall be charged the current license fee for each reissuance of a license.

D. Reserved.

E. Reserved.

F. Reserved.

G. Reserved.

H. Reserved.

I. Reserved.(Ord. No. 1593, Amended, 11/15/88)

J. Reserved.

SECTION 3-05-003-0315 RESERVED:

SECTION 3-05-003-0320 LICENSING; CANCELLATION, REVOCATION:

A. Cancellation: The Tax Collector shall be authorized to cancel the City privilege license of any licensee as "inactive" if the taxpayer, required to report monthly to the City, has neither filed any return nor remitted to the City any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.

B. Revocation: If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid to the City under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector shall be authorized to revoke the City privilege license of said licensee.

C. Notice and Hearing: The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the privilege license. If within twenty (20) days the licensee so notified requests a hearing, he shall be granted a hearing before the Tax Collector.

D. After cancellation or revocation of a taxpayer's license, the taxpayer shall not be relicensed until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with the provisions of this Chapter.

SECTION 3-05-003-0330 OPERATING WITHOUT A LICENSE:

It shall be unlawful for any person who is required by this Chapter to obtain a privilege license to engage in or continue in business within

the City without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.

SECTION 3-05-003-0350 RECORDKEEPING REQUIREMENTS:

A. It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day.

B. The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

1. Only for future reporting periods, and

2. Only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the City to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer. (Ord. 1924, 01/07/97)

SECTION 3-05-003-0360 RECORDKEEPING; CLAIM OF EXCLUSION, EXEMPTION, DEDUCTION, OR CREDIT, DOCUMENTATION, LIABILITY:

A. All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required either by this Chapter or regulation.

B. Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is to entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not

again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

SECTION 3-05-003-0370 INADEQUATE OR UNSUITABLE RECORDS:

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:

A. To provide such other records required by this Chapter or regulation; or

B. To correct or to reconstruct his records, to the satisfaction of the Tax Collector.

DIVISION 3-05-004
PRIVILEGE TAXES

SECTIONS:

3-05-004-0400	**IMPOSITION OF PRIVILEGE TAXES; PRESUMPTION:**
3-05-004-0405	**ADVERTISING:**
3-05-004-0410	**AMUSEMENTS, EXHIBITIONS, AND SIMILAR ACTIVITIES:**
3-05-004-0415	**CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS:**
3-05-004-0416	**CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:**
3-05-004-0417	**CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS:**
3-05-004-0418	**(RESERVED)**
3-05-004-0420	**FEED AT WHOLESALE:**
3-05-004-0425	**JOB PRINTING:**
3-05-004-0427	**MANUFACTURED BUILDINGS:**
3-05-004-0430	**TIMBERING AND OTHER EXTRACTION:**
3-05-004-0432	**MINING:**
3-05-004-0435	**PUBLISHING AND PERIODICALS DISTRIBUTION:**
3-05-004-0440	**RESERVED:**
3-05-004-0444	**HOTELS:**
3-05-004-0445	**RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:**
3-05-004-0446	**RESERVED:**
3-05-004-0447	**RESERVED:**
3-05-004-0450	**RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:**
3-05-004-0452	**RESERVED:**
3-05-004-0455	**RESTAURANTS AND BARS:**
3-05-004-0460	**RETAIL SALES; MEASURE OF TAX, BURDEN OF PROOF, EXCLUSIONS:**
3-05-004-0465	**RETAIL SALES; EXEMPTIONS:**
3-05-004-0470	**TELECOMMUNICATION SERVICES:**
3-05-004-0475	**TRANSPORTING FOR HIRE:**
3-05-004-0480	**UTILITY SERVICES:**
3-05-004-0485	**RESERVED:**
3-05-004-0490	**RESERVED:**

SECTION 3-05-004-0400 IMPOSITION OF PRIVILEGE TAXES; PRESUMPTION:

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following privilege taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

(1) A privilege tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.

(2) A privilege tax upon certain persons for the privilege of occupancy of real property, in accordance with the provisions of Section 3-05-004-0413.

(b) Taxes Imposed by this Chapter are in Addition to Others: Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(c) Presumption: For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income is subject to the tax until the contrary is established by the taxpayer.

(d) Limitation of Exemptions, Deductions, and Credits Allowed Against the Measure of Taxes Imposed by this Chapter: All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

SECTION 3-05-004-0405 ADVERTISING:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "local advertising", except the following:

(1) The advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly designated business entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

(2) The advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

(3) The advertising of a product which may only be purchased from an out-of-State supplier.

(4) Political advertising for United States presidential and vice presidential candidates only.

(5) Advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.

Advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

(b) Reserved.

(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0410 AMUSEMENTS, EXHIBITIONS, AND SIMILAR ACTIVITIES:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the following type or nature of businesses:

(1) Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dancehalls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

(2) Reserved.

(b) Reserved. (Ord. 1851, 01/03/95)

(2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0415 CONSTRUCTION CONTRACTING; CONSTRUCTION CONTRACTORS:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.

(1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by Arizona Revised Statutes Section 45-604.

(2) Reserved.

(3) Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 3-05-004-0427.

(b) Deductions and exemptions:

(1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

(2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty five percent (35%).

(3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(A) Section 3-05-004-0465, Subsections (g) and (p)

(B) (Reserved)

Shall be exempt or deductible, respectively, from the tax imposed by this section.

(4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 3-05-001-0110, that is deducted from the retail classification pursuant to Section 3-05-001-0465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, “Permanent Attachment” means at least one of the following:

(A) To be incorporated into real property.

(B) To become so affixed to real property that it becomes part of the real property.

(C) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section. (Ord. 2008 11/02/99)

(8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this section.

(c) "Subcontractor" means a construction contractor performing work for either:

(1) A construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City privilege license number.

(2) An owner-builder who has provided the subcontractor with a written declaration that:

(A) The owner-builder is improving the property for sale; and

(B) The owner-builder is liable for the tax for such construction contracting activity; and

(C) The owner-builder has provided the contractor his City privilege license number.

(3) A person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City privilege license number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above. (Ord. 1851, 01/03/95)

(2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999); (Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-004-0416 CONSTRUCTION CONTRACTING; SPECULATIVE BUILDERS:

(a) The tax shall be equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.

(1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

(2) "Improved real property" means any real property:

(A) Upon which a structure has been constructed; or

(B) Where improvements have been made to land containing no structure (such as paving or landscaping); or

(C) Which has been reconstructed as provided by regulation; or

(D) Where water, power, and streets have been constructed to the property line.

(3) "Sale of improved real property," includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the

term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.

(4) "Partially Improved Residential Real Property," as used in this Section means any improved real property, as defined in Subsection A.2. above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions:

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by regulation.

(2) Reserved.

(3) Reserved.

(4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in A.4. above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and

(C) The seller also:

(i) Maintains proper records of such transactions in a manner similar to the requirements provided in this Chapter relating to sales for resale; and

(ii) Retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) Is properly licensed with the City as a speculative builder and provides the City with a written declaration attached to the City privilege tax return where he claims the exclusion.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to deductions and tax credits. (Ord. 1669, 7-17-90)

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 3-05-004-0465, subsections (g) and (p)

(ii) (Reserved)

Shall be exempt or deductible, respectively, from the tax imposed by this section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 3-05-110, that is deducted from the retail classification pursuant to Section 3-05-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "Permanent Attachment" means at least on of the following:

(i) To be incorporated into real property.

(ii) To become so affixed to real property that it becomes part of the real property.

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(3) Tax Credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross

income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999); (Ord. No. 2006-16, Amended 06/06/2006)

(Ord. 2000-14, Amended, 06/06/2000); (Ord. 2008, Amended, 11/02/1999); (Ord. No. 2004-25, Amended, 01/10/05); (Ord. No. 2006-16, Amended 06/06/2006)

SECTION 3-05-004-0417 CONSTRUCTION CONTRACTING; OWNER-BUILDERS WHO ARE NOT SPECULATIVE BUILDERS:

(a) At the expiration of twenty four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of:

(1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection 3-05-004-0415 C.2.; and

(2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) the tax liability of this Section is subject to the following provisions , relating to exemptions, deductions and tax credits.

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 3-05-004-0465, subsections (g) and (p)

(ii) (Reserved)

Shall be exempt or deductible, respectively, from the tax imposed by this section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 3-05-004-0465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water, or land pollution shall be exempt from the tax imposed under this section.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair, or maintenance of income-producing capital equipment, as defined in Section 3-05-110, that is deducted from the retail classification pursuant to Section 3-5-465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project development or improvement shall be exempt from the tax imposed by this section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair,

maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, “Permanent Attachment” means at least on of the following:

(i) To be incorporated into real property.

(ii) To become so affixed to real property that it becomes part of the real property.

(iii) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

3) Tax Credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(c) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 3-05-005-0540, will be based on reportable date.

(d) Reserved.

(Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999); (Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-004-0418 (RESERVED)

SECTION 3-05-004-0420 FEED AT WHOLESALE:

(a) The tax rate shall be at an amount equal to one percent (1%) of the gross income from the business activity upon every person engaging or continuing in the business of the sale of feed, salt, vitamins, and other additives to feed, to persons engaged in the raising or feeding of livestock or poultry purchased or raised for slaughter, with no deduction for the income derived from the "resale" of such feed.

(b) The tax imposed by this Section shall not apply to:

(1) Out-of-City sales.

(2) Out-of-State sales.

SECTION 3-05-004-0425 JOB PRINTING:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b) The tax imposed by this Section shall not apply to:

(1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.

(2) out-of-City sales.

(3) out-of-State sales.

(4) job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 3-5-435(a) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.

(5) sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(6) (Reserved)

(Ord. 1851, 01/03/95; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98)
(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0427 MANUFACTURED BUILDINGS:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

(b) The sale of used manufactured buildings are not taxable.

(c) The sales price of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. The sale of such items are subject to the tax under Section 3-05-004-0460.

(d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability. (Ord. 1851, 01/03/95)

(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0430 TIMBERING AND OTHER EXTRACTION:

(a) The tax rate shall be an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:

(1) Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.

(2) Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

(b) The rate specified in subsection A. above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports product, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when

transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(d) The tax prescribed by this Section shall not apply to the felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use. (Ord. 1851, 01/03/95)

(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0432 MINING:

(a) The tax rate shall be at an amount equal to one tenth of one percent (.1%), not to exceed one tenth of one percent, of the gross income from the business activity upon every person engaging or continuing in the business of mining, smelting, or producing for sale, profit or commercial use any copper, gold, silver, or other mineral product, compound, or combination of mineral products; but not including the extraction, removal, or production of sand, gravel, or rock from the ground for sale, profit, or commercial use.

(b) The rate specified in Subsection A. above shall be applied to the value of the entire product mined, smelted or produced for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out-of-State and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section. (Ord. 1851, 01/03/95)

SECTION 3-05-004-0435 PUBLISHING AND PERIODICALS DISTRIBUTION:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:

(1) publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 3-5-405. In cases where the location of publication is both within and without this State, gross

income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

(2) distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(b) "Location of Publication" is determined by:

(1) location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or

(2) location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.

(c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.

(d) "Circulation", for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(e) Allocation of taxes between cities and towns. In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the City shall include:

(1) that portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus

(2) only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(f) The tax imposed by this Section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health

care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(Ord. 1593, 12/06/88; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98)
(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0440 RESERVED:

SECTION 3-05-004-0444 HOTELS:

The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or space furnished to any:

(a) Reserved.

(b) Transient. "Transient" means any person who, for any period of not more than twenty-nine (29) (Ord. 1979, 10/06/98) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel for which lodging or use of lodging space a charge is made. (Ord. 1669, 7-17-90)

(c) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this section.

(Ord. No. 1979, Amended, 10/06/98)
(Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999)

SECTION 3-05-004-0445 RENTAL, LEASING, AND LICENSING FOR USE OF REAL PROPERTY:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:

(1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 3-5-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) (Reserved)

(g) (Reserved)

(h) The tax prescribed by this Section shall not include gross income from the rental, leasing, or licensing of lodging or lodging space to an individual who resides therein.

(i) (Reserved)

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 3-5-444 of this code.

(k) (Reserved)

(l) (Reserved)

(m) (Reserved)

(n) Notwithstanding the provisions of Section 3-5-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this section.

(p) Charges by an hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or any other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving “personal care” or “directed care” by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

(Ord. 1851, 01/03/95; Ord. 1979, 10/06/98); (Ord. No. 1989, Amended, 10/06/98); Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999; (Ord. No. 2004-25, Amended, 01/10/05)(Ord. 2006-16, Amended, 06/06/2006)

SECTION 3-05-004-0446 RESERVED:

SECTION 3-05-004-0447 RESERVED:

SECTION 3-05-004-0450 RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

(b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of

twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

(1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.

(2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.

(3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 3-5-410, or to a radio station, television station, or subscription television system.

(4) rental, leasing, or licensing for use of the following:

(A) prosthetics.

(B) income-producing capital equipment.

(C) mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

(5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training,

job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

(7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.

(8) the gross income from coin-operated washing, drying, and dry cleaning machines, or from coin-operated car washing machines. This exemption shall not apply to suppliers or distributors renting, leasing, or licensing for use of such equipment to persons engaged in the operation of coin-operated washing, drying, dry cleaning, or car washing establishments.

(9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.

(10) Rental, leasing and licensing for use of an alternative fuel vehicle as defined in A.R.S. Section 43-1086 if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

Ord. 1851, 01/03/95; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98; Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999; Ord. No. 2004-25, Amended, 01/10/05

SECTION 3-05-004-0452 RESERVED:

SECTION 3-05-004-0455 RESTAURANTS AND BARS:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

(b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises, shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.

(c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(d)The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-1310.01(a)(48), that serves the food and beverages to its passengers, without additional charge, for consumption in flight.

(e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.

(f) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(Ord. 1593, 11-15-88; Ord. 1979, 10/06/98)(Ord. No. 1593, Amended, 11/15/88; Ord. No. 1979, Amended, 10/06/98)
(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0460 RETAIL SALES; MEASURE OF TAX, BURDEN OF PROOF, EXCLUSIONS:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

(b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.

(c) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:

(1) Sales of stocks, bonds, options, or other similar materials.

(2) Sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.

(3) Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(4) Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.

(5) Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(d) Reserved.

(e) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.

(f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location. (Ord. 1924, 01/07/97)

(g) Retail sales of prepaid calling calls or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

(Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999)

SECTION 3-05-004-0465 RETAIL SALES; EXEMPTIONS:

Income derived from the following sources is exempt from the tax imposed by Section 3-5-460:

(a) sales of tangible personal property to a person regularly engaged in the business of selling such property.

(b) out-of-City sales or out-of-State sales.

(c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.

(d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.

(e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.

(f) sales of prosthetics.

(g) sales of income-producing capital equipment.

(h) sales of rental equipment and rental supplies.

(i) sales of mining and metallurgical supplies.

(j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.

(l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.

(m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.

(n) Sales made directly to the Federal Government to the extent of:

(1) One hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer (effective 07/01/01, Ordinance No. 2001-04).

(2) Fifty percent (50%) of the gross income derived from retail sales by any other person (effective 07/01/01, Ordinance No. 2001-04).

(o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 3-5-455 or the equivalent excise tax upon such income.

(p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

(q) sales of food for home consumption.

(r) Reserved.

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Reserved.

(s) sales of groundwater measuring devices required by A.R.S. Section 45-604.

(t) Reserved.

(u) sales of aircraft acquired for use outside the state, as prescribed by Regulation.

(v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) Reserved.

(x) Reserved.

(y) Reserved.

(z) Reserved.

(aa) the sale of tangible personal property used in remediation contracting as defined in Section 3-5-100 and Regulation 3-5-100.5.

(bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(1) printed or photographic materials.

(2) electronic or digital media materials.

(cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)(50), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 3-5-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

(ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 3-5-470 is considered to be a sale for resale in the regular course of business.

(ff) sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

(gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 3-5-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501 (C) (3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, “Accessories” means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) Reserved.

(ll) Sales of motor vehicles that use alternative fuel as defined in A.R.S. Section 43-1086 if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

(Ord. 1924, 01/07/97; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98) (Ord. 2000-29, Amended, 11/21/00) (Ord. 2001-04, Amended, 01/16/2001; Ord. 2000-29, Amended, 11/21/2000; Ord. 2008, Amended, 11/02/1999); (Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-004-0470 TELECOMMUNICATION SERVICES:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.

(1) Telecommunication services shall include:

(A) Two-way voice, sound and/or video communication over a communications channel.

(B) One-way voice, sound, and/or video transmission or relay over a communications channel.

(C) Facsimile transmissions.

(D) Providing relay or repeater service.

(E) Providing computer interface services over a communications channel.

(F) Time-sharing activities with a computer accomplished through the use of a communications channel.

(2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:

(A) All fees for connection to a telecommunication system.

(B) Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.

(C) Fees charged for access to or subscription to or membership in a telecommunication system or network.

(D) Charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.

(b) Resale Telecommunication Services. Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(c) Interstate Transmissions. Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

(d) (Reserved)

(e) However, gross income from the providing of telecommunication services by a cable television system, as such system is defined in Arizona Revised Statutes Section 9-505, shall be exempt from the tax imposed by this Section.

(f) Prepaid calling cards. Telecommunications services purchased with a prepaid calling card that are taxable under Section 3-05-004-0460 are exempt from the tax imposed under this section.

(g) Internet access services. The gross income subject to tax under this section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:

(1) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(2) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

(Ord. 2000-14, Amended, 06/06/2000; Ord. 2008, Amended, 11/02/1999); (Ord. No. 2004-25, Amended, 01/10/05); (Ord. No. 2006-16, Amended 06/06/2006)

SECTION 3-05-004-0475 TRANSPORTING FOR HIRE:

The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State.

(a) Reserved.

(b) Transporting of oil or natural or artificial gas through pipe or conduit.

(c) Transporting of property by aircraft.

(d) Transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article III, Chapter 4, Title 42, Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:

(1) Gross income subject to the tax imposed by Article VI, Chapter 9, Title 28, Arizona Revised Statutes.

(2) Gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.

(3) Gross income derived from the transporting of persons or property by motor vehicle to a point outside the City.

(4) Gross income derived from the towing of automobiles, trucks, and other motor vehicles or equipment by rental agencies, storage garages, service stations, parking lots, or other similar persons.

(e) Transporting of persons or property by railroad shall not be subject to the tax.

(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-004-0480 UTILITY SERVICES:

(a) The tax rate shall be at an amount equal to one and six hundred and one thousandths percent (1.601%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

(1) consumers or ratepayers who reside within the City.

(2) consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 3-5-460 and 3-5-465, and not considered gross income taxable under this Section.

(c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d) (Reserved)

(e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(g) The tax imposed by this Section shall not apply to:

(1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

(2) revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

(h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

(Ord. 1924, 01/07/97; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98); (Ord. 2000-14, Amended, 06/06/2000); (Ord. 2006-16, Amended 06/06/2006)

SECTION 3-05-004-0485 RESERVED:

Reserved.

SECTION 3-05-004-0490 RESERVED:

DIVISION 3-05-005
ADMINISTRATION

SECTIONS:

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SECTION 3-05-005-0500 ADMINISTRATION OF THIS CHAPTER; RULE MAKING:

A. The administration of this Chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector.

B. The Tax Collector shall prescribe the forms and procedures necessary for the administration of the taxes imposed by this Chapter.

C. Except as provided in this Section, no rule or regulation shall be adopted until approved by formal action of the City Council.

D. Reserved (Ord. 1924, 01/07/97)

E. The Unified Audit Committee shall publish uniform guidelines that interpret the Model City Tax Code and that apply to all cities and towns that have adopted the Model City Tax Code as provided by A.R.S. Section 42-6005.

(1) Prior to finalization of Uniform Guidelines that interpret the Model City Tax Code, the Unified Audit Committee shall disseminate draft guidelines for public comment.

(2) Pursuant to A.R.S. Section 42-6005(D), when the State statutes and Model City Tax Code are the same and where the Arizona Department of Revenue has written guidance, the Department's interpretation is binding on cities and towns.

(Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-005-0510 DIVULGING OF INFORMATION PROHIBITED; EXCEPTIONS ALLOWING DISCLOSURE:

A. Except as specifically provided, it shall be unlawful for any official or employee of the City to make known information obtained pursuant to this Chapter concerning the business financial affairs or operations of any person.

B. The City Council may authorize an examination of any return or audit of a specific taxpayer made pursuant to this Chapter by authorized agents of the Federal government, the State of Arizona, or any political subdivisions.

C. The Tax Collector may provide to an Arizona county, city, or town any information concerning any taxes imposed in this Chapter relative to the taxing ordinances of that county, city, or town.

D. Successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees, if directly interested, may be given information by the Tax Collector as to the items included in the measure and amounts of any unpaid tax, interest, and penalties required to be paid.

E. Upon a written direction by the City Attorney or other legal advisor to the City designated by the City Council, officials or employees of the City may divulge the amount and source of income, profits, leases, or expenditures disclosed in any return or report, and the amount of such delinquent and unpaid tax, penalty, or interest, to a private collection agency having a written collection agreement with the City.

F. The Tax Collector shall provide information to appropriate representatives of any Arizona city or town to comply with the provisions of Arizona Revised Statutes Section 42-6003, A.R.S. Section 42-6005 and A.R.S. Section 42-6056.

G. The Tax Collector may provide information to authorized agents of any other Arizona governmental agency involving the allocation of taxes imposed by Section 3-05-004-0435 upon publishing and distribution of periodicals.

H. The Tax Collector shall provide information regarding the enforcement and collection of taxes imposed by this Chapter to any governmental agency with which the City has an agreement.

(Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-005-0515 DUTIES OF THE TAXPAYER PROBLEM RESOLUTION OFFICER:

A. The Taxpayer Problem Resolution Officer shall assist taxpayers in:

1. Obtaining easily understandable tax information and information on audits, corrections and appeals procedures of the City.

2. Answering questions regarding preparing and filing the returns required under this Chapter.

3. Locating documents filed with or payments submitted to the Tax Collector by the taxpayer.

B. The Taxpayer Problem Resolution Officer shall also:

1. Receive and evaluate complaints of improper, abusive or inefficient service by the Tax Collector or any of his designees, employees, or agents and recommend to the City Manager or, for a city without a city manager, the chief administrative officer appropriate action to correct such service.

2. Identify policies and practices of the Tax Collector or any of his designees, employees, or agents that might be barriers to the equitable treatment of taxpayers and recommend alternatives to the City Manager or, for a city without a city manager, the chief administrative officer.

3. Provide expeditious service to taxpayers whose problems are not resolved through normal channels.

4. Negotiate with the Tax Collector, his designees, employees, or agents to resolve the most complex and sensitive taxpayer problems.

5. Take action to stop or prohibit the tax collector from taking an action against a taxpayer.

6. Participate and present taxpayers' interests and concerns in meetings formulating the City's policies and procedures under and interpretation of this Chapter.

7. Compile data each year on the number and type of taxpayer complaints and evaluate the actions taken to resolve those complaints.

8. Survey taxpayers each year to obtain their evaluation of the quality of service provided by the Tax Collector, his designees, employees, and agents.

9. Perform other functions which relate to taxpayer assistance as prescribed by the City Manager or, for a city without a city manager, the chief administrative officer.

C. Actions taken by the Taxpayer Problem Resolution Officer may be reviewed and/or modified only by the City Manager or, for a city without a city manager, the chief administrative officer upon request of the Tax Collector or a taxpayer.

D. The Mayor and Council of the City shall be provided with a report quarterly which identifies:

1. Any complaints of improper, abusive or inefficient service received by the Taxpayer Problem Resolution Officer since the date of the last report.

2. Any recommendations made, action taken or surveys obtained by the Taxpayer Problem Resolution Officer pursuant to subsection B.1.-9., above, since the date of the last report. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0516 TAXPAYER ASSISTANCE ORDERS:

A. The Taxpayer Problem Resolution Officer, with or without a formal written request from a taxpayer, may issue a taxpayer assistance order that suspends or stays an action or proposed action by the Tax Collector if, in the problem resolution officer's

determination, a taxpayer is suffering or will suffer a significant hardship due to the manner in which the Tax Collector is administering the tax laws.

B. A taxpayer assistance order may require the Tax Collector to release any lien perfected under this Chapter, or cease any action or refrain from taking any action to enforce against the taxpayer any section of this Chapter pending resolution of the issue giving rise to the taxpayer assistance order.

C. The Taxpayer Problem Resolution Officer, City Manager or, for a city without a city manager, the chief administrative officer may modify, reverse or rescind a taxpayer assistance order. A taxpayer assistance order is binding on the Tax Collector until it is reversed or rescinded.

D. The running of the applicable statute of limitations for any action that is the subject of a taxpayer assistance order is suspended from the date the taxpayer applies for the order or the date the order is issued, whichever is earlier, until the order's expiration date, modification date or recision date, if any. Interest that would otherwise accrue on an outstanding tax obligation is not affected by the issuance of a taxpayer assistance order.

E. A taxpayer assistance order may not be used:

1. To contest the merits of a tax liability.

2. To substitute for informal protest procedures or administrative or judicial proceedings to review a deficiency assessment, collection action or denial of a refund claim. (Ord. 1924, 01.07/97)

SECTION 3-05-005-0517 BASIS FOR EVALUATING EMPLOYEE PERFORMANCE:

A. The Tax Collector shall solicit evaluations from taxpayers and include such evaluations in the performance appraisals of his employees, where applicable.

B. The Tax Collector shall not evaluate an employee on the basis of taxes assessed or collected by that employee. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0520 REPORTING AND PAYMENT OF TAX:

A. Returns: The returns required under this Chapter shall be made upon forms prescribed or approved by the Tax Collector, and shall be considered filed only when the accuracy of the return has been attested to, by signature upon the form, by an authorized agent of

the taxpayer, and when such form has been received by the Tax Collector.

B. Payment: If payment is made in any form other than United States legal tender, the tax obligation shall not be satisfied until the payment has been honored in funds.

C. Requirement of Security: If a taxpayer has remitted payment in the form of a check or other form of draw upon a bank or third party and such remittance has not been honored in funds, the Tax Collector may demand security for future payments.

D. Method of Reporting: Each taxpayer shall elect to report on either a cash receipts basis or an accrual basis and shall indicate the choice on the privilege license application. A taxpayer shall not change his reporting method without receiving prior written approval by the Tax Collector.

1. Taxpayers must report all gross income subject to the tax using the same basis of reporting.

2. Taxes imposed upon construction contracting shall be reported as follows:

a. Construction contractors shall report on either a progressive billing ("accrual") basis or cash receipts basis.

b. Speculative builders shall report the gross income derived from sale of improved real property at close of escrow or at transfer of title or possession, whichever occurs earlier.

c. Owner-builders who are not speculative builders shall report taxable amounts as provided in Section 3-05-004-0417.

SECTION 3-05-005-0530 WHEN TAX DUE; WHEN DELINQUENT; VERIFICATION OF RETURN; EXTENSIONS:

A. Except as provided elsewhere in this Section, the taxes shall be due and payable monthly on or before the twentieth (20th) day of the month next succeeding the month in which the tax accrues.

1. Quarterly returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City privilege and use tax liability on taxable gross income in excess of five thousand dollars ($5,000.00) but less than fifty thousand dollars ($50,000.00) to file returns on a calendar-quarterly basis.

The taxes for each calendar quarter shall be due and payable on or before the twentieth (20th) day of the month next succeeding the end of each calendar quarter.

2. Annual returns. The Tax Collector may authorize a taxpayer whose reporting history indicates an estimated annual City privilege and use tax liability on taxable gross income of not more than five thousand dollars ($5,000.00) to file returns for such taxes on a calendar-annual basis. The taxes for each calendar year shall be due and payable on or before January 20 of the following year.

B. Special Requirements of Taxpayers Filing Quarterly or Annual Returns: No taxpayer may report on a quarterly or annual basis until he has established, to the Tax Collector's satisfaction, six (6) months reporting history. It is the taxpayer's responsibility to notify the Tax Collector and increase his reporting frequency (to quarterly or monthly as applicable) when his taxable income or tax due exceeds the maximum limits for his current reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Tax Collector, is sufficient cause for the Tax Collector to deny future filings by the taxpayer on a quarterly or annual basis.

C. Delinquency Date: Except as provided in subsection D. below, all returns and remittances received within the Tax Collector's office on or before the last business day of the month when due shall be regarded as timely filed. The start of business of the first business day following the month when due shall be the delinquency date. It shall be the taxpayer's responsibility to cause his return and remittance to be timely received. Mailing the return or remittance on or before the due date or delinquency date does not relieve the taxpayer of the responsibility of causing his return or remittance to be received by the last business day of the month when due.

D. Jeopardy Reporting: If the Tax Collector determines that the collection of any tax due to the City is in jeopardy, the Tax Collector may direct the taxpayer to file his return and remit the tax on a weekly, daily, or transaction-by-transaction basis. Such return and remittance shall be due upon the date fixed by the Tax Collector, and the "delinquency date" shall be the following day.

E. Extensions: The Tax Collector may extend the time for filing a return, for good cause shown, and only when requested in writing and received by the Tax Collector prior to the tax due date. However, the time for filing such return shall not be extended beyond the last business day of the month next succeeding the due date of such return. In such cases, only the penalties for late filing and late payment may be waived by the Tax Collector for filing and payment within the extension period. Notwithstanding

the granting of an extension, the interest payable for late payment of taxes shall be paid for the period commencing upon the original delinquency date and ending on the date the tax is paid. The interest may not be waived by the Tax Collector. (Ord. 1851, 01/03/95)

SECTION 3-05-005-0540 INTEREST AND CIVIL PENALTIES:

A. Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax at the rate of one percent (1%) per month, until paid. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 3-05-005-0570.

B. In addition to interest assessed under subsection A. above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

1. A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to wilful neglect. This penalty shall not exceed twenty five percent (25%) of the tax due.

2. A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax, unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to wilful neglect. If the taxpayer is also subject to a penalty under subsection B.1. above for the same period, the total penalties under subsection B.1.and this subsection shall not exceed twenty five percent (25%)of the tax due.

3. A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty five percent (25%) of the tax, unless the taxpayer shows that the failure is due to reasonable cause and not due to wilful neglect or the Tax Collector agrees to a longer time period.

4. If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence, but without regard for intent to defraud, the taxpayer shall pay a penalty of ten

percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under subsection B.1. or B.2. above for the same tax period, the total penalties imposed under subsection B.1., B.2. and this subsection shall not exceed twenty-five percent (25%) of the tax due.

5. If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

C. Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

D. If, following an audit, penalties attributable to the audit period are to be assessed pursuant to subsection B.1. or B.2. above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer, and the Tax Collector never the less decides to assess penalties pursuant to subsection B.1. and B.2. above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector's determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause.

E. The assessment of the penalties prescribed by subsection B.3. through B.5. above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon subsection B.3., B.4., or B.5. above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances.

F. The Tax Collector shall waive or adjust penalties imposed by subsections B.1. and B.2. above upon a finding that:

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner; or

2. The amount of the penalty is greatly disproportionate to the amount of the tax; or

3. The failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question:

a. The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

b. Erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

c. Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

d. Unavoidable absence of the taxpayer immediately prior to the due date.

e. Destruction, by fire or other casualty, of the taxpayer's place of business or records.

f. Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

g. The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.

h. The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter and, after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.

i. The taxpayer has never been audited by a city for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.

j. The taxpayer can provide some public record (court case, report in a periodical, professional journal or publication, etc.) stating that the transaction is not subject to tax.

k. The Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.

A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

G. No request for waiver of penalty under subsection F. above may be granted unless written request for waiver is received by the Tax Collector within forty five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under subsection F. above may appeal under the provisions of Section 3-05-005-0570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty five (45) days of the taxpayer's receipt of notice by the City that waiver has been denied.

H. For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City.

I. For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:

1. The taxpayer's failure to maintain records in accordance with Division 003 of this Chapter.

2. Repeated failures to timely file returns; or

3. Gross ignorance of the law. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0541 ERRONEOUS ADVICE OR MISLEADING STATEMENTS BY THE TAX COLLECTOR; ABATEMENT OF PENALTIES AND INTEREST; DEFINITION:

A. Notwithstanding Section 3-05-005-0540 A., no interest or penalty may be assessed on an amount assessed as a deficiency if either:

1. The deficiency assessed is directly attributable to erroneous written advice furnished to the taxpayer by an employee of the City acting in an official capacity in response to a specific request from the taxpayer and not from the taxpayer's failure to provide adequate or accurate information.

2. All of the following are true:

a. A tax return form prepared by the Tax Collector contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this Chapter.

b. The taxpayer reasonably relies on the statement.

c. The taxpayer's underpayment directly results from this reliance.

B. Each employee of the Tax Collector, at the time any oral advice is given to any person, shall inform the person that the Tax Collector is not bound by such oral advice.

C. For purposes of this Section "tax return form" includes the instructions that the Tax Collector prepares for use with the tax return form. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0542 PROSPECTIVE APPLICATION OF NEW LAW OR INTERPRETATION OR APPLICATION OF LAW

A. Unless expressly authorized by law, the tax collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.

B. If the tax collector adopts a new interpretation or application of any provision of this chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:

(1) The change in interpretation or application applies prospectively only unless it is favorable to taxpayers.

(2) The tax collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.

C. For purposes of subsection Subsection B, “New Interpretation or Application” includes policies and procedures which differ from established interpretations of this chapter.

D. Tax liabilities, penalties, and interest paid before a new interpretation or application of a provision of this chapter shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to the tax collector that all such amounts will be refunded to the person who paid an added charge to cover the tax.

(Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-005-0545 DEFICIENCIES; WHEN INACCURATE RETURN IS FILED; WHEN NO RETURN IS FILED; ESTIMATES:

A. If the taxpayer has failed to file a return, or if the Tax Collector is not satisfied with the return and payment of the amount of tax required, and additional taxes are determined by the Tax Collector to be due, the Tax Collector shall deliver written notice of his determination of a deficiency to the taxpayer, and such deficiency, plus penalties and interest, shall be due and payable forty five (45) days after receipt of the notice and

demand. Such additional taxes shall bear any applicable civil penalties and interest as provided in Section 3-05-005-0540, and every such notice of a determination of an additional amount due shall be assessed within the limitation period provided in Section 3-05-005-0550.

1. When a return is filed. If the Tax Collector is not satisfied with a return and payment of the amount of tax required by this Chapter to be paid to the City, he may examine the return or examine the records of the taxpayer, and redetermine the amount of tax, penalties, and interest required to be paid, for any periods available to the Tax Collector under Section 3-05-005-0550, based upon the information contained in the return or records or based upon any information within his possession or which comes into his possession.

2. When no return is filed. If any person fails to make a return, the Tax Collector may make an estimate of the amount of tax due under this Chapter and compute any applicable penalties and interest due, based upon any information within his possession or which comes into his possession.

SECTION 3-05-005-0546 CLOSING AGREEMENTS IN CASES OF EXTENSIVE TAXPAYER MISUNDERSTANDING OR MISAPPLICATION; CITY ATTORNEY APPROVAL; RULES:

A. If the Tax Collector determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this Chapter it may enter into closing agreements with those taxpayers under the following terms and conditions:

1. Extensive misunderstanding or misapplication of the tax laws occurs if the Tax Collector determines that more than sixty percent (60%) of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws.

2. The Tax Collector shall publicly declare the nature of the possible misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misapplication and the definition of the affected class.

3. If, after the public hearing, the Tax Collector determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation in the City and through the next two model city tax code updates.

4. A closing agreement under this Section may abate some or all of the penalties, interest and tax that taxpayers have failed to remit, or the agreement may provide for the prospective treatment of the matter as to the class of affected taxpayers. All taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods.

5. Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into an equivalent closing agreement providing for a pro rata credit or refund of their taxes previously paid.

6. The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to adhere to such a requirement, the closing agreement is voidable by the Tax Collector and he may assess the taxpayer for the delinquent taxes. The Tax Collector may issue such a proposed assessment within six months after the date that he declares that closing agreement void or within the period prescribed by section 3-05-005-0550 of this Chapter.

B. Before entering into closing agreements pursuant to this Section, the Tax Collector shall secure such approval as required by charter, ordinance or administrative regulation.

C. After a closing agreement has been signed pursuant to this Section, it is final and conclusive except on a showing of fraud, malfeasance or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed upon or the agreement shall not be modified by any officer, employee or agent of the City. The agreement or any determination, assessment, collection, payment abatement, refund or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action or proceeding.

D. The Tax Collector shall report in writing its activities under this Section to the Mayor and City Council on or before February 1 of each year. (Ord. 1924, 01/07/97)

SECTION 305-005-0550 LIMITATION PERIODS:

A. Limitation when a return has been filed:

1. Except as provided elsewhere in this Section, the Tax Collector may assess additional tax due at any time within four (4) years after the date on which the return is required to be filed, or within four (4) years after the date on which the return is filed, whichever period expires later.

2. However, if a taxpayer does not report an amount properly reportable which is in excess of twenty five percent (25%) of the taxable amount stated on the return, the Tax Collector may assess additional tax due at any time within six (6) years after the date on which the return was filed.

3. Any delay in commencement or completion of any examination by the Tax Collector, which is requested or agreed to in writing by the taxpayer, shall be excluded from the computation of any limitation period prescribed by this Section, and the Tax Collector shall be entitled to make a determination for taxes due without exclusion of any such time period, and any limitation period shall be extended for a length of time equivalent to the period of the agreed upon delay.

4. Any assessment of additional tax due by the Tax Collector shall be deemed to have been made by mailing a copy of a notice of audit assessment by certified mail to the taxpayer's address of record with the Tax Collector or by personal delivery of a copy of a notice of audit assessment to the taxpayer or his authorized agent.

B. Suspension of Limitation Period: The limitation period on assessment shall be suspended for any period:

1. The assets of the taxpayer are in the control or custody of the court in any proceeding before any court of jurisdiction within the United States of America, and for one hundred eighty (180) calendar days thereafter; or

2. Which the taxpayer and the Tax Collector agree upon in writing.

C. When No Return Filed; Fraudulent Return: In the case of a fraudulent return with the intent to evade tax, or the failure or refusal to file a return for any month, the Tax Collector may assess the amount of taxes payable for that month at any time, without any reliance by the taxpayer upon any time limitation provided elsewhere in this Chapter.

D. Special Provisions Relating to Owner-Builders: The limitation for an owner-builder subject to the tax as prescribed in Section 3-05-004-0417 shall be based upon the date such tax liability is reportable or was reported, as provided in Section 3-05-004-0417. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0553 EXAMINATION OF TAXPAYER RECORDS; JOINT AUDITS.

A. Waiver of joint audit. A taxpayer that does not authorize a joint audit to be conducted for a tax jurisdiction is subject to audit by

that tax jurisdiction at any time subject to the limitation provisions provided in Section 03-05-005-0550.

B. Tax jurisdiction acceptance of joint audit. If the Arizona Department of Revenue intends to conduct an audit of a taxpayer, the cities or towns for whom a joint audit is being conducted may accept the audit by the Arizona Department of Revenue or may elect to have a representative participate, provided that no more than two city or town representatives in total may participate.

(1) If a city or town does not accept the audit as a joint audit, the city or town may not conduct an audit of the taxpayer for forty-two months from the close of the last tax period covered by the audit unless an exception applies to that taxpayer pursuant to A.R.S. Section 42-2059.

(2) If a joint audit is performed by a city or town, the Arizona Department of Revenue is not prohibited from conducting an audit that does not violate the provisions of A.R.S. Section 42-2059.

(Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-005-0555 TAX COLLECTOR MAY EXAMINE BOOKS AND OTHER RECORDS; FAILURE TO PROVIDE RECORDS:

A. The Tax Collector may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Chapter, for any periods available to him under Section 3-05-005-0550.

B. In order to perform any examination authorized by this Chapter, the Tax Collector may issue an administrative request for the attendance of witnesses or for the production of documents, as provided by regulation.

C. If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information the Tax Collector may, in addition to penalties prescribed under Section 3-05-005-0540, impose an additional penalty of twenty five percent (25%) of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure is due to reasonable cause and not due to wilful neglect.

D. The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.

E. The fact that the taxpayer has not maintained or provided such books and records which the Tax Collector considers necessary to determine the tax liability of any person does not preclude the Tax Collector from making any assessment. In such cases, the Tax Collector is authorized to use estimates, projections, or samplings, to determine the correct tax. The provisions of Section 3-05-005-0545 B., concerning estimates, shall apply.

F. The Tax Collector shall give the taxpayer written notice of his determination of a deficiency by certified mail to the taxpayer's address of record with the Tax Collector, and the tax deficiency, plus interest and penalties, is final forty five (45) days from the date of receipt of the notice by the taxpayer, unless an appeal is taken pursuant to the provisions of Section 3-05-005-0570 through 3-05-005-0575. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0556 NO ADDITIONAL AUDITS OR PROPOSED ASSESSMENTS; EXCEPTIONS:

(a) Once the Tax Collector completes an examination authorized by Section 3-5-555 and a written notice of the determination of a deficiency has been issued to the taxpayer pursuant to Section 3-5-545(a) or 3-5-555(f), the taxpayer's liability for the time period subjected to the examination is fixed and determined, and no additional audit or examination may be conducted by the Tax Collector with respect to such time period except under the following circumstances.

(1) if a taxpayer files a claim for refund under Section 3-5-560, the Tax Collector may conduct an examination limited to the issues presented in the refund claim.

(2) if the taxpayer failed to disclose material information during the initial examination, falsified books or records, or otherwise engaged in conduct which prevented the Tax Collector from conducting an accurate examination. The applicability of this subsection, and the Tax Collector's right to proceed thereunder, may be raised and contested by the taxpayer in a subsequent administrative review brought pursuant to Section 3-5-570.

(b) An audit or examination conducted by any other taxing jurisdiction will not preclude the Tax Collector from conducting an audit or examination for the same time period.

(c) If the Tax Collector issues a notice of deficiency pursuant to either Section 3-5-545(a) or Section 3-5-555(f), the Tax Collector may not increase the proposed deficiency except in one or more of the following circumstances:

(1) the taxpayer made a material misrepresentation of fact.

(2) the taxpayer failed to disclose a material fact.

(3) the Tax Collector submitted a written request for information prior to issuance of the assessment, and the taxpayer, despite possessing or having access to such information, failed to provide it within 60 days as required by Section 3-5-555(c).

(4) after issuing the notice of determination of deficiency but before the deficiency became final, the Arizona Tax Court, Court of Appeals or Supreme Court issued a decision, the applicability of which causes the deficiency initially proposed to increase.

(Ord. 1924, 01/07/97; Ord. 1979, 10/06/98); (Ord. No. 1979, Amended, 10/06/98)

SECTION 3-05-005-0560 ERRONEOUS PAYMENT OF TAX; CREDITS AND REFUNDS; LIMITATIONS:

A. The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be cancelled from the accounts of the City if no timely filed request for credit or refund is made by the taxpayer claiming same within one year following the date of determination and notice by the Tax Collector of the excess payment.

B. No credit shall be allowed or refund paid except under one of the following conditions:

1. As provided in Section 3-05-005-0565.

2. Upon examination of filed returns for any period not excluded by Section 3-05-005-0550, and not to exceed the tax, penalty, or interest actually paid with such returns.

3. Upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 3-05-005-0550. In the case of an examination performed at the taxpayer's request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest taxes actually paid within the limitation period provided in Section 3-05-005-0550, such period to be calculated from the date of receipt of the taxpayer's request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits.

4. Upon the taxpayer's submission of a written claim for refund of any excess taxes, penalties, or interest paid to the City by the taxpayer. When a written claim for refund is submitted, credit shall be allowed or refund paid only for those excess taxes, penalties, or interest paid within the limitation period provided in Section 3-05-005-0550, such period to be calculated from the date the Tax Collector received the taxpayer's written refund claim. A refund claim submitted by a taxpayer pursuant to this subsection must identify the specific grounds upon which the claim is based, the dollar amount of the refund requested, the specific tax periods involved, and the name, address and tax identification number of the claimant.

C. No credit will be allowed or refund paid where it appears that the taxpayer has collected, by separately stated itemization, the amount of the tax, except that a credit or refund will be allowed in such case if the taxpayer can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this Section will be remitted to those customers within sixty (60) days of receipt of the refund.

D. Interest shall be allowed at the rate set forth in Section 3-05-005-0540 A. on any credit or refund authorized pursuant to the provisions of this Chapter. Interest shall be calculated from the time of the claim made to the City by the taxpayer.

E. The determination of the Tax Collector that no refund or credit is to be paid or allowed pursuant to this Section may be appealed by the taxpayer under the provisions of Section 3-05-005-0570.

F. Any refund paid under the provisions of this Section shall be paid from the privilege tax revenue accounts. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0565 PAYMENT OF TAX TO THE INCORRECT ARIZONA CITY OR TOWN:

A. When it is determined that taxes have been reported and paid to the City by the wrong taxpayer, any taxes erroneously paid shall be transferred by the City to the privilege tax account of the person who actually owes and should have paid such taxes, provided that the City receives an assignemnt and waiver signed by both the perison who actually paid the tax and the person who should have paid the tax.

B. An assignment and waiver provided under this Section, must:

1. Identify the name and City privilege license number of the person who erroneously paid the tax and the person who should hve paid the tax.

2. Provide that the person who erroneously paid the tax waives any right such person may have to a refund of the taxes erroneously paid.

3. Authorize the City Treasurer to transfer the erroneously paid tax to the privilege tax account of the person who should have paid the tax.

C. When it is determined that taxes have been reported and paid to the wrong Arizona city or town, such taxes shall be remitted to the correct city or town, provides that the city or town to whom the taxes were erroneously paid receives an assignment and waiver signed by both the person who actually paid the tax and the person who should have paid the tax. Where the person who actually paid the tax and the person who should have paid the tax are one and the same, no assignment and waiver need be provided. The City shall neither pay nor charge any interest or penalty on any overpayment or underpayment except such interest and penalty actually paid by the taxpayer relating to such tax.

D. This Section in no way limits or restricts the applicability of any remedies which may otherwise be available under A.R.S. Section 42-1452. The limitations and procedures set forth in Arizona Revised Statutes Section 42-1452 shall apply to all payments under this Section.

E. When reference is made in this Section to this City or an Arizona city or town, and payments made to or requested from this City or an Arizona city or town, the provisions shall be applicable to the Arizona Department of Revenue when it is acting for or on behalf of this City or an Arizona city or town. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0567 RESERVED:

SECTION 3-05-005-0570 ADMINISTRATIVE REVIEW; PETITION FOR HEARING OR FOR REDETERMINATION; FINALITY OF ORDER:

For the purposes of this section, “municipal tax hearing office” means the administrative offices of the municipal tax hearing officer.

A. Informal Conference: A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.

B. Administrative Review:

1. Filing a petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of any tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:

   a. Within forty five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit ha been denied; or

   b. By voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

   c. By petition accompanying a timely filed return contesting an amount reported but not paid; or

   d. By petition requesting review of denial of waiver of penalty as provided in subsection 3-05-005-0540 F.

2. Extension to file a petition. In all cases, the taxpayer may request only one (1) extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay and time of delay requested, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow such extension to file a petition, when such written request has been properly and timely made by the taxpayer, but such extension shall not exceed forty five (45) days beyond the time provided for originally filing a petition.

3. Requirements for petition.

   a. The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.

b. The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.

c. The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under this Section.

4. Transmittal to Hearing Officer. The City shall designate a Hearing Officer who may be other than an employee of the City. The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal tax hearing office (MTHO) within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty five (45) days to correct the petition.

5. Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

6. Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.

7. Hearing ruling. In either case, the Hearing Officer shall issue his ruling not later than forty five (45) days after the close of the record by the Hearing Officer.

8. Notice of refund or adjusted assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the tax collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.

C. Stipulations that Future Tax is Also Protested: A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.

D. When an Assessment is Final:

1. If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection B. above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty determined to be due shall be final as provided in subsections 3-05-005-0545 A. and 3-05-005-0555 F.

2. The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection B.8. above, unless the taxpayer appeals the order or decision in the manner provided in Section 3-05-005-0575.

E. Reserved.

(Ord. 1925, 01/07/97);

Reg. 3-5-115.1. COMPUTER HARDWARE, SOFTWARE, AND DATA SERVICES:

(a) Definitions.

(1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

(2) "Computer Software" (also called "computer program") is tangible personal property, and includes:

(A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.

(B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: Payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

(3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

(4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.

(5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

(b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

(1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.

(2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions

on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:

(A) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(B) The entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.

(C) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(D) The entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.

(E) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

(i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error

corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.

(c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

(1) Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.

(2) Additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 3-5-100.2 (e):

(1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(A) Custom~~er~~ computer programming is deemed a professional service regardless of the form in which the programming is transferred.

(B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

(C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

(2) Training services related to computer hardware or software, provided further that:

(A) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.

(B) Training deemed a direct customer service does not include:

(i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.

(ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.

(3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

(4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(f) Reserved.

(Ord. No. 2004-25, Amended, 01/10/05)

SECTION 3-05-005-0571 JEOPARDY ASSESSMENTS:

A. If the Tax Collector believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax or deficiency declared to be in jeopardy, including interest, penalties, and additions.

B. Jeopardy assessments are immediately due and payable, and the Tax Collector may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Tax Collector may allow, by bond or

collateral in favor of the City in the amount Tax Collector declared to be in jeopardy in his notice.

C. "Bond or Collateral", as required by this Section,

1. Shall mean either:

a. A bond issued in favor of the City by a surety company authorized to transact business in this State and approved by the Director of Insurance as to solvency and responsibility, or

b. Collateral composed of securities or cash which are deposited with, and kept in the custody of, the Tax Collector.

2. Shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Tax Collector must be of a nature that they may be sold at public or private sale without notice to the taxpayer.

D. If bond or collateral is not filed within the period prescribed by subsection B. above, the tax collector may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Sections 3-05-005-0570 and 3-05-005-0575. The filing of a petition by the taxpayer under Section 3-05-005-0570, however, shall not stay the tax collector's rights to pursue any collection proceedings.

E. If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 3-05-005-0570, including requests for additional time to file a petition. (Ord. 1593, 12/06/88)

SECTION 3-05-005-0572 EXPEDITED REVIEW OF JEOPARDY ASSESSMENTS:

A. Within thirty (30) days after the day on which the Tax Collector furnishes the written notice required by Section 3-05-005-0571 A., the taxpayer, pursuant to Section 3-05-005-0570, may request the Tax Collector to review the action taken. Within fifteen (15) days after the request for review, the Tax Collector shall determine whether both the jeopardy determination and the amount assessed are reasonable.

B. Within thirty (30) days after the Tax Collector notifies the taxpayer of the determination he reached pursuant to subsection A.

above, the taxpayer may bring a civil action in the appropriate court. If the taxpayer so requests, the City shall stipulate to an accelerated and expedited resolution of the civil action. If the court determines that either the jeopardy determination or the amount assessed is unreasonable, the court may order the Tax Collector to abate the assessment, to redetermine any part of the amount assessed or to take such other action as the court finds to be appropriate. A determination made by the court under this subsection is final except as provided in Arizona Revised Statutes Section 12-170. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0575 JUDICIAL REVIEW:

(a) A taxpayer may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action against the City in the appropriate court of this County. A taxpayer is not required to pay any tax, penalty, or interest upheld by the Hearing Officer before seeking such judicial review.

(b) The Tax Collector may seek judicial review of all or any part of a Hearing Officer's decision by initiating an action in the appropriate court of this County.

(c) An action for judicial review cannot be commenced by either the taxpayer or the Tax Collector more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Hearing Officer's decision, unless the time to commence such an action is extended in writing signed by both the taxpayer and the Tax Collector. Failure to bring the action within thirty (30) days or such other time as is agreed upon in writing shall constitute a waiver of any right to judicial review, except as provided in subsection F. below.

(d) The court shall hear and determine the appeal as a trial de novo; however, the Tax Collector cannot raise in the court any grounds or basis for the assessment not asserted before the Hearing Officer. Nothing in this subsection, however, shall preclude the Tax Collector from responding to any arguments which are raised by the taxpayer in the appeal.

(e) The City has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This subsection does not abrogate any requirements of this chapter that requires a taxpayer to substantiate an item of gross income, exclusion, exemption, deduction, or credit. This subsection applies to a factual issue if a preponderance of the evidence demonstrates that:

(1) The taxpayer asserts a reasonable dispute regarding the issue.

(2) The taxpayer has fully cooperated with the Tax Collector regarding the issue, including providing within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonable requested by the Tax Collector.

(3) The taxpayer has kept and maintained records as required by the City.

(f) The issuance of an adjusted or corrected assessment or notice of refund due to the taxpayer, where made by the Tax Collector pursuant to the decision of the Hearing Officer, shall not be deemed an acquiescence by the City or the Tax Collector in said decision, nor shall it constitute a bar or estoppel to the institution of an action or counterclaim by the City to recover any amounts claimed to be due to it by virtue of the original assessment.

(g) After the initiation of any action in the appropriate court by either party, the opposite party may file such counterclaim as would be allowed pursuant to the Arizona Rules of Civil Procedure. (Ord. 1924, 01/07/97)

(Ord. 2008, Amended, 11/02/1999)

SECTION 3-05-005-0577 REFUNDS OF TAXES PAID UNDER PROTEST:

In the event the Hearing Officer's decision or a final judgment by the court is rendered in favor of the taxpayer to recover protested taxes, it shall be the duty of the Tax Collector, upon receipt of such decision or of a certified copy of such final judgment, to authorize a warrant in favor of the taxpayer in an amount equal to the amount of the tax found by such decision or by the final judgment to have been paid under protest, and such warrant shall include the amount of interest or other cost that may have been recovered against the city by the final judgment in such action in the courts, to be paid from the privilege tax revenue accounts.

SECTION 3-05-005-0578 REIMBURSEMENT OF FEES AND OTHER COSTS; DEFINITIONS:

A. A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to any administrative proceeding brought by the taxpayer pursuant to Section 3-05-005-0570 B. For purposes of this Section, a taxpayer is considered to be the prevailing party only if both of the following are true:

1. The Tax Collector's position was not substantially justified.

2. The taxpayer prevails as to the most significant issue or set of issues.

B. Reimbursement under this Section may be denied if any of the following circumstances apply:

1. During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter.

2. The reason that the taxpayer prevailed is due to an intervening change in the applicable law.

C. The taxpayer shall present an itemization of the reasonable fees and other costs to the Taxpayer Problem Resolution Officer within thirty (30) days after receipt by the taxpayer of a notice of refund or recalculated assessment issued by the Tax Collector pursuant to Section 3-O5-005-0570 B.8. The Taxpayer Problem Resolution Officer shall determine the validity of the fees and other costs within thirty (30) days after receiving the itemization. The Taxpayer Problem Resolution Officer's decision is considered a final decision. Either the taxpayer or the Tax Collector may seek judicial review of the Taxpayer Problem Resolution Officer's decision. An action for judicial review, however, shall not be commenced more than thirty (30) days after receipt of the resolution officer's decision.

D. In the event judicial review is not sought pursuant to subsection C. above, the City shall pay the fees and other costs awarded as provided in this Section within thirty days after demand by a person who has received an award pursuant to this Section.

E. Reimbursement to a taxpayer under this Section shall not exceed twenty thousand dollars or actual monies spent, whichever is less. The reimbursable attorney or representative fees shall not exceed one hundred dollars per hour or actual monies spent, whichever is less, unless the Taxpayer Problem Resolution Officer determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or representatives for the proceeding involved justifies a higher fee.

F. For purposes of this Section "reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses, the cost of any study, analysis, report, test or project that is found to be necessary to prepare the party's case and necessary fees for attorneys or other representatives. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0580 CRIMINAL PENALTIES:

A. It is unlawful for any person to knowingly or wilfully:

1. Fail or refuse to make any return required by this Chapter.

2. Fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.

3. Make or cause to be made a false or fraudulent return.

4. Make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.

5. Fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.

6. Fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

7. Advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.

8. Fail or refuse to obtain a privilege license or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

9. Reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.

B. Reserved.

C. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

SECTION 3-05-005-0590 CIVIL ACTIONS:

A. Liens:

1. Any tax, penalty, or interest imposed under this Chapter which has become final, as provided in this Chapter, shall become a lien when the City perfects a notice and claim of lien setting forth the name of the taxpayer, the amount of

the tax, penalty, and interest, the period or periods for which the same is due, and the date of accrual thereof, the amount of the recording costs by the County Recorder in any county in which the taxpayer owns real property and the documentation and lien processing fees imposed by the City Council and further stating that the City claims a lien therefor.

2. The notice of claim of lien shall be signed by the Administrative Services Director under his official seal or the official seal of the City, and, with respect to real property, shall be recorded in the office of the County Recorder of any county in which the taxpayer owns real property, and, with respect to personal property shall be filed in the office of the Secretary of State. After the notice and claim of lien is recorded or filed, the taxes, penalties, interest and recording costs and lien processing fees referred to above in the amounts specified therein shall be a lien on all real property of the taxpayer located in such county where recorded, and all tangible personal property of the taxpayer within the State, superior to all other liens and assessments recorded or filed subsequent to the recording or filing of the notice and claim of lien.

3. Every tax and any increases, interest, penalties, and recording costs and lien processing fees referred to above, shall become from the time the same is due and payable a personal debt from the person liable to the City, but shall be payable to and recoverable by the Tax Collector and which may be collected in the manner set forth in subsection B. below.

4. Any lien perfected pursuant to this Section shall, upon payment of the taxes, penalties, and interest, recording costs and lien processing fees referred to above and lien release fees imposed by the County Recorder in any county in which the lien was recorded, thereby, be released by the Tax Collector in the same manner as mortgages and judgments are released. The Tax Collector may, at his sole discretion, release a lien in part, that is, against only specified property, for partial payment of moneys due the City.

B. Actions to Recover Tax: An action may be brought by the City Attorney or other legal advisor to the City designated by the City Council, at the request of the Tax Collector, in the name of the City, to recover the amount of any taxes, penalties, interest, recording costs, lien processing fees and lien release fees due under this Chapter; provided that:

1. No action or proceeding may be taken or commenced to collect any taxes levied by this Chapter until the amount thereof has

been established by assessment, correction, or reassessment; and

2. Such collection effort is made or the proceedings begun:

   a. Within six (6) years after the assessment of the tax; or

   b. Prior to the expiration of any period of collection agreed upon in writing by the Tax Collector and the taxpayer before the expiration of such six (6) year period, or any extensions thereof; or

   c. At any time for the collection of tax arising by reason of a tax lien perfected, recorded, or possessed by the City under this Section. (Ord. 1851, 01/03/95)

SECTION 3-05-005-0595 COLLECTION OF TAXES WHEN THERE IS SUCCESSION IN AND/OR CESSATION OF BUSINESS:

A. In addition to any remedy provided elsewhere in this City Code that may apply, the Tax Collector may apply the provisions of subsections B. through D. below concerning the collection of taxes when there is succession in and/or cessation of business.

B. The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

C. Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the privilege tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner-builder, as provided in Sections 3-05-004-0416 and 3-05-004-0417.

D. A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The tax collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

   1. If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.

2. If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees. (Ord. 1593, 12/06/88)

SECTION 3-05-005-0596 AGREEMENT FOR INSTALLMENT PAYMENTS OF TAX:

A. The City may enter into an agreement with a taxpayer to allow the taxpayer to satisfy a liability for any tax imposed by this Chapter by means of installment payments. The Tax Collector may require a taxpayer who requests an installment payment agreement to complete a financial report in such form and manner as the Tax Collector may prescribe.

B. The Tax Collector, without notice, may alter, modify or terminate an installment payment agreement if the taxpayer:

1. Fails to pay an installment at the time the installment payment is due under the agreement.

2. Fails to pay any other tax liability at the time the liability is due.

3. Fails to file any tax report or return at the time the report or return is due.

4. Fails to furnish any information requested by the Tax Collector within thirty days after receiving a written request for such information.

5. Fails to notify the Tax Collector of a material improvement in the taxpayer's financial condition above the income previously reported in the most recent income statement within thirty days after the material improvement.

6. Provides inaccurate, false or incomplete information to the Tax Collector.

C. Notwithstanding any installment payment agreement, the Tax Collector may offset any tax refunds against the liabilities provided for in the installment payment agreement, may file and perfect any tax liens and, in the event the taxpayer breaches any term or provision of the installment payment agreement, may engage in collection activities.

D. The Tax Collector, without notice, may terminate an installment payment agreement if the Tax Collector believes that the collection of tax to which the payment agreement pertains is in jeopardy.

E. If the Tax Collector determines that the financial condition of a taxpayer has improved, the Tax Collector may alter, modify or terminate the agreement by providing notice to the taxpayer at least thirty days before the effective date of the action. The notice shall include the reasons why the tax collector believes the alteration, modification or termination is appropriate.

F. An installment payment agreement shall remain in effect for the term of the agreement except as otherwise provided in this Section.

G. A taxpayer who is aggrieved by a decision of the Tax Collector to refuse to enter into an installment payment agreement or to alter, modify or terminate an agreement entered into pursuant to this Section may petition the Taxpayer Problem Resolution Officer to review that determination. The taxpayer problem resolution officer may stay such alteration, modification or termination pending its review and may modify or nullify the determination.

H. The City and the taxpayer may modify any installment payment agreement at any time by entering into a new or modified agreement. (Ord. 1924, 01/07/97)

SECTION 3-05-005-0597 PRIVATE TAXPAYER RULINGS; REQUEST; REVOCATION OR MODIFICATION; DEFINITION:

A. The Tax Collector shall issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall:

1. State the name, address and, if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling.

2. Describe all facts that are relevant to the requested ruling.

3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the Tax Collector or any other taxing jurisdiction in connection with an active audit, protest or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing jurisdiction for a ruling.

4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.

B. A private taxpayer ruling may be revoked or modified by either:

1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by regulations and court decisions.

2. Actual written notice by the Tax Collector to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.

C. With respect to the taxpayer or prospective taxpayer to whom a private taxpayer ruling is issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the Tax Collector shall not assess any penalty or tax attributable to erroneous advice that is furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:

1. The taxpayer reasonably relied on the private taxpayer ruling.

2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.

D. A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by any taxpayer other than the taxpayer who received the ruling.

E. A taxpayer may appeal the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the tax collector pursuant to Section 3-05-005-0570 within forty-five (45) days after receiving written notice of the intent to retroactively apply a revoked or modified private taxpayer ruling.

F. A private taxpayer ruling constitutes the Tax Collector's interpretation of the sections of this chapter only as they apply to the taxpayer making, and the particular facts contained in, the request.

G. A private taxpayer ruling which addresses a taxpayer's ongoing business activities will apply only to transactions that occur or tax liabilities that accrue from and after the date of the taxpayer's ruling request.

H. The Tax Collector shall attempt to issue private taxpayer rulings within forty-five (45) days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed beyond the forty-five (45) days, the Tax Collector shall notify the requestor of the delay and the proposed date of issuance.

I. Within thirty (30) days after being issued, the Tax Collector shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings are open to public inspection subject to the confidentiality requirements prescribed by section 3-05-005-0510.

J. In this Section, "private taxpayer ruling" means a written determination by the Tax Collector issued pursuant to this Section that interprets and applies one or more sections contained in this Chapter and any applicable regulations.

K. A private taxpayer ruling issued by the Arizona Department of Revenue pursuant to A.R.S. Section 42-139.21 may be relied upon by the taxpayer to whom the ruling was issued and must be recognized and followed by any city in which such taxpayer has obtained a privilege license if the City has not issued a ruling addressing the facts described in the taxpayer's ruling request and the statute at issue in the taxpayer's ruling request is, in essence, worded and written the same as the applicable section hereunder. (Ord. 1924, 01/07/97)

DIVISION 3-05-006
MISCELLANEOUS PROVISIONS

SECTIONS:

3-05-006-0600 **TERMINATION, APPROVAL AND AUTHORITY TO AMEND CHAPTER:**
3-05-006-0601 **RESERVED:**
3-05-006-0602 **RESERVED:**
3-05-006-0605 **VALIDITY OF ORDINANCE:**
3-05-006-0610 **REPEAL:**

SECTION 3-05-006-0600 TERMINATION, APPROVAL AND AUTHORITY TO AMEND CHAPTER:

(a) Sunset Clause: The provisions of this Chapter shall terminate and cease to be operative for the tax rates specified below at eleven fifty-nine (11:59) P.M. on the date specified for each rate, unless extended pursuant to paragraph (b) below:

(1) For the 1.0% transaction privilege tax rate imposed by Ordinance No. 1491, November 4, 2014.
(2) For the 2.0% transaction privilege tax rate imposed by Ordinance No. 1532, March 31, 2013.
(3) For the 0.08% transaction privilege tax rate imposed by Ordinance No. 2000-14, June 30, 2020.
(4) For the 0.16% transaction privilege tax rate imposed by Ordinance No. 2000-14, June 30, 2020.
(5) For the 0.084% to 0.175% transaction privilege tax rate imposed by Ordinance No. 2000-14, June 30, 2010.
(6) For the 0.186% transaction privilege tax rate imposed by Ordinance No. 2000-14, June 30, 2020.

(b) Automatic Extension Upon Electors' Approval: The authority to levy each of the tax rates specified in paragraph (a) above shall be subject to approval by a majority of the qualified electors voting in a regularly scheduled general election. Such approval shall constitute an automatic extension of this Chapter for however long the qualified electors approve such extension at the respective tax rate approved without further action by the City Council.

(c) Authority to Amend: The Council may amend this Chapter as it may deem necessary with the exception of the rates or the effective term of this Chapter.

(Ord. 2000-14, Amended, 06/06/2000)

SECTION 3-05-006-0601 RESERVED:

SECTION 3-05-006-0602 RESERVED:

SECTION 3-05-006-0605 VALIDITY OF ORDINANCE:

(a) If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Section. (Ord. 1593, 12-6-88)

SECTION 3-05-006-0610 REPEAL:

A. All ordinances or parts of ordinances, including but not limited to Ordinance Number 1333, which conflict with the provisions of this Ordinance are hereby repealed.

B. Paragraph A. above shall be inoperable in the event that this Ordinance is defeated by referendum. (Ord. 1491, 6-16-87)

DIVISION 3-05-007
REGULATIONS-PRIVILEGE AND EXCISE TAXES

SECTIONS:

3-05-007-0001 **REGULATIONS-PRIVILEGE AND EXCISE TAXES:**

SECTION 3-05-007-0001 REGULATIONS-PRIVILEGE AND EXCISE TAXES:

Reg. 3-5-100.1. BROKERS:

(a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 3-05-004-0405, relating to advertising commissions.

(b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:

(1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

(2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

(e) Reserved.

(f) Location of Business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "out-of-City sales"; provided, however, that an auctioneer is deemed to be engaged in business at the site of each auction.

Reg. 3-5-100.2. DELIVERY, INSTALLATION, OR OTHER DIRECT CUSTOMER SERVICES:

(a) "Delivery Charges" exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges.

(1) Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge".

(2) Freight in. Charges for delivery from place of production or the manufacturer to the vendor either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery.

(b) "Installation", as used in this definition, relates only to tangible personal property. installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.

(c) Repair of tangible personal property is not included in this definition. See Regulation 3-5-465.(1)

(d) "Direct Customer Services" means services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of subsection (e) below are referred to by the words "identify" or "identification."

(1) A retailer sells a customer a $100 "plug-in" appliance, with a $25 delivery and installation charge. If the retailer identifies the $25 delivery and installation charge, it is a charge for direct customer services.

(2) A caterer charges his customer $1,000 for the food and drink served, $300 for setup and site cleanup, and $500 for bartender and waiters. If all charges are properly identified, only the $300 for set up and cleanup is a charge for direct customer services, and the $1,500 for food and service is restauranting gross income.

(3) Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges for labor as direct customer services.

(4) All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.

(5) An equipment rental company charging $25 for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.

(6) Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.

(e) Recordkeeping requirements.

(1) Any person who engages in transactions involving these services must:

(A) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge; and

(B) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified, to the satisfaction of the Tax Collector.

(2) Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or similar a expression does not satisfy the requirements of this subsection.

Reg. 3-5-100.3. RETAILERS:

When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

Reg. 3-5-100.4. OUT-OF-CITY/OUT-OF-STATE SALES: SALES TO NATIVE AMERICANS:

(a) Sales to Native Americans or tribal councils by vendors located within the City shall be deemed sales within the City, unless all of the following conditions exist:

(1) The vendor has properly accounted for such sales, in a manner similar to the recordkeeping requirements for out-of-City sales; and,

(2) All of the following elements of the sale exist:

(A) Solicitation and placement of the order occurs on the reservation; and

(B) Delivery is made to the reservation; and

(C) Payment originates from the reservation.

Reg. 3-5-115.1. COMPUTER HARDWARE, SOFTWARE, AND DATA SERVICES:

(a) Definitions.

(1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.

(2) "Computer Software" (also called "computer program") is tangible personal property, and includes:

(A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user

applied programs and allows the user to access the computer's processing capabilities.

(B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: Payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.

(3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.

(4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.

(5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

(b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:

(1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.

(2) Computer software which is not custom computer programming. Such prewritten ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such prewritten programs includes:

(A) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium

or coding sheets on which or into which the prewritten program has been recorded, coded, or punched.

(B) The entire amount charged for the temporary transfer or possession of a prewritten program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.

(C) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a prewritten program.

(D) The entire amount charged for transfer of a prewritten ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.

(E) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which prewritten program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:

(i) if such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(ii) if such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the prewritten program.

(iii) if such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a prewritten program and charges for consultation are deemed to be charges for professional services.

(c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:

(1) Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in subsection (e) below.

(2) Additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.

(d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.

(e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 3-5-100.2 (e):

(1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing prewritten programs.

(A) Custom~~er~~ computer programming is deemed a professional service regardless of the form in which the programming is transferred.

(B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.

(C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a prewritten program.

(2) Training services related to computer hardware or software, provided further that:

(A) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.

(B) Training deemed a direct customer service does not include:

(i) training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.

(ii) training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.

(3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).

(4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.

(f) Reserved.

Reg. 3-5-120.1. FOOD FOR HOME CONSUMPTION: RECORDKEEPING AND REPORTING REQUIREMENTS:

(a) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 3-05-005-0520, report to the Tax Collector in a manner prescribed by the Tax Collector all sales of food for home consumption exempted from taxes imposed by this Chapter.

(b) Recordkeeping.

(1) Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this Chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III, and regulations of the Tax Collector.

(2) Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the Tax Collector, a person cannot demonstrate to the Tax Collector that such records and reports do properly reflect all sales of food for

home consumption, the Tax Collector may recompute the amount of tax to be paid as provided in Sections 3-05-003-0370 and 3-05-005-0545 (b)

Reg. 3-5-200.1. WHEN DEPOSITS ARE INCLUDABLE IN GROSS INCOME:

(a) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee.

(b) Reserved.

Reg. 3-5-250.1. EXCESS TAX COLLECTED:

If a taxpayer collects taxes in excess of the combined tax from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers.

Reg. 3-5-270.1. PROPRIETARY ACTIVITIES OF MUNICIPALITIES ARE NOT CONSIDERED ACTIVITIES OF A GOVERNMENTAL ENTITY:

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 3-05-002-0270:

(a) Rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

(b) Producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

(c) Sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

Reg. 3-5-270.2. PROPRIETARY CLUBS:

(a) Equity requirements. In order to qualify for exclusion under Section 3-05-002-0270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital

interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.

(b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of subsection 3-05-002-0270 (c)(1),

(1) The following shall be excluded:

(A) Membership dues.

(B) Membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.

(C) Assessments.

(D) Special fund raising events, raffles, etc.

(E) Donations, gifts, or bequests.

(F) Gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.

(2) The following must be included:

(A) Green fees, court use fees, and similar charges for the actual use of a facility or part thereof.

(B) Pro shop sales if the shop is owned by the club.

(C) Golf cart rental if the carts are owned by the club.

(D) Rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.

(E) All receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.

(F) Locker and locker room fees and attendants charges if paid to the club.

(G) Tournament entry fees other than entry fees for the one annual tournament exempt under subsection (b)(1)f. above.

Reg. 3-5-300.1. WHO MUST APPLY FOR A LICENSE:

(a) For the purposes of determining whether a license is required under Section 3-05-003-0300, a person shall be deemed to be "engaged in or continuing in business" within the City, if he meets any of the following conditions:

(1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.

(2) He has or maintains within the City directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this City under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this City.

(3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.

(4) Reserved.

(5) Reserved.

(b) Reserved.

Reg. 3-5-300.2. RESERVED:

Reg. 3-5-310.1. RESERVED:

Reg. 3-5-310.2. RESERVED:

Reg. 3-5-310.3. RESERVED:

Reg. 3-5-350.1. RECORDKEEPING: INCOME:

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

(a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City.

(b) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return.

(c) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.

(d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:

(1) If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:

(A) The City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and

(B) The name, business address, and business activity of the customer, and

(C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.

(2) If the transaction is claimed to be exempt for any other reason:

(A) The name, business address, and business activity of the customer, and

(B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.

(e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.

(f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

Reg. 3-5-350.2. RECORDKEEPING: EXPENDITURES:

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

(a) The total price of all goods acquired for use or storage in the City.

(b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.

(c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.

(d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.

(e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:

(1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.

(2) Disbursement of collected gratuities and related payroll information required of restaurants.

(3) Franchise and license fee payments and computations thereto which relate to:

(A) Utility service

(B) Telecommunication service.

(4) The validity of any claims of proof of exemption, as provided by Regulation.

(5) A claimed alternative prior value for reconstruction.

(6) Reserved.

(7) Costs used to compute the "computed charge" claimed for retail service and repair.

(8) Payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.

(9) Reserved.

(f) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.

(g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

Reg. 3-5-350.3. RECORDKEEPING: OUT-OF-CITY AND OUT-OF-STATE SALES:

(a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.

(b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:

(1) Documentation of location of the buyer at the time of order placement; and

(2) Documentation of residency of the buyer, determined in the manner one determines if a person "resides within the City"; and

(3) Shipping, delivery, or freight documents showing where the buyer took delivery; and

(4) Documentation of intended location of use or storage of the tangible personal property sold to such buyer.

Reg. 3-5-360.1. PROOF OF EXEMPTION: SALE FOR RESALE; SALE, RENTAL, LEASE, OR LICENSE OF RENTAL EQUIPMENT:

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person

possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Reg. 3-5-360.2. PROOF OF EXEMPTION: EXEMPTION CERTIFICATE:

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 3-5-350.1 and 3-5-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, at the time of the transaction, in all material respects, of a certificate containing all the information set forth below (see Sales Tax Division for form). For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

Reg. 3-5-405.1. LOCAL ADVERTISING EXAMPLES:

For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

(1) Retail sales and rental establishments doing business within the State when only one commonly designated business entity is identified by name in the advertisement.

(2) Financial institutions doing business within the State whether part of a national chain or local business only.

(3) Sales of real estate located within the State.

(4) Health care facilities located within the State.

(5) Hotels, motels, and apartments, whether a national chain or local so long as the advertisement identifies any location within the State.

(6) Brokers doing business within the State whether stockbrokers, real estate brokers, insurance brokers, etc.

(7) Nonprofit organizations, which even though tax exempt, have an office, whether national, local, or branch, within the State.

(8) Political activity, except United States Presidential and Vice Presidential candidates.

(9) Restaurants or food service establishments which have one or more branches, outlets, or franchises within the State even though the local franchisee or licensee may not be responsible for the placement of the advertisement.

(10) Services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling services, utilities, contractors, auction houses, etc.

(11) Coupons redeemable only at a single commonly designated business entity within the State.

(12) Theater, sports, and other entertainment events held at locations within the State.

Reg. 3-5-405.2. ADVERTISING ACTIVITY WITHIN THE CITY:

(a) In General. Except as provided elsewhere in this regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the City limits. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City.

(b) Billboards and other outdoor advertising companies shall be considered to be doing business within the City to the extent they have billboards or similar displays within the City.

(c) Publishers and distributors of newspaper and other periodicals shall be subject to the tax upon advertising imposed by Section 3-05-004-0405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 3-05-005-0435.

Reg. 3-5-407.1. RESERVED:

Reg. 3-5-415.1. DISTINCTION BETWEEN THE CATEGORIES OF CONSTRUCTION CONTRACTING:

For the purposes of this Chapter, transactions involving improvements to, or sales of, real property are designated into one of the following categories, and these categorizations shall apply, whether or not a person designates himself as a contractor, construction manager, developer, or otherwise:

(a) A person performing improvements to real property is one of the following:

(1) An "Owner-Builder" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder".

(2) A "Construction Contractor" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has provided a written declaration stating that:

(A) The owner-builder is improving the property for sale; and

(B) The owner-builder is liable for the tax for such construction contracting activity; and

(C) The owner-builder has provided the contractor his city Privilege License number.

(3) A "Subcontractor" as provided in Section 3-05-004-0415 (c)

(b) An owner or lessor ("owner-builder") of improved real property is one of the following:

(1) A "Speculative Builder" as provided in Section 3-05-001-0100; or

(2) An "owner-builder who is not a speculative builder" in all other cases.

(c) The terms "owner", "lessor", and "lessee-in-possession" shall be deemed to include any authorized agent for such person.

Reg. 3-5-415.2. DISTINCTION BETWEEN CONSTRUCTION CONTRACTING AND CERTAIN RELATED ACTIVITIES:

(a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

(1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.

(2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

(3) Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.

(b) Distinction between construction contracting, retail, and certain direct customer service activities.

(1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.

(2) Items attached or installed on tangible personal property are retail sales.

(3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).

(4) Demolition, earth moving, and wrecking activities are considered construction contracting.

(c) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(d) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

(1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.

(2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.

(3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.

(4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

SECTION 3-05-007-0415.3 CONSTRUCTION CONTRACTING; TAX RATE EFFECTIVE DATE:

A. In the event of a tax rate change, the rate imposed on gross income from construction contracting shall be computed based upon the rate in effect when the contract was executed, subject to the “enactment date” as defined in this section. Gross income from a contract executed prior to the enactment date shall not be subject to the tax rate change, provided the contract contains no provision that entitles the construction contractor to recover the amount of the tax.

B. In the event of a rate increase, in order to qualify for the lower rate, the construction contractor shall, upon request, provide sufficient documentation, in a manner and form prescribed by the tax collector, to verify that a contract was entered into before the enactment date.

C. For the purposes of this section, “enactment date” shall be:

(1) In the event an election is held, the date of election.

(2) In the event no election is held, the date of final adoption by the Mayor and Council.

(3) Notwithstanding the above, nothing in this section shall be construed to prevent the City from establishing a later enactment date.

Reg. 3-5-416.1. SPECULATIVE BUILDERS: HOMEOWNER'S BONA FIDE NON-BUSINESS SALE OF A FAMILY RESIDENCE:

(a) A sale of a custom home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:

(1) The property was actually used as the principal place of family residence or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and

(2) The seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and

(3) The seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.

(b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and

all construction contractors shall be required to report and pay the tax imposed on all such improvements.

(c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.

(d) "Owner" and "Homeowner" as used in this Regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings, for the estate of a deceased or incompetent person or a minor, may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.

Reg. 3-5-416.2. RECONSTRUCTION CONTRACTING:

(a) "Reconstruction (of Real Property)" shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:

(1) A structure existed on said real property prior to the reconstruction activity; and

(2) The "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and

(3) The total cost of all construction contracting activities performed on said real property in the twenty-four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

(4) The structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.

(b) Except as provided in subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value"shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the

County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where, according to Title 42 of the Arizona Revised Statutes, a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s).

(c) "Alternative Prior Value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, at a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five percent (65%) of the acquisition price. (Only long term lending - not interim or construction financing will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.

(d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty) whichever is earlier, to a purchaser or grantee of any single residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens or security interests) of a share, or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases a person shall include a husband and wife as a community, or any co-occupants of a single unit as joint tenants.

Reg. 3-5-425.1. DISTINCTION BETWEEN JOB PRINTING AND CERTAIN RELATED ACTIVITIES:

(a) Computerized Printing. Computerized versions of all items which would be taxable under Section 3-05-004-0425 if performed without computerized assistance are considered taxable under that Section, and therefore, are not exempt services.

(b) Book publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.

(c) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

Reg. 3-5-435.1. DISTINCTION BETWEEN PUBLISHING OF PERIODICALS AND CERTAIN RELATED ACTIVITIES:

(a) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.

(b) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

Reg. 3-5-435.2. ADVERTISING INCOME OF PUBLISHERS AND DISTRIBUTORS OF NEWSPAPERS AND OTHER PERIODICALS:

Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 3-05-004-0405 and such tax shall be allocated in the manner prescribed by subsection (e) of Section 3-05-004-0435.

Reg. 3-5-445.1. WHEN THE RENTAL, LEASING, AND LICENSING OF REAL PROPERTY IS EXEMPT AS "CASUAL":

Reg. 3-5-445.1. When the rental, leasing, and licensing of real property is exempt as "casual".

(a) (Reserved)

(b) (Reserved)

Reg. 3-5-445.3. RENTAL, LEASING, AND LICENSING OF REAL PROPERTY AS LODGING: ROOM AND BOARD; FURNISHED LODGING:

(a) Room and board.

(1) Rooming houses, lodges, or other establishments providing both lodging and meals, shall maintain a record of the separate charges made for the lodging and the meals.

(2) The charge for lodging shall be subject to the tax imposed by Section 3-05-004-0444 or Section 3-05-004-0445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 3-05-004-0455.

(b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and

licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:

(1) Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and

(2) The lessor separately charges tenants for lodging and for furnishings; and

(3) The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.

If all of the above conditions are met, such person shall report both sources of income separately to the City.

Reg. 3-5-447.1. RESERVED:

Reg. 3-5-450.1. DISTINCTION BETWEEN RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY AND CERTAIN RELATED ACTIVITIES:

(a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

(1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.

(2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.

(3) Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

(b) Distinction between equipment rental, leasing, or licensing for use and transporting for hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

Reg. 3-5-450.2. RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY: MEMBERSHIP FEES; OTHER CHARGES:

(a) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.

(b) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.

(c) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is exempt.

Reg. 3-5-450.3. RENTAL, LEASING, AND LICENSING FOR USE OF EQUIPMENT WITH OPERATOR:

In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

Reg. 3-5-450.4. RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY: SEMI-PERMANENTLY OR PERMANENTLY INSTALLED TANGIBLE PERSONAL PROPERTY:

(a) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.

(b) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.

(c) Examples of "semi-permanently or permanently installed tangible personal property" include, but are not limited to: Computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.

(d) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.

(1) For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.

(2) Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, forklift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, towbars, sump pumps, arc welders.

(e) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one of the other types of portable equipment or property described in subsection (d) above.

Reg. 3-5-450.5. RENTAL, LEASING, AND LICENSING FOR USE OF TANGIBLE PERSONAL PROPERTY: DELIVERY, INSTALLATION, REPAIR, AND MAINTENANCE CHARGES:

(a) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 3-05-004-0450; provided that the provisions of Regulation 3-5-100.2 have been met.

(b) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt:

(c) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property are exempt from the tax imposed by Section 3-05-004-0450; however, such income is subject to the provisions of Sections 3-05-004-0460 and 3-05-004-0465, and the provisions of Regulation 3-5-465.(1)

Reg. 3-5-455.1. GRATUITIES RELATED TO RESTAURANT ACTIVITY:

Gratuities charged by or collected by persons subject to the tax imposed by Section 3-05-004-0455 may be excluded from gross income if:

(a) Such charge is separately stated upon the bill, invoice, etc. provided the customer, and such amounts are maintained separately in the books and records of the taxpayer; and

(b) Such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

Reg. 3-5-460.1. DISTINCTION BETWEEN RETAIL SALES AND CERTAIN OTHER TRANSFERS OF TANGIBLE PERSONAL PROPERTY:

(a) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 3-05-004-0460:

(1) Tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 3-05-004-0415 through 3-05-004-0418.

(2) Sales of feed at wholesale, per Section 3-05-004-0420.

(3) Job printing, per Section 3-05-004-0425.

(4) Mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 3-05-004-0430.

(5) Publication of newspapers, magazines, and other periodicals, per Section 3-05-004-0435.

(6) Rental, leasing, and licensing of real or tangible personal property, per Sections 3-05-004-0445 or 3-05-004-0450.

(7) Restaurants and bars, per Section 3-05-004-0455.

(8) Telecommunications services, per Section 3-05-004-0470.

(9) Utility services, per Section 3-05-004-0480.

(b) Distinction between construction contracting, retail, and certain direct customer service activities.

(1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.

(2) Items attached or installed on tangible personal property are retail sales.

(3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).

(4) Demolition, earth moving, and wrecking activities are considered construction contracting.

(c) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

(1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.

(2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.

(3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.

(4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

Reg. 3-5-460.2. RETAIL SALES: TRADING STAMP COMPANY TRANSACTIONS:

A trading stamp transaction is defined as follows: The trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.

The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any Privilege or Use Tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

Reg. 3-5-460.3. RETAIL SALES: MEMBERSHIP FEES OF RETAILERS:

Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

Reg. 3-5-460.4. RETAIL SALES: PROFESSIONAL SERVICES:

(a) "Professional Services" refer to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, workpapers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.

(b) Creative ("idea") labor and design labor that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer's books and records, are not includable in gross income.

(c) "Professional services" shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential."

(1) Incidental transfers of tangible personal property shall be regarded as "inconsequential" if,

(A) The purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction, and

(B) The tangible personal property transferred is not itself in a form which is subject to retail sale.

(2) In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property, and subject to all applicable taxes imposed by this Chapter upon such transfer.

(d) Examples:

(1) The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public

accountant is regarded as inconsequential to the charges for professional services.

(2) An appraisal report issued by an appraiser, reflecting such appraiser's efforts to appraise real estate, is regarded inconsequential.

(3) Use of a hair care product on a client's hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client's use thereafter and without the professional's assistance, the transfer of the bottle of hair care product is deemed not inconsequential.

(4) If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

Reg. 3-5-460.5. RETAIL SALES: MONETIZED BULLION; NUMISMATIC VALUE OF COINS.

(a) "Monetized Bullion" means coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.

(b) Any coin shall be considered to have been transferred or acquired primarily for its "Numismatic value" if the sale or acquisition price:

(1) Is equal to or greater than twice (2 times) the value of the metallic content of the coin as of the date of transfer or acquisition; and

(2) Is equal to or greater than twice (2 times) its face value, in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

Reg. 3-5-460.6. RETAIL SALES: CONSIGNMENT SALES:

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

Reg. 3-5-465.1. RETAIL SALES: REPAIR SERVICES:

(a) Fair market value of parts and labor charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part, which ordinarily sells to the customer at $10, at $5 and including the difference as "service" or "labor". In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit, to estimate the gross income subject to tax.

(b) Notwithstanding Regulation 3-5-350.1(e),

(1) In the case where the taxpayer does not normally and regularly sell items of tangible personal property apart from a repair transaction, the taxpayer may determine the sale price of the tangible personal property transferred by means of a "computed charge". The "computed charge" shall be the sum of the cost of the item of tangible personal property transferred, plus a "reasonable markup." The "reasonable markup" shall be that amount needed to achieve a representative retail price for which such items of tangible personal property are normally sold at retail by comparable businesses within the State (not under circumstances involving the combination of such sale with the providing of repair services). The taxpayer shall have the initial responsibility of determining such reasonable markup, and providing to the Tax Collector, if requested, the basis for his determination.

(2) In the event that there is a disagreement between the Tax Collector and the taxpayer as to the proper determination of the "computed charges", the burden shall be upon the taxpayer to satisfy the Tax Collector, the Hearing Officer in the event of a hearing, or the court in any subsequent court action involving an assessment, of the validity of the taxpayer's method of determination of such "computed charges". The determination by the Tax Collector as to the proper "computed charge" shall be considered valid, and shall be sustained unless it is proven by the taxpayer that such determination is arbitrary and unreasonable.

Reg. 3-5-465.2. RETAIL SALES: WARRANTY, MAINTENANCE, AND SIMILAR SERVICE CONTRACTS:

(a) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by Section 3-05-004-0460.

(b) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance agreement between a vendor and a vendee shall be subject to tax under Section 3-05-004-0460 only to the extent of gross income received from separately itemized charges made for the items of property transferred.

(c) The gross income derived from a maintenance insurance agreement, which agreement is entered into between the purchaser and any person other than the seller is not subject to tax imposed by Section 3-05-004-0460. If the provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured in the performance of the agreement, such sales are subject to all applicable taxes imposed by this Chapter.

(d) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service contract exempted under Section 3-05-004-0465 are subject to tax as retail sales.

(e) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer's warranty is not taxable under Section 3-05-004-0460.

Reg. 3-5-465.3. RETAIL SALES: SALE OF CONTAINERS, PAPER PRODUCTS, AND LABELS:

(a) The sale of a container or similar packaging material which contains personal property and which is transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such nontaxable containers include but are not limited to:

(1) Packaging materials sold to a manufacturer of video equipment for containment of the product during shipment.

(2) Cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.

(3) Bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are used to contain and measure the amount purchased by the customer.

(4) Shopping bags and similar merchandising bags sold to grocery stores, department stores or other retailers.

(5) Gift wrappings and gift boxes sold to department stores or other retailers.

(b) Sales of non-returnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks and other similar food accessories to a restaurant or others taxable under Section 3-5-455 for transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink or condiment are sales for resale and not taxable.

(c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale.

(d) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.

(e) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.

Reg. 3-5-465.4. RETAIL SALES: AIRCRAFT ACQUIRED FOR USE OUTSIDE THE STATE:

"Aircraft acquired for use outside the state" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

(a) Any foreign government for use by such government outside of this state.

(b) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subsection also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

Reg. 3-5-470.1. TELECOMMUNICATION SERVICES:

(a) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:

(1) Charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 3-05-004-0415, 3-05-004-0416, or 3-05-004-0417 (construction contracting); 3-05-004-0445 (real property rental); 3-05-004-0450 (tangible personal property rental); or 3-05-004-0460 (retail sales); depending upon the nature of the work performed.

(2) Separately billed advertising charges which are subject to the provisions of Section 3-05-004-0405 or 3-05-004-0435.

(b) Mobile equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones, portable hand-held two-way radios, paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider's customers are "within this City" as follows:

(1) By the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.

(2) In all other cases, the business location of the telecommunications provider.

Reg. 3-5-475.1. DISTINCTION BETWEEN TRANSPORTING FOR HIRE AND CERTAIN RELATED ACTIVITIES:

The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

Reg. 3-5-520.1. REPORTS MADE TO THE CITY:

(a) Each taxpayer shall provide, as a minimum, all of the following when reporting taxes due as provided in this Chapter:

(1) Legal business name of the taxpayer or his agent.

(2) Mailing address of the taxpayer.

(3) City Privilege License number of the taxpayer.

(4) Period of time for which the report is intended.

(5) For each category of income to which the taxpayer is subject, for the reporting period, as provided on the official City tax return:

(A) All amounts subject to, excluded from, exempt from, or deductible from the tax imposed upon that category of business activity, summarized in total as "gross receipts" of that category of business activity.

(B) The total amount claimed as excludable, exempted, or deducted from such "gross receipts", itemized as provided on the official City tax return, and summarized in total as "total deductions" for that category.

(C) The difference between such "gross receipts" and "total deductions" as "net taxable" for that category.

(D) The tax due and payable for that category.

(6) Reserved.

(7) Any excess tax collected which is due and payable.

(8) Any claimed tax credits against taxes due and payable.

(9) Total amount remitted with the return.

(10) A statement verifying that the information provided on the return is accurate to the best of the preparer's knowledge. Such statement must be accompanied by a dated signature of the preparer, and also show the preparer's title or relationship to the taxpayer.

(11) The tax collector may prescribe and will notify taxpayers of alternative methods for signing, subscribing or verifying any report or statement required to be filed, including, but not limited to, electronic signatures and/or security codes, and such methods shall have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe or verify the return, statement, or other document.

(Ord. No. 2004-25, Amended, 01/10/05)

Reg. 3-5-520.2. CHANGE OF METHOD OF REPORTING:

(a) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving written approval of the Tax Collector. The approval shall state the effective date of the change.

(b) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.

(c) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the City. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.

(d) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a Privilege License shall be deemed to have chosen the accrual method of reporting.

Reg. 3-5-555.1. ADMINISTRATIVE REQUEST FOR THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS; SERVICE THEREOF; REMEDIES AND PENALTIES FOR FAILURE TO RESPOND:

(a) If a taxpayer refuses or fails to comply in whole or in part with a request to provide records authorized by Section 3-05-005-0555, the Tax Collector may issue his written Administrative Request which shall:

(1) Designate the individual to provide information.

(2) Describe specifically or generally the information to be provided, and any documents sought to be examined.

(3) State the date, time, and place in which the individual shall appear before the Tax Collector to provide the information and to produce the documents sought.

(4) Be directed to:

(A) Any director, officer, employee, agent, or representative of the person sought to be examined; or

(B) Any independent accountant, accounting firm, bookkeeping or financial service retained or employed by such person for any purpose connected with business activity subject to taxation; or

(C) Any other person who, in the opinion of the Tax Collector, has knowledge of facts bearing upon any tax liability of the person or taxpayer from whom information is sought.

(b) The failure of a taxpayer to comply with reasonable requests for records without good reason or cause may, in the exercise of

judicial discretion by a court, be held to constitute a failure to exhaust administrative remedies.

Reg. 3-5-571.1. COLLECTION OF TAX IN JEOPARDY:

Evidence that collection of tax due is in jeopardy shall include documentation that:

(a) The taxpayer is going out of business.

(b) The taxpayer has no City Privilege License or has no permanent business location in the State.

(c) The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.

(d) The taxpayer has remitted payment by check, which has been dishonored.

(e) The taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 3-5-555.1.

(Ord. 2008, Amended, 11/02/1999)

CHAPTER 3-06
LODGING, RESTAURANT AND LOUNGE TAX

SECTIONS:

3-06-001-0001 **DEFINITIONS:**
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SECTION 3-06-001-0001 DEFINITIONS:

ARTS AND SCIENCES: Support for Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation and enhancement of the overall quality of life and community image including support of public art.

BAR/LOUNGE: Any public or private establishment where spirituous liquor, as defined by Arizona Revised Statutes, section 4-101.26, is sold for consumption on the premises.

BEAUTIFICATION: Any modification of the urban physical environment to increase pleasure to the senses or pleasurably exalt the mind or spirit or strengthen the urban design framework of the City.

ECONOMIC DEVELOPMENT: The encouragement, promotion and assistance of the expansion of economic activity for the purposes of expanding revenue and providing jobs to the community.

HOSPITALITY INDUSTRY: Those establishments engaged in business as bar/lounge, restaurant or hotel/motel/campground.

HOTEL/MOTEL/CAMPGROUNDS: Any public or private establishment which provides transient lodging for compensation; except hospitals, rest homes, nursing homes, foster homes, sheltered care homes or residential treatment facilities operated on a not-for-profit basis.

PARKS AND RECREATION: The development and management of public parks, recreational facilities, and programs which are available to the residents and visitors including funding the Flagstaff Urban Trail System.

RESTAURANT: Any business activity where articles of food, drink or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or

similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

TOURISM: The guidance, management, marketing, accommodation, promotion and encouragement of tourists.

TOURISTS/VISITORS: Individuals or groups which visit Flagstaff and surrounding areas for business, recreational, educational, scientific or cultural purposes.

TRANSIENT: Person who obtains, at his own or another's expense, lodging for a period of thirty (30) days or less. (Ord. 1902, 12/19/95)

(Ord. No. 1902, Amended, 12/19/95)

SECTION 3-06-001-0002 TAX RATE:

There is hereby levied against all hotels/motels/campgrounds, bars and restaurants a tax in the amount of two percent (2%) on the gross sales of that portion of all revenue defined as hotel/motel/ campgrounds, bar or restaurant business. This tax shall be in addition to all other taxes.

SECTION 3-06-001-0003 DISTRIBUTION:

There shall be a separate accounting for all funds collected under this Chapter. Said funds shall be distributed and expended in an manner consistent with the City Charter and State law. The funds collected under this Chapter shall be allocated as follows:

A. An initial allocation of $40,000 in 1997, $30,000 in 1998, $20,000 in 1999 and $10,000 in 2000, shall be made for economic development purposes.

B. After the initial allocation above, the balance of the tax collected shall be distributed as follows:

   1. Thirty percent (30%) for tourism in conformance with subsection 3-06-001-0004(A).

   2. Twenty percent (20%) for beautification in conformance with subsection 3-06-001-0004(B).

   3. Nine and one-half percent (9.5%) for economic development in conformance with subsection 3-06-001-0004(C).

   4. Thirty-three percent (33%) for Parks and Recreation, in conformance with Section 3-06-001-0004(D).

5. Seven and one-half percent (7.5%) for Arts and Science in conformance with Section 3-06-001-0004(E). (Ord. 1902, 12/19/95)

(Ord. No. 1902, Amended, 12/19/95)

SECTION 3-06-001-0004 FINANCIAL CONTROL:

A. Tourism: Those funds designated for tourism shall be administered as follows:

1. The City Council shall appoint a Tourism Commission composed of nine (9) members, five (5) of whom shall be from the hospitality industry. Recommendations for members will be made by the Flagstaff tourism industry; or

2. The City Council shall designate an appropriate public or private agency to form a Tourism Committee. Said Committee shall be composed of one City Council person and additional members as required, the majority of whom will be from the hospitality industry. (Ord. No. 2006-14, amended, 05/16/2006)

3. This public or private agency, or Commission shall review the expenditure of the portion of this tax to be applied to tourist related activities and projects and;

   a. Develop and transmit to the Council an annual master plan outlining the Commission's or public or private agency's program recommendations for the upcoming year.

   b. Make recommendations to the Council concerning the annual budgetary allocation of the tourism portion of this tax to include, but not be limited to:

      (1) Providing funding to the qualified, established public or private agency to administer, on a contract basis, tourism programs as required.

      (2) Developing and implementing a marketing plan. Major elements of the marketing plan will include, but not be limited to, developing a specific image for Flagstaff, identifying target market segments, implementing a promotional plan directed to target market segments.

      (3) Establishing visitor information center(s) to include, but not be limited to, a high profile location, easy visitor access, adequate staffing, a toll-free telephone number for visitor information,

and develop other facilities as needed to benefit visitors and the community.

(4) Establishing an educational program to include, but not be limited to, scholarships for hospitality education at Northern Arizona University.

(5) Promoting activities that enhance the community's image and the overall quality of life.

(6) Retaining of appropriate staff to implement approved programs.

c. Perform those additional duties determined by the Council as set forth by ordinance.

B. Beautification: Those funds designated for beautification and public art shall be administered as follows:

1. The City Council shall appoint a Beautification and Public Art Commission composed of nine (9) members to review the expenditure of the portion of this tax to be applied to beautification activities and projects. Funds for the public art program shall be derived from an allocation of the arts and sciences portion of this tax as set out in Section 3-06-001-0004(E) and from other monies as the City Council may consider appropriate.

2. The Beautification and Public Art Commission shall:

(a) Make recommendations concerning the allocation of this tax.

(b) Make recommendations to the Council concerning the annual budgetary allocation of the beautification and public art portions of this tax and other monies as deemed appropriate, to include but not be limited to:

(1) Purchase, installation or modification of landscaping and irrigation systems.

(2) Purchase, removal or modification of billboards and nonconforming signs.

(3) Beautification of buildings and facilities, streetscapes and gateways.

(4) Development and support of the City’s public art program.

(5) Purchase or lease of easements or property necessary for beautification projects.

3. Perform those additional duties determined by the Council as set forth by ordinance.

(Ord. No. 2006-14, amended, 05/16/2006)

C. Economic Development: Those funds designated for economic development shall be administered as follows:

The City Council shall:

1. Appoint or act as an Economic Development Commission;

2. Designate an appropriate public or private economic development agency. Said agency shall be composed of at least two City Council persons and additional members as required;

3. This public or private agency, shall:

a. Develop and transmit to the Council an annual master plan outlining the Commission's or public or private agency's program recommendations for the upcoming year. Said plan shall be presented to the Council prior to April 1 of each year.

b. Make recommendations to the Council concerning the annual budgetary allocation of the economic development portion of this tax, to include but not be limited to:

(1) Developing, acquiring and distributing advertising material to promote economic development.

(2) Providing financial assistance programs to stimulate relocation and retention of industrial prospects to Flagstaff.

(3) Retaining of appropriate staff to implement approved programs.

(4) Perform those additional duties determined by the Council as set forth by ordinance.

D. PARKS AND RECREATION: Those funds designated for Parks and Recreation shall be administered as follows:

The City Council shall:

1. Appoint a Parks and Recreation Commission which shall:

a. Review the expenditure of the portion of this tax to be applied to Parks and Recreation related activities and projects.

b. Develop and transmit to the Council an annual operating plan outlining the Commission's program recommendations for the upcoming year.

c. Make recommendations to the Council concerning the annual budgetary allocation of the Parks and Recreation portion of this tax, to include but not be limited to:

(1) Developing Parks and Recreation facilities, and programs as needed to benefit the community and its visitors.

(2) Funding for the Flagstaff Urban Trails System development and maintenance.

(3) Developing, acquiring and distributing material to promote Parks and Recreation.

(4) Retaining of appropriate staff to implement approved programs.

d. Perform those additional duties determined by the Council as set forth by ordinance.

E. ARTS AND SCIENCE: Those funds designated for Arts and Science shall be administered as follows:

The City Council shall:

1. Allocate an annual amount for the support and development of the City’s public art program to be administered by the Beautification Commission as provided in Section 3-06-001-0004(B). (Ord. No. 2006-14, amended, 05/16/2006)

2. Designate an appropriate public or private arts and science agency or board.

3. This public or private agency or board, shall:

a. Review the expenditure of the portion of this tax to be applied to arts and science related activities and projects; and

b. Develop and transmit to the Council an Annual Plan outlining program recommendations for the upcoming year in conjunction with the City's annual budgetary process.

c. Make recommendations to the Council concerning the annual budgetary allocation of the Arts and Science portion of this tax, to include but not be limited to:

(1) Developing and supporting the Flagstaff arts, scientific and cultural activities, events and organizations to provide direct and indirect citizen participation, and opportunities for enhancement of the overall quality of life and community image.

(2) Developing, acquiring and distributing material to promote arts and science.

(3) Developing financial assistance programs to stimulate artistic and scientific activities in Flagstaff.

(4) Retaining of appropriate staff to implement approved programs.

d. Perform those additional duties determined by the Council as set forth by ordinance. (Ord. 1902, 12/19/95)

(Ord. No. 1902, Amended, 12/19/95)
(Ord. 2002-04, Amended, 03/05/2002)
(Ord. No. 2006-14, Amended, 05/16/2006)

SECTION 3-06-001-0005 TECHNICAL ADMINISTRATION:

The tax shall be collected by the City of Flagstaff. Technical administration, collection, audits, appeals not covered by this Chapter shall be in accordance with the City of Flagstaff Transaction Privilege Tax Ordinance No. 1491 and its amendments.1 Should any conflict arise between this Chapter and the City of Flagstaff Transaction Privilege Tax Ordinance, this Chapter shall prevail as it relates to the lodging, restaurant and lounge tax.

1See Chapter 5 of this Title.

SECTION 3-06-001-0006 EXEMPTION:

The tax shall be exempt from the limits imposed on spending by article IX, section 20, of the Arizona State Constitution. (Ord. 1532, 11-17-87)

CHAPTER 3-07
SPECIAL LICENSES

SECTIONS:

3-07-001-0001 **DEFINITIONS:**
3-07-001-0002 **LICENSE REQUIRED:**
3-07-001-0003 **LICENSE PROPOSAL:**
3-07-001-0004 **COMPENSATION:**
3-07-001-0005 **PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES:**
3-07-001-0006 **PROVIDING FOR SEVERABILITY:**

SECTION 3-07-001-0001 DEFINITIONS:

In this Chapter/Article, unless the context otherwise requires:

“Cable Service” shall mean (1) the one-way transmission to Subscribers of video programming or other programming service and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any Streets; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) and facilities of any electric utility used solely for operating its electric utility systems.

“Commercial Mobile Radio Service” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code Section 157.

“Facilities” means the plant, equipment, and property, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under highways and not owned by the City of Flagstaff and used in the provision of telecommunication services.

“Public Highway” or “Highway” means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the City of Flagstaff.

“Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services, or cable services.

“Telecommunications Corporation” means any public service corporation to the extent that it provides telecommunications services in this state.

“Telecommunications Services” means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public regardless of the facilities used.
(Ord. 2009, Added, 11/02/1999)

SECTION 3-07-001-0002 LICENSE REQUIRED:

A. No telecommunications corporation shall install, maintain, construct, or operate telecommunications facilities in any public highway in the City of Flagstaff, unless a license to provide telecommunications services has first been granted by the City of Flagstaff Council under this chapter.

B. Notwithstanding Subsection A, any telecommunications corporation that was providing telecommunications service within the State of Arizona as of October 31, 1997 pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona Constitution, may continue to provide telecommunications services pursuant to that state grant, until the state grant is lawfully repealed, revoked or amended, and need not obtain any further authorization from the City of Flagstaff to provide telecommunication services; provided, however, that such entity must in all other respects comply with the requirements applicable to telecommunications corporations, as provided in Title 9, Chapter 5, Article 7, Arizona Revised Statutes.

C. Nothing in this ordinance shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the City of Flagstaff prior to October 31, 1997, or to release any party from its obligations thereunder. Those franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. The City of Flagstaff City Manager, with the Consent of the City of Flagstaff City Council, may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license, or agreement.

D. A license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities under this chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license or permit that

authorizes the use of the highways for such other service; nor shall the fact that an entity holds a franchise, license or permit to make any other use of the highway or to provide any other service authorize installation, maintenance, construction or operation of telecommunications facilities in any highway in the City of Flagstaff, without obtaining a license hereunder.

E. Any license granted shall not be exclusive.

F. A Telecommunications licensee may enter into contracts for use of its facilities within the public highways to provide telecommunication services. Persons using such licensee’s facilities must themselves obtain a telecommunication license if such person constructs, installs, operates, or maintains telecommunication facilities within the public highway of the City of Flagstaff. If the persons using such licensee's facilities do not construct, install, operate or maintain telecommunication facilities within the public highway of the City of Flagstaff, such persons need not obtain a separate license but the telecommunications licensee must disclose the identity of such persons to the City of Flagstaff.

(Ord. 2009, Added, 11/02/1999)

SECTION 3-07-001-0003 LICENSE PROPOSAL:

A. A Telecommunications corporation desiring a license to construct, install, operate and maintain telecommunication facilities in streets and other highways of the City of Flagstaff shall file a proposal with the City Manager, in the form prescribed by the City of Flagstaff, and shall pay a filing fee determined by the City Manager. The amount of the fee shall be reasonably related to the cost directly incurred by the City of Flagstaff relating to the granting or administration of the license and can be appealed to the City Manager.

B. Each application shall, at a minimum,

1. Show where the facilities the applicant will use will be located, or contain such other information as the City of Flagstaff may deem necessary in order to ensure that the applicant will comply with requirements for use of the highways;

2. identify the applicant, its name, address and telephone number;

3. contain a description of the services to be provided; and

4. set out a description of any agreement with any other entity that would permit such entity to use the facilities.

C. Upon receiving an application for a license that satisfies the conditions of Section B, the City of Flagstaff shall promptly proffer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the license, the request shall be approved. Notwithstanding the foregoing, the City need not issue or renew a license if the applicant has previously had a license or permit revoked, or for any other reason permitted under Arizona law.

D. As a condition of issuing or renewing a license to use the public highways to construct, install, operate and maintain telecommunication facilities, the City may require that:

1. The applicant shows that it has received a Certificate Of Public Convenience And Necessity from the Arizona Corporation Commission.

2. The applicant agrees to comply with the highway use requirements that the City of Flagstaff may establish from time to time.

3. The applicant agrees to provide and maintain accurate maps showing the location of all the facilities it will use in the highways within the City of Flagstaff, and to comply with such other mapping requirements as the City of Flagstaff may establish from time to time.

4. The applicant obtains the insurance, and provides proof of insurance as required by the City of Flagstaff; posts the performance bonds and security fund required by the City of Flagstaff; agrees to fully indemnify the City of Flagstaff, its officers, agents, boards and commissions, in a form satisfactory to the City of Flagstaff; and agrees that it shall have no recourse against the City of Flagstaff for monetary damages as a result of any damage that may result from the City of Flagstaff’s exercise of its rights under the license, or applicable provisions of law.

5. The applicant agrees to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the City of Flagstaff which may include:

   a. Provisions covering assignment.

   b. The right to inspect records to determine compliance by the licensee.

   c. Provisions for renewal.

E. Any license granted by the City of Flagstaff pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the provider. The license shall be for a term of five years, and subject to the conditions and restrictions provided in the instrument and this chapter.

F. Every licensee shall be subject to the City of Flagstaff's exercise of such police, regulatory and other powers as the City of Flagstaff now has or may later obtain, and a license may not waive the application of the same, and must be exercised in strict conformity therewith. Every license shall be subject to revocation if the licensee fails to comply with the terms and conditions of the license or applicable law. Provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance and fails to cure the defect within 60 days of the notice, except where the City of Flagstaff finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked or not renewed if the licensee requests a hearing.

G. The issuance of a license by the City of Flagstaff is not a representation or warranty that such license is a legally sufficient substitute for a franchise and is not a representation or warranty that a franchise is not required.

(Ord. 2009, Added, 11/02/1999)

SECTION 3-07-001-0004 COMPENSATION:

A. The city shall not levy a tax, rent, fee, or charge to a telecommunications corporation for the use of a public highway to provide telecommunications services, or levy a tax, fee, or charge upon the privilege of engaging in the business of providing telecommunications services, except that, in connection with its provisions of telecommunications services and its use of the highways to provide the same, each telecommunications corporation shall:

1. Pay a transaction privilege tax on the business of providing telecommunications services or applicable use tax.

2. Pay public highway construction permit fees established from time to time by the city.

3. Pay all reasonable costs associated with the construction, maintenance, and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways.

B. Nothing in this section is intended to limit the obligation of any person to pay amounts owed under any franchise or license. Provided that, for franchises or licenses issued after the effective date of this ordinance, payments required under such franchise or license for the provision of telecommunications services shall comply with the provisions of A.R.S. Section 9-581.

(Ord. 2009, Added, 11/02/1999)

SECTION 3-07-001-0005 PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES:

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

(Ord. 2009, Added, 11/02/1999)

SECTION 3-07-001-0006 PROVIDING FOR SEVERABILITY:

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

(Ord. 2009, Added, 11/02/1999)

CHAPTER 3-08
SEXUALLY ORIENTED BUSINESSES

DIVISIONS:

3-08-001 **SEXUALLY ORIENTED BUSINESSES**
3-08-002 **LIVE SEX ACT BUSINESSES**

DIVISION 3-08-001
SEXUALLY ORIENTED BUSINESSES

SECTIONS:

3-08-001-0001	**PURPOSE AND FINDINGS:**
3-08-001-0002	**DEFINITIONS:**
3-08-001-0003	**CLASSIFICATION:**
3-08-001-0004	**LICENSE REQUIRED:**
3-08-001-0005	**ISSUANCE OF LICENSE:**
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3-08-001-0007	**INSPECTION:**
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3-08-001-0011	**TRANSFER OF LICENSE:**
3-08-001-0012	**LOCATION:**
3-08-001-0013	**ADDITIONAL REGULATIONS FOR ADULT MOTELS:**
3-08-001-0014	**REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS:**
3-08-001-0015	**ADDITIONAL REGULATIONS FOR ESCORT AGENCIES:**
3-08-001-0016	**ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:**
3-08-001-0017	**ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:**
3-08-001-0018	**PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS AND DUTY TO INSPECT OUTSIDE A SEXUALLY ORIENTED BUSINESS:**
3-08-001-0019	**HOURS OF OPERATION:**
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3-08-001-0024	**DATE FOR COMPLIANCE WITH CERTAIN PROVISIONS**

SECTION 3-08-001-0001 PURPOSE AND FINDINGS:

A. Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City through reasonable and uniform regulations to encourage operators of sexually oriented businesses to see that such businesses are run in a manner consistent with the health, safety and welfare of their patrons and employees, as well as the citizens of the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended

market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini Theatres, 426 U.S. 50 (1976), and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

2. Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

3. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. Offering and providing such space encourages such activities, which creates unhealthy conditions.

5. Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

6. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the

human immunodeficiency virus (HIV) in the United States -- 1,170 in 1982, 3,068 in 1983, with a peak of 78,164 ten years later in 1993, and a total of 700,979 through December 31, 1998.

8. As of June 1999, there have been 6,528 reported cases of AIDS and 4,188 reported cases of HIV in the State of Arizona.

9. Although the number of cases of syphilis in the United States reported annually has declined since 1990, the number of cases reported in Arizona has risen. Between 1997 and 1998, there was an increase of 40% in the number of cases of syphilis reported in Arizona, according to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

10. After several years of decreases in reported cases of gonorrhea in the United States, the number of cases reported annually increased from 326,564 in 1997 to 355,642 in 1998, according to the Centers for Disease Control and Prevention.

11. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

12. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

13. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

14. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

15. The findings noted in paragraphs number 1 through 14 raise substantial governmental concerns.

16. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

17. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses.

Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

18. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

19. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

20. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

21. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

22. The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

23. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

24. The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this ordinance.

(Ord. 2000-01, Added, 02/01/2000)

SECTION 3-08-001-0002 DEFINITIONS:

A. ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the exhibiting of "specified sexual activities" or "specified anatomical areas."

B. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which offers sexually explicit material for sale or rental for any form of consideration, and meets any one or more of the following criteria:

1. that has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or

2. that derives thirty percent (30%) or more of its gross income for any one calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or

3. that at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equal to at least 200 square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two dimensions and all areas that are reserved for foot traffic shall be included; or

4. which regularly excludes minors from the premises because of the sexually explicit nature of the items sold, rented or displayed on the business premises.

C. ADULT CABARET means a nightclub, bar, topless bar, restaurant, or similar commercial establishment which during any part of any two (2) or more days within any thirty (30) day period features, exhibits or displays:

1. persons who appear in a state of nudity or semi-nudity; or

2. live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

3. films, motion pictures, video cassettes, video reproductions, slides or other reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual representations which are characterized by an

emphasis on matters that depict or exhibit "specified sexual activities" or "specified anatomical areas."

D. ADULT MOTEL means a hotel, motel or similar commercial establishment which:

1. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual presentations which are distinguished or characterized by "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of "adult," "nude," "sex," or "XXX" movies, videos, films or similar reproductions; or

2. offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

3. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

E. ADULT MOTION PICTURE THEATER means a commercial establishment that features, exhibits, or displays during any part of any two (2) or more days within any continuous thirty (30) day period, for any form of consideration, films, motion pictures, video cassettes, video reproductions, slides, or similar reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that depict or exhibit "specified sexual activities" or "specified anatomical areas."

F. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that features, exhibits, or displays during any part of any two (2) or more days within any continuous thirty (30) day period, for any form of consideration, persons who appear in a state of nudity or semi-nudity, or live performances that expose or exhibit "specified anatomical areas" or by "specified sexual activities."

Nothing in this chapter shall be construed to apply to the non-obscene presentation, showing, or performance of any play, drama, or ballet in any theater, concert hall, fine arts academy, school, institution of higher education, or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of sex for the purpose of advancing the economic welfare of a commercial or business enterprise.

G. EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

H. EROTIC ENTERTAINER shall mean any employee who appears either semi-nude or in a state of nudity on the premises of a sexually oriented business.

H. ESCORT means a person who, for tips or any other form of consideration, agrees or offers to act as a companion or date for another person, and who agrees or offers to privately model lingerie, to perform a striptease, to appear in a state of nudity or semi-nudity, to display any specified anatomical areas or perform any specified sexual activities..

I. ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts for a fee, tip, or other consideration.

J. ESTABLISHMENT means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;

2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

3. the addition of any sexually oriented business to any other existing sexually oriented business; or

4. the relocation of any sexually oriented business.

K. LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

L. NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly exhibited before other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State

of Arizona or a college, community college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college, or university supported entirely or partly by taxation; or in a structure:

1. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

2. where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

3. where no more than one nude or semi-nude model is on the premises at any one time.

M. NUDITY or a STATE OF NUDITY means:

1. the showing of the human anus, male genitals, female genitals, or female breast; or

2. a state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or female breast.

N. PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

O. SEMI-NUDE or in a SEMI-NUDE CONDITION means a state of dress which shows the female breast below a horizontal line across the top of the areola at its highest point or which shows the male or female buttocks. This definition shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

P. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, offers for any form of consideration or features, displays, exhibits, or permits:

1. physical contact in the form of wrestling or tumbling between two (2) or more persons when one or more of the persons is in a state of nudity or is semi-nude; or

2. two (2) or more persons engaging in "specified sexual activities" or exposing "specified anatomical areas."

Q. SEXUALLY EXPLICIT MATERIAL means books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other products offered in photographic, electronic, magnetic, digital or other imaging medium, or other visual representations that are distinguished or

characterized by an emphasis on matters that depict, describe or exhibit "specified sexual activities" or "specified anatomical areas," or instruments, devices, or paraphernalia, excluding condoms and other birth control and disease prevention products, that are designed for use in connection with "specified sexual activities."

Q. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

R. SPECIFIED ANATOMICAL AREAS means:

1. the human genitals in a state of arousal; or

2. the appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or

3. a state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or areola of the female breast.

S. SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

1. prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public sexual indecency; indecent exposure; sexual abuse; sexual conduct with a minor; engaging in organized criminal activity; sexual assault; molestation of a child; sexual assault of a spouse; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the Arizona Criminal Code or the penal code of other states or countries;

2. for which:

(a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more

misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

T. SPECIFIED SEXUAL ACTIVITIES means any of the following:

1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

3. excretory functions as part of or in connection with any of the activities set forth in (1) through (2) above.

U. SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

V. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

1. the sale, lease, or sublease of the business;

2. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

3. the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 2000-15, Amended, 08/01/2000; Ord. 2000-01, Added, 02/01/2000)

SECTION 3-08-001-0003 CLASSIFICATION:

Sexually oriented businesses are classified as follows:

A. Adult arcades;
B. Adult bookstores, adult novelty stores, or adult video stores;
C. Adult cabarets;
D. Adult motels;
E. Adult motion picture theaters;
F. Adult theaters;
G. Escort agencies;
H. Nude model studios; and

I. Sexual encounter centers.

(Ord. 2000-01, Added, 02/01/2000)

SECTION 3-08-001-0004 LICENSE REQUIRED:

A. It is a class one misdemeanor:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this ordinance.

2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this ordinance.

3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

B. An application for a license must be made on a form provided by the City.

C. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this ordinance.

D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner or other person who will participate directly and regularly in decisions relating to management of the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section, and each applicant shall be considered a licensee if a license is granted.

E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:

a. an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least 18 years of age;

b. a partnership, the partnership shall state its complete name, and the names of all partners who will participate directly and regularly in decisions relative to management of the business, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

c. a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers and directors , and the name of the registered corporate agent and the address of the registered office for service of process;

d. a limited liability company, the company shall state its complete name, and the names of all members who will participate directly and regularly in decisions relative to management of the business. If the management of the limited liability company is vested in a manager or managers, the company shall also state the name of each person who is a manager of the limited liability company.

2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

3. Whether the applicant has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each offense.

4. Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the license or permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership, a member of a limited liability company, or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business

ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

6. The single classification of license for which the applicant is filing.

7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

8. The applicant's mailing address and residential address.

9. A recent photograph of the applicant(s).

10. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within five hundred (500) feet of the property to be certified; and the property lines of any residential areas within five hundred (500) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict or exhibit specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 3-08-001-0014.

F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
2. Age, date, and place of birth;
3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. Date, issuing state and number of driver's permit or other identification card information;
7. Social Security number; and
8. Proof that the individual is at least eighteen (18) years of age.

G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant has had a previous license, permit or authorization under this ordinance or other similar sexually oriented business ordinances from another city or county denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation, or suspension, state the name(s) in use by the applicant at the time of such denial revocation or suspension, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each offense.

H. Confidentiality. Any records or information obtained by or disclosed to the City in connection with an application for license or license renewal under this chapter shall be treated as confidential information by the City and shall not be available for public inspection or copying or divulged to any person, except as required by Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes regarding public records, and as provided in this subsection. The City may disclose confidential information only as follows:

1. To law enforcement officials in connection with a law enforcement or public safety function.

2. In connection with an action brought pursuant to this chapter or to Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes.

3. Upon order of a court of competent jurisdiction.

(Ord. 2000-15, Amended, 08/01/2000; Ord. 2000-01, Added, 02/01/2000)

SECTION 3-08-001-0005 ISSUANCE OF LICENSE:

A. Sexually Oriented Business License. Within 30 days after receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant is under eighteen (18) years of age.
2. An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business activity of the applicant in the City.
3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
4. An applicant has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
5. An applicant has been convicted of a specified criminal activity defined in this ordinance.
6. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official, after due investigation, as being in compliance with applicable laws and ordinances.
7. The license fee required by this ordinance has not been paid.
8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

B. Sexually Oriented Business Employee License. Upon the filing of said application for a sexually oriented business employee license, the City shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city

departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or
5. The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 03-08-001-0010.

C. Annual License Renewal. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 3-08-001-0006.

D. Posting Requirement. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section 3-08-001-0003.

1. Business Licenses. All licenses for businesses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

2. Employee Licenses. A sexually oriented business employee license must be on the employee’s person, readily available for inspection, or at the adult business premises, at all times during which the employee is engaging in such licensed business activities within the city and shall be available

for inspection upon request by any law enforcement officer or any city official whose duties are related to licensing.

E. Certifications Required. The fire department and building officials shall complete their certifications that the premises are in compliance or not in compliance with requirements of this Sexually Oriented Business Licensing Ordinance and other applicable City ordinances within twenty (20) days of receipt of the application by the City.

F. License Classification. A sexually oriented business license shall issue for only one classification as found in Section 3-08-001-0003.

G. Licenses Not Transferable. Licenses issued under this section are not transferable.

(Ord. 2000-15, Amended, 08/01/2000; Ord. 2000-01, Added, 02/01/2000)

SECTION 3-08-001-0006 FEES:

A. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a Two Hundred Fifty Dollar ($250.00) non-refundable application and investigation fee.

B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of Two Hundred Fifty Dollars ($250.00) within thirty (30) days of license issuance or renewal.

C. Every application for a sexually oriented business employee license shall be accompanied by a One Hundred Dollar ($100.00) non-refundable application and investigation fee. In addition, every sexually oriented business employee who is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of Twenty-Five Dollars ($25.00) at the time the license is issued.

D. All license applications and fees shall be submitted to the Licensing Administrator of the City.

Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0007 INSPECTION:

A. An applicant or licensee shall permit representatives of the Police Department, Fire Department, Zoning Department, or other City

departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

B. A person who operates a sexually oriented business or his agent or employee commits a class two misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

(Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0008 EXPIRATION OF LICENSE:

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 3-08-001-0004. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

B. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0009 SUSPENSION:

A. The City shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

1. violated or is not in compliance with any section of this ordinance;

2. refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;

3. has violated applicable provisions of the City of Flagstaff Land Development Code;

4. been on the premises of the sexually oriented business while in an intoxicated condition or has committed disorderly conduct as defined in A.R.S. Section 13-2904 while on the premises of the business, or knowingly has permitted an employee to be on the business premises while the employee was in an intoxicated condition;

5. knowingly permitted gambling by any person on the premises of the sexually oriented business.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0010 REVOCATION AND STAY OF REVOCATION, SUSPENSION OR DENIAL OF LICENSE:

A. The City shall revoke a license if a cause of suspension in Section 3-08-001-0009 occurs and the license has been suspended within the preceding twelve (12) months.

B. The City shall revoke a license if it determines that:

1. a licensee gave false or misleading information in the material submitted during the application process;
2. a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
3. a licensee has knowingly allowed prostitution on the premises;
4. a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
5. except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
6. a licensee is delinquent in payment to the City, County, or State for any taxes or fees past due;
7. on two (2) or more occasions within a twelve (12) month period, a person or persons while in or on the license premises committed an offense listed in Section 3-08-001-0002(S)(1), for which a conviction has been obtained, and the person or persons were managers or employees of the sexually oriented business at the time the offenses were committed.

C. When the City revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

D. If the City denies the issuance of a license or suspends or revokes a license, the City will send to the applicant or licensee by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation the person whose

application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the Superior Court. An appeal to the Superior Court must be filed within thirty (30) days after the receipt of notice of the decision of the City. A licensee's filing of an appeal or other legal action, in good legal order and within thirty (30) days of receipt of the written notice of suspension or revocation, challenging the City's decision to suspend or revoke a license under this chapter shall cause the license to remain in effect until a judge hears and decides the merits of the matter. An applicant's filing of an appeal or other legal action, in good legal order and within thirty (30) days of receipt of the written notice not to issue a license, challenging the City's decision not to issue a license under this chapter shall result in the City issuing a temporary license to applicant to operate until a judge hears and decides the merits of the matter.

(Ord. 2000-15, Amended, 08/01/2000; Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0011 TRANSFER OF LICENSE:

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0012 LOCATION:

A. A person commits a class two misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than as specified in the City of Flagstaff Land Development Code.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0013 ADDITIONAL REGULATIONS FOR ADULT MOTELS:

A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

B. A person commits a class two misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10)

hours from the time the room is rented, he rents or subrents the same sleeping room again.

C. For purposes of subsection B. of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0014 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS:

A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's

station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 1 of this Section.
7. No viewing room may be occupied by more than one person at any time.
8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily washable surfaces, with no rugs or carpeting.
14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily washable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

B. A person having a duty under Subsection 1 through 14 of Paragraph A above commits a class two misdemeanor if he knowingly fails to fulfill that duty.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0015 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES:

A. An escort agency shall not employ any person under the age of 18 years.

B. A person commits a class one misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

C. An escort agency shall obtain a sexually oriented business license if its business or office location is in the City of Flagstaff, or if it furnishes any person who acts as an escort in the City.

(Ord. 2000-15, Amended, 08/01/2000; Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0016 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:

A. The operator of a nude model studio commits a class one misdemeanor if he employs any person under the age of 18 years.

B. A person under the age of 18 years commits a class two misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

C. A person commits a class two misdemeanor if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0017 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:

A. It shall be a class two misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

B. It shall be a class two misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

1. It is a class two misdemeanor for an erotic entertainer, while performing, to knowingly:

a. use his or her hands, or any other part of his or her body, to make contact with the breasts, buttocks, anus or genitals of any other person; or

b. permit his or her breasts, buttocks, anus or genitals to make contact with any other person; or

c. display any portion of the areola of the female breast, or any portion of the erotic entertainer's pubic hair, anus, vulva, or genitals; or

d. permit a patron to place any money on the person of, or on the costume of, an erotic entertainer provided that incidental hand-to-hand contact occurring during the act of tipping shall not be unlawful; or

e. perform anywhere other than in the "general patron area" or in any other location which is not entirely visible by "direct line of sight" from the "general patron area." For purposes of this section, "general patron area" means that portion of the business premises, excluding lobbies and restrooms, which is available to any member of the general public lawfully on the premises without payment of a fee or consideration other than a cover charge or other consideration payable to gain admittance to the premises generally.

f. For purposes of this subsection, "contact" shall include contact which occurs through clothing or by means of any other object.

C. It shall be a class two misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

It shall be a class two misdemeanor for an employee, while nude or semi-nude, to touch a customer or the clothing of a customer.
It is unlawful for any person to work as an erotic entertainer on the premises of a business with a liquor license issued by the Arizona Department of Liquor Licenses and Control unless such person is at least 19 years old, regardless of whether such person has been issued an employee license by the City. The manager of the premises for which a liquor license has issued shall require all persons who seek to work on the premises as erotic entertainers to display to the manager valid proof of age in the form of one of the following documents before allowing such persons to work as erotic entertainers on the premises:

1. An unexpired driver’s license issued by any state, provided such license includes a picture of the person;
2. An identification license issued pursuant to Arizona Revised Statutes, Section 28-3165;
3. An armed forces identification card;
4. An unexpired passport which is issued by a government and which contains a photograph of the person and date of birth; or
5. Any other identification document issued by a government which has substantial indices of reliability.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0018 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS AND DUTY TO INSPECT OUTSIDE A SEXUALLY ORIENTED BUSINESS:

A. A person commits a class one misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

B. A person commits a class two misdemeanor if a person operates or causes to be operated a sexually oriented business and fails, at least once every eight (8) hours during each business day, to inspect or cause to be inspected the outside of the sexually oriented business premises for trash or waste resulting from "specified sexual activities," or describing or depicting "specified sexual activities" or "specified anatomical areas" and, if any such trash or waste is found, to pick up and dispose of the trash or waste properly inside the premises of the sexually oriented business.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0019 HOURS OF OPERATION:

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays. A violation of this provision is a class one misdemeanor.
(Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0020 EXEMPTIONS:

A. It is a defense to prosecution under Section 3-08-001-0017 that a person appearing in a state of nudity did so in a modeling class operated:

1. by a proprietary school licensed by the State of Arizona, a college, community college, or university supported entirely or partly by taxation;
2. by a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college, or university supported entirely or partly by taxation; or
3. in a structure:

    a. which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    b. where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
    c. where no more than one nude model is on the premises at any one time.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0021 INJUNCTION:

A. A person who operates or causes to be operated a sexually oriented business without a valid license commits a class one misdemeanor, punishable upon conviction by a fine of not more than twenty-five hundred dollars ($2,500) or by imprisonment for not more than six (6) months. Each day the violation continues shall constitute a separate offense.

B. An enterprise, as defined in Title 13 of the Arizona Revised Statutes, which operates or causes to be operated a sexually oriented business without a valid license commits a class one misdemeanor and shall be subject to a fine of not more than twenty thousand dollars ($20,000).

C. In addition to other penalties, a sexually oriented business which operates without a valid license shall constitute a public nuisance which may be abated by a suit for injunctive relief.

(Ord. 2000-15, Amended, 08/01/2000; Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0022 SEVERABILITY:

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

(Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0023 CONFLICTING ORDINANCES REPEALED:

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.
(Ord. Ord. 2000-01, Add, 02/01/2000)

SECTION 3-08-001-0024 DATE FOR COMPLIANCE WITH CERTAIN PROVISIONS

The provisions of this ordinance which require layout or other physical changes to businesses existing at the time this ordinance becomes effective shall not apply for ninety (90) days from the effective date of the ordinance to permit those businesses to bring their premises into compliance with this ordinance. Any licenses issued to such businesses shall be contingent upon compliance with the ordinance within the foregoing period.

(Ord. 2000-01, Add, 02/01/2000)

DIVISION 3-08-002
LIVE SEX ACT BUSINESSES