

ARTICLE 7 – BUSINESS REGULATIONS

Section 7-1 BUSINESS LICENSING

7-1-1. License Required. It is unlawful for any person to carry on any trade, calling, profession, occupation or business in the Town without first having procured a valid business license from the Town as set forth in this Section and without complying with all regulations of such business as specified or required by federal, state or local laws and regulations, except a property owner or property management company engaged in the rental of residential real property to a person for residential use only.

7-1-1-1. All licenses shall be issued for a period of one year and shall run January through December. No license shall be renewed unless the licensee conforms to the provisions of the Town Code. Licenses issued shall not be transferable.

7-1-1-2. Special events authorized pursuant to Town Code are exempt from the requirement to obtain a business license pursuant to this Section.

7-1-2. Issuance of License. Nothing in this Section, and no payment for or issuance of any license issued under the provisions of this Section, shall be deemed to legalize any act which otherwise may be in violation of the law, or to exempt any person from any penalty for such violation.

7-1-3. Applications for business licenses shall be submitted to the Town finance department. Upon compliance with this Section, it shall be the duty of the finance department to issue business licenses within 60 days of submittal of a complete application and to state in each license the amount charged, the period of time covered, and the name of the person, firm or corporation for whom issued.

7-1-3-1. In no case shall any mistake in stating the amount of a license prevent or prejudice the collection by the Town of what shall be actually due from anyone required to obtain a business license pursuant to this Section.

7-1-4. Payment. All business license fees shall be paid at the office of the Town Clerk in such manner as may be specified by the Clerk. License fees shall be paid in the amounts and be due on or before issuance of the license or renewal thereof.

7-1-5. A separate license shall be obtained for each branch establishment or separate place of business in which any trade, calling, profession, occupation or business is carried on. Each license shall authorize the person obtaining such license to carry on, pursue or conduct only that trade, calling, profession, occupation or business described in such license and only at the location or place of business that is indicated.

7-1-6. Posting of License. Every person having a license required by this Section and carrying on a trade, calling, profession, occupation or business at a fixed place of business shall keep such license posted and exhibited in some conspicuous part of the place of business. Every person having such a license, and not having a fixed place of business, shall carry such license with him at all times while carrying on that trade, calling, profession, occupation or business for which the same was granted. Every person having a business license required by this Section shall produce and exhibit the license when applying for a renewal thereof and whenever requested to do so by any police officer or by any other authorized person.

7-1-7. Zoning Regulation and Fire Safety Inspection. It shall be the responsibility of the licensee to ensure that the Town's zoning regulations are complied with before applying for a business license and during the term of the license. Every applicant for a Town business license shall pass an annual Fire Safety Inspection performed by Rural Metro Fire before a Town business license will be issued. The payment of a license fee or issuance of a license shall not be deemed to validate the conduct of any business, activity, calling, vocation, profession, or trade at the said address.

7-1-8. Exhibition of License Required. Authorized representatives of the Town shall have the power to enter free of charge any place of business during regular business hours for which a license is required by

this Section and to demand the exhibition of such license for the current term from any person engaged or employed in the transaction of any such business. It is unlawful for such person to fail to exhibit such license when requested to do so.

7-1-9. License Not Transferable. No license issued under the provisions of this Section shall be assignable or transferable to any other person, firm, company or corporation other than is therein.

7-1-10. Exemption. A producer selling agricultural products or other food products produced by the producer shall be exempted from any license fee imposed by this Section for the sale of those products only. Before receiving the exemption, the producer shall file with the Town Clerk an affidavit or other form approved by the Town establishing the facts entitling the producer to the exemption.

7-1-11. Fees. All persons required to have a business license pursuant to this Section shall pay a license fee in the amount to be set by Council resolution.

7-1-12. Information Required. The application for a license shall include the following information:

- 7-1-12-1. Name;
- 7-1-12-2. Permanent and local address;
- 7-1-12-3. Business address;
- 7-1-12-4. A brief description of the nature of business conducted and goods being sold;
- 7-1-12-5. State privilege license number;
- 7-1-12-6. Proof of compliance with the Town privilege license tax code; and,
- 7-1-12-7. Signature of applicant.

7-1-13. A.R.S. § 41-1080 restricts the Town's authority to issue business licenses to those applicants lawfully present in the United States. Unless the applicant is exempt as described in this subsection, the Town may not issue a business license to an individual unless that individual presents any one of the following documents:

- 7-1-13-1. Arizona driver's license issued after 1996 or an Arizona nonoperating identification license;
- 7-1-13-2. Driver's license issued by any state that verifies lawful presence in the United States;
- 7-1-13-3. Birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;
- 7-1-13-4. United States certificate of birth abroad;
- 7-1-13-5. United States passport;
- 7-1-13-6. Foreign passport with a United States visa;
- 7-1-13-7. Form I-95 with a photograph;
- 7-1-13-8. United States Citizenship and Immigration Services employment authorization document or refugee travel document;
- 7-1-13-9. United States certificate of naturalization;
- 7-1-13-10. United States certificate of citizenship;
- 7-1-13-11. Tribal certificate of Indian blood; or
- 7-1-13-12. Tribal or Bureau of Indian Affairs affidavit of birth.

7-1-14. If all of the following apply, an individual is exempt from the requirement that he present one of the documents listed in Subsection 7-1-13 of this Section, prior to being issued a business license:

- 7-1-14-1. The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country; and
- 7-1-14-2. The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

7-1-15. Denial and Revocation of Licenses; Hearing. Business licenses may be denied, modified, suspended or revoked by the finance department after notice and hearing before the Town Manager for any of the

following causes:

- 7-1-15-1. Fraud, misrepresentation of false statement contained in the application for license.
- 7-1-15-2. Any violation of this Section or failure to meet any licensing requirements, including timely payment of fees.
- 7-1-15-3. Conducting a business in violation of any federal, state, county or local law.
- 7-1-15-4. The licensee is convicted of untrue, fraudulent, misleading or deceptive advertising.
- 7-1-15-5. The licensee is a corporation and is no longer qualified to transact business in the state.
- 7-1-15-6. Failure to provide the information required by this Section.

7-1-16. Notice of a hearing shall be mailed to licensee by the Town Manager at least 10 days prior to the hearing and shall set forth specifically the grounds of complaint and the time and place of hearing.

7-1-17. The Town Manager shall issue a written decision and mail notice thereof within 10 days after the hearing, setting forth the findings and grounds for the decision, to the licensee.

7-1-18. Appeal. Any person aggrieved by the denial, modification, suspension, or revocation of a license shall have the right to appeal to the Town Council. The appeal must be filed with the Town Clerk no later than 14 days after the Town Manager's decision has been mailed to the person, and must consist of a written statement fully describing the grounds for appeal.

7-1-18-1. The Town Clerk shall set a time and place for a hearing before the Council on such appeal, to be held within 30 days from the filing date of the appeal. Notice of such hearing shall be mailed by the Town Clerk, to the appellant setting forth specifically the time and place of the hearing.

7-1-18-2. The decision of the Town Council on appeal shall be final, except any person aggrieved may appeal the decision to superior court within twenty (20) days after the ruling appealed from.

7-1-18-3. Any non-renewed or revoked license shall be surrendered to the Town Clerk on demand at the expiration of the appeals process.

7-1-19. Interim Licenses. A licensee may obtain an interim license to conduct business operations pending its appeal of the Town's decision to deny renewal, modify, suspend, or revoke a license under this Section. The licensee shall apply for an interim license by submitting to the finance department a written request for an interim license, along with a copy of the notice of appeal (filed for Town Council or judicial review), and any materials required for a license but not previously provided. The finance department will issue an interim license within one (1) business day of receipt of the foregoing materials. No fee will be charged for an interim license.

7-1-19-1. An interim license does not constitute permission to violate laws or create a public nuisance. A business may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, pursuant to applicable building, fire, health and safety regulations or as determined by the court.

7-1-19-2. An interim license automatically expires upon the earliest of the following: if the licensee does not timely file an appeal to the Town Council, upon expiration of the time to file that appeal; if the licensee appeals to the Town Council and does not timely file an action for judicial review after the Town Council's decision, upon expiration of the time to seek judicial review; upon withdrawal, abandonment, or dismissal of the appeal or action for judicial review; or upon entry of final judgment by a court of competent jurisdiction, unless the court orders otherwise..

7-1-20. Re-application for License. No person may apply for a business license under this Section within 1 year from the date of the denial or revocation of any such license; provided, however, that the finance department may accept and process a new application before the expiration of that period if the grounds for

the denial, revocation, or nonrenewal have been cured to the satisfaction of the Town.

Section 7-2 PEDDLERS/SOLICITORS

7-2-1. It is unlawful for any person to take part in the act of soliciting, peddling, hawking, selling, or vending of goods, wares, merchandise, newspapers, magazines or services from house to house, or to only one house, in the Town without having obtained a business license pursuant to Section 7-1 and having registered with the Town for a permit pursuant to this Section. Such persons shall be referred to as “peddlers” in this Section. Charitable, religious, educational, patriotic, political and philanthropic organizations shall not be required to comply with this Section if they are not engaged in the act of soliciting money, donations of money or property, or financial assistance, selling any service, or selling or distributing any item of literature or merchandise for which a fee is charged.

7-2-2. It is unlawful for any person to erect or maintain any booth, stand, cart or counter on any street or sidewalk in the Town for the purpose of barter, sale or trade, or keep or maintain upon the streets, alleys, or sidewalks any wagon, cart, wheel, vehicle, movable booth or stand for the purpose of barter or trade except as part of an approved event sponsored or approved by the council.

7-2-3. It is unlawful for any peddler, solicitor or canvasser to maintain his business prior to the hour of 8:00 a.m. or after sunset.

7-2-4. It is unlawful for any peddler, solicitor or canvasser in the course of his business to ring the doorbell or knock at any building whereon a sign prohibiting peddlers, solicitors or canvassers is exposed to public view.

7-2-5. Exemptions. The terms of this Section do not include the acts of persons selling personal property at wholesale to dealers in such articles, nor to newspaper deliverers, students on school class projects, nor to acts of merchants or their employees in delivering goods in the regular course of business. Nothing contained in this Section prohibits any sale required by statute or by order of any court or prevents any person from conducting a bona fide auction sale pursuant to law.

7-2-6. Creation of Undue Noise Prohibited. No licensee nor any person in their behalf shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, alleys, parks or other public places of the Town or upon any private premises in the Town 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 any goods, wares or merchandise which such licensee proposes to sell.

Section 7-3 YARD SALES.

7-3-1 Definitions. In this Section, unless the context otherwise requires:

“*Miscellaneous merchandise*” means those items offered for retail sale at a yard sale which merchandise has not been purchased for the purpose of resale.

“*Yard sales*” means the resale by the resident of a specific address of miscellaneous merchandise occurring without regularity.

7-3-2 Yard sales shall only be conducted by the owner or resident of a specific residential address and only for the purposes of selling miscellaneous merchandise at retail.

7-3-3 Yard sales shall be limited to no more than four times per calendar year per address and shall not exceed forty-eight hours in total length for each of the four permitted times.

7-3-4 At no time shall any yard sale be permitted to operate if, in the judgment of the town manager, such operation is detrimental to the public health, safety or welfare of the surrounding neighbors or the community.

7-3-5 All yard sales shall be conducted during the daylight hours only, and all miscellaneous merchandise as well as the tables or stands that they are displayed on shall be removed from the sight at the conclusion of each permitted forty-eight hour period.

7-3-6 License. It shall be unlawful for any person or other entity or for any agent, servant or employee of any person or other entity to engage in, carry on or conduct a yard sale without first obtaining a license to do so. There shall be a charge of one dollar for a license which shall be issued for each forty-eight hour period of a yard sale.

Section 7-4 TELECOMMUNICATIONS

7-4-1 Purpose. The purpose of this Section is to establish a competitively neutral and non-discriminatory policy governing the management of public rights-of-way for the provision of telecommunications services.

7-4-1-1 To that end, the Town Council seeks to enable the Town to:

7-4-1-1-1 Authorize non-discriminatory and competitively neutral access to and use of the public rights-of-way by providers of telecommunications services, while ensuring that those who have placed facilities in the right-of-way or otherwise use such facilities to provide telecommunications services fairly compensate the Town for that access and use; and,

7-4-1-1-2 Manage the public rights-of-way in order to minimize the impact and cost to San Tan Valley citizens of the placement of telecommunications facilities within Town rights-of-way; and,

7-4-1-1-3 Manage the public rights-of-way so as to maximize their efficient use, thereby minimizing the foreclosure of future additional uses of such rights-of-way; and,

7-4-1-1-4 Promote competition among telecommunications service providers and encourage the universal availability of advanced telecommunications services to all residents and businesses of the Town; and,

7-4-1-1-5 Minimize congestion, inconvenience, visual impact, and other adverse effects on the Town's public rights-of-way.

7-4-2 The Town Council finds that the Town's rights-of-way constitute a valuable public asset:

7-4-2-1 Having been acquired and maintained by the Town at taxpayer expense;

7-4-2-2 Providing uniquely valuable property that private telecommunications providers may wish to use for profit-making purposes that may not necessarily benefit all the residents of the Town;

7-4-2-3 Representing public investments for which the taxpayers are entitled to a fair monetary return on the Town's past and future investment in the Town's infrastructure; and,

7-4-2-4 Comprising significant assets which the Town must manage as a public fiduciary trust to enhance the public health, safety, and welfare.

7-4-3 Therefore, in this Section the Town Council intends:

7-4-3-1 To ensure that locally elected officials manage local rights-of-way consistent with their fiduciary trust obligations;

7-4-3-2 To ensure compliance with public health, safety, and welfare measures for Town rights-of-way;

7-4-3-3 To encourage public-private partnerships to provide telecommunications facilities needed for the most cost-effective delivery of public services, including schools, libraries, police and fire protection, as well as private services;

7-4-3-4 To conserve the limited physical capacity of the rights-of-way held in public trust by the Town;

7-4-3-5 To assure that the Town's current and ongoing costs of granting and regulating private access to and use of the rights-of-way are fully paid by the persons seeking such access and causing such costs; and

7-4-3-6 To secure fair and reasonable compensation to the Town and the residents of the Town for use of the rights-of-way for private installation of telecommunications facilities, in the exercise of its police and other powers insofar as permitted by state and federal law.

7-4-4 Definitions. For the purpose of this Section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory, and "may" is permissive. Words not defined herein or in the Arizona Public Service Law, A.R.S. §§ 40-201 et seq. or the Federal Communications Act of 1934, as amended, U.S. Code, Title 47, Chapter 5, shall be given their generally accepted meaning in the telecommunications industry.

"Cable Services and Cable System" shall have the same meaning as defined in state statute.

"Commercial Mobile Radio Service" means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 Code of Federal Regulations Section 20.3, as amended.

"Communications" 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, and includes but is not limited to telecommunications services and interstate communications services, but excludes cable and open video services. The operator of a fiber optics communication system shall be deemed to be a provider of communications services over facilities for the purposes of this Section. Except as otherwise specifically provided for or excepted.

"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 Town and used in the provision of communications services.

"Fiber Optics Communication System" means an interstate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources, and other attachments and appurtenances necessary for the fiber optics communication.

"Non-Facilities Based Reseller" means any person that provides telecommunications service over a facility located in whole or in part in the public highways but who does not own, lease, or have an indefeasible right to use the underlying facility used for the transmission, does not place any facilities in the public highway itself, and is not responsible for the operation, installation or maintenance of facilities in the public highways under any arrangement; and resells a transmission service provided by the owner of the facility.

"Person" means any individual, partnership, association, corporation, legal entity or organization of any kind. Whenever used in any clause prescribing a penalty, the term *Person* as applied to partnerships or associations includes partners or members thereof, and if applied to corporations, the officers thereof. *Person* does not include the Town of San Tan Valley.

"Provider" means all persons required to obtain a franchise or license under this Section, all telecommunications corporations, and all communications service providers.

“Public Highway or Highway” means all roads, streets, and alleys and all other dedicated public rights-of-way and public utility easements of the Town.

“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, 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.

“Wireless Services” means any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed or mobile location using wireless facilities.

7-4-5 Rights Reserved to Town. Without limiting the rights that the Town might otherwise have, the Town does hereby expressly reserve the following rights, powers, and authorities:

7-4-5-1 To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the Town.

7-4-5-2 To determine any question of fact relating to the meaning, terms, obligations, or other aspects of this Section and the instruments issued under this Section.

7-4-5-3 To grant multiple, nonexclusive licenses, franchises, licenses, or permits within the Town to other persons.

7-4-6 Police Power; Continuing Jurisdiction. The provider shall at all times be subject to all lawful exercise of the police power by the Town, including any and all articles, sections, rules, or regulations which the Town has adopted or may adopt, and all laws, rules, regulations, orders, and policies of the state and the United States Government. In the event of a conflict between this Section and other provisions of the Town code, the stricter requirement shall apply. The Town shall have continuing jurisdiction and supervision over any facilities located within or on Town public highways. However, it is recognized that the daily administrative, supervisory, and enforcement responsibilities of the provisions of this Section shall be delegated and entrusted to the Town Manager or designee to interpret, administer, and enforce the provisions of this Section, and to promulgate standards regarding the construction, reconstruction, relocation, maintenance, dismantling, abandonment, or use of the facilities within the Town public highways.

7-4-7 Violation. From and after the effective date of this Section, it shall be unlawful for any provider to occupy the public highways unless the provider is in compliance with the provisions of this Section. The Town may pursue any remedy at law, including but not limited to, injunctive relief, civil or criminal trespass, criminal misdemeanor, and withholding other Town permits and authorizations until the provider complies with this Section. These remedies are cumulative and may be pursued in the alternative.

7-4-8 License or Franchise to Occupy Public Highways / License Required by Telecommunications Corporations. No telecommunications corporation shall install, maintain, construct or operate telecommunication facilities in any public highway in the Town, unless a license to provide telecommunication services has first been granted by the Town Council under this Section.

7-4-9 Notwithstanding the foregoing, any telecommunications corporation that was providing telecommunications service within this state on November 1, 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 Town 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.

7-4-10 Nothing in this Section shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the Town prior to November 1, 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 Town Manager with the consent of the Town Council may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license or agreement.

7-4-11 A license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities under this Section 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 Town, without obtaining a license hereunder.

7-4-12 Any license granted shall not be exclusive.

7-4-13 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 Town. If the persons using such licensee's facilities do not construct, install, operate or maintain telecommunication facilities within the public highway of the Town, such persons need not obtain a separate license but the telecommunications licensee must disclose the identity of such persons to the Town.

7-4-14 Telecommunications Corporation License Proposal. A telecommunications corporation desiring a license to construct, install, operate and maintain telecommunication facilities in streets and other highways of the Town shall file a proposal with the Town Manager, in the form prescribed by the Town, and shall pay an application fee determined by the Town Engineer. The amount of the application fee shall be reasonably related to the cost directly incurred by the Town relating to the granting or administration of the license and can be appealed to the Town Manager.

7-4-15 Each application shall, at a minimum:

- (a) Show where the facilities the applicant will use will be located, or contain such other information as the Town may deem necessary in order to ensure that the applicant will comply with the requirements for use of the highways;
- (b) Identify the applicant, its name, address and telephone number;
- (c) Contain a description of the services to be provided; and,
- (d) Set out a description of any agreement with any other entity that would permit such entity to use the facilities.

7-4-16 Upon receiving an application for a license that satisfies the conditions of subsection 7-4-1-13, the Town 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 Town 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.

7-4-17 License or Franchise Terms.

(a) *Franchise election.* If the franchise is the type of agreement that requires voter approval based on State law, the Town Engineer shall forward to the matter to the Town Clerk, who will place the item on a Town Council agenda for referral to the voters. If the matter is referred to the voters by the Town Council, the Town Clerk will advise franchise

proposers to pay a franchise election fee to the Town Clerk within a specified number of days in an amount to be determined by the Town Clerk that recovers all Town costs. Upon the Town Clerk's receipt of the fee, the Town Clerk shall schedule a franchise election at the next date determined by the Town Council.

(b) *Length of license or franchise.* Any license or franchise granted by the Town pursuant to this Section shall commence upon adoption of the license or franchise and acceptance of the license or franchise by the provider. The license or franchise shall be effective for a period determined by the Town Council, or such term as approved by the voters for franchises requiring voter approval, but in the case of a license to a telecommunications corporation to construct, install, operate or maintain telecommunications facilities, the period shall be five (5) years. Each license or franchise is subject to the conditions and restrictions provided in the instrument and this Section. The Town may terminate a license or franchise in accord with its terms and conditions if the licensee or franchisee is in default thereunder.

(c) *License or franchise agreement.* The Town reserves the right, at its discretion, to require providers seeking a license or franchise under this Section to execute a binding agreement setting forth all terms and provisions of the contractual relationship between the Town and the provider regarding the presence of communications facilities within Town public highways. Such agreements may be amended only in writing subject to the mutual consent of the parties, and in the case of agreements relating to franchises, with the concurrence of the electorate at an election.

(d) *No warranty.* Providers may choose between requesting a license or franchise under this section. The issuance of a license by the Town is neither a representation nor a warranty that such license is a legally sufficient substitute for a franchise and is neither a representation nor a warranty that a franchise is not required.

7-4-18 As a condition of issuing or renewing a license or franchise pursuant to this Section, applicant must:

(a) Show, in the case of a telecommunications corporation seeking a telecommunications license or franchise, that the applicant has and maintains a valid certificate of convenience and necessity from the Arizona Corporation Commission or the Federal Communications Commission or the successor of either, as the case may be and in other cases, applicant must demonstrate that it is qualified to hold a license or franchise; except that this requirement shall not apply to a telecommunication corporation that provides solely interstate telecommunication services within Arizona;

(b) Agree to conform to public highway use requirements that the Town may establish from time to time;

(c) Agree to provide and maintain accurate locational maps and drawings of all of applicant's facilities as proposed and as built in the public highway, and to comply with such other mapping requirements as the Town may establish from time to time;

(d) Satisfy insurance, bonding, and security fund requirements established by the Town; fully indemnify the Town, its Mayor and Councilmembers, employees, officers, agents, boards and commissions, in a form satisfactory to the Town; and agree that applicant shall have no recourse against the Town for monetary damages as a result of any damage that may result from the Town's exercise of its rights under the license, or applicable provisions of law; and,

(e) Agree to comply with and be bound by the administrative and enforcement provisions set forth in this Section and as may be prescribed from time to time by the Town consistent with state law, which may include:

(i) Provisions covering assignment.

(ii) The right to inspect records to determine compliance by the licensee.

(iii) Provisions for renewal.

(iv) Fees and charges contemplated by A.R.S. § 9-582(C), as amended, may be charged by the Town pursuant to Town Code.

7-4-19 Nothing herein shall be read to prevent the Town from considering other matters or establishing additional conditions. Except as prohibited by state law, nothing herein shall be read to require the Town to 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. Every licensee shall be subject to the Town's exercise of such police, regulatory and other powers as the Town 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.

7-4-20 A cable franchise or license issued under other provisions of this code shall not constitute for any purpose the license or franchise required under this Section. Nothing in this Section shall be read to relieve the operator of an open video system of the obligation to obtain a license or franchise before installing, constructing, operating or maintaining an open video system, and before providing open video system services.

7-4-21 A license or franchise issued pursuant to this Section may not be transferred without the prior, written consent of the Town. A "transfer" is any transaction, however nominated, that results in a change in the franchisee or licensee, or a change in the control of the communications facility, in whole or part, or a change in the control of franchisee, licensee or its parents, or that purports to transfer or subdivide any of the rights granted pursuant to the license or franchise.

7-4-22 Limited Communications Provider Licenses Authorized; Fees. The license and proposal requirements set forth herein shall also apply, with necessary changes, to communications providers that are not telecommunications corporations. The Town Council may issue limited, non-exclusive licenses under the following circumstances:

(a) *De minimus license.* The Town Council may issue a limited license to authorize placement of interstate fiber-optic telecommunications facilities within Town public highways in the event the facilities do not exceed ten lineal miles in total length of installation and connect only to interstate telecommunication carrier points of presence, and to no other connection within the Town. Said license shall provide for quarterly payments to the Town of a public highway occupancy fee for each lineal foot of installation on the basis of fair market value and cost, as determined by the Town Council at the time of the granting of the license and adjusted periodically thereafter at the Town's discretion. The license may also contain such additional terms and conditions as the Town Council may approve consistent with the purposes and findings in this Section and applicable law.

(b) *Transitting traffic license.* The Town Council may issue a limited license to authorize use of the Town's public highways solely for the purpose of providing telecommunications service where no sale or exchange of service originates or terminates in the Town. Said license shall provide for quarterly payments to the Town of a public highway occupancy fee for each lineal foot of installation on the basis of fair market value and cost, as determined by the Town Council at the time of the granting of the license and adjusted periodically thereafter at the discretion of the Town. The license may also contain such other terms and conditions as the Town Council may approve consistent with the purposes and findings in this Section and applicable law.

(c) *Wireless services facilities license.* The Town Council may issue a limited license to authorize the installation, operation, maintenance, or use of wireless services facilities, such as antennas, within the Town's public highways. Unless no fee is allowed by law, said license shall provide for quarterly payments to the Town of a public highway occupancy fee for each site or installation on the basis of fair market value and cost, as determined by the Town Council at the time of the granting of the license and adjusted periodically thereafter at the discretion of the Town. The license may contain such other terms and conditions as the Town Council may approve consistent with the purposes and findings in this Section and applicable law.

7-4-23 Right-of-Way Permit. The Town Engineer shall not issue an encroachment permit or other authorization for a provider to construct or install communications facilities, or facilities for which a license or franchise is required under this Section, unless the provider has first obtained all licenses or franchises required to occupy the Town's public highways under this Section. No permit issued shall be valid if the required license or franchise has not been obtained.

7-4-24 Revocation; Refusal to Renew. The Town may revoke or refuse to renew any license or franchise issued or granted under this Section for failure to comply with the material terms and conditions of the license or franchise or applicable law. A license or franchise may be revoked only if the licensee or franchisee has been given written notice of the defect or defects in performance and the defect is not or the defects are not cured within 60 days of the notice,

unless the Town finds that the defect is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations if the licensee or franchisee has already had notice and opportunity to cure. If the licensee requests a hearing, a hearing shall be held before a license is revoked or not renewed.

7-4-25 Fees and Costs. A telecommunication corporation, including a telecommunications corporation not required to obtain a license pursuant to an exemption, shall pay an encroachment permit fee for the issuance of an encroachment permit to place telecommunication facilities in the public highway. A telecommunication corporation that has placed facilities in public highways that carry interstate traffic between and among the telecommunication corporation's points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls, shall pay an annual fee based on the number of linear feet of trench in the public highways. The rate per linear foot shall be set by Town Council resolution and shall not exceed the highest rate per linear foot a political subdivision charged a licensee or franchisee on or before December 31, 1999. The rate per linear foot shall not be increased in any year by more than the increase in the average consumer price index as published by the United States Department of Labor, Bureau of Labor Statistics. Telecommunication corporations shall bear all of the reasonable costs associated with construction, maintenance, and operations of its facilities in the public highways used to provide telecommunications services including reasonable costs associated with damage to the public highways.

7-4-26 Non-Facilities-Based Resellers. A telecommunications licensee or franchisee may enter into contracts for the use of its telecommunications facilities within the public highways to provide telecommunications services. Any person using such licensee's or franchisee's facilities must obtain a separate telecommunications license or franchise for his or herself, if such person constructs, installs, operates or maintains telecommunications facilities within the public highway of the Town. If the persons using such licensee's or franchisee's facilities does not construct, operate or maintain telecommunications facilities within the public highway of the Town, such person need not obtain a separate license or franchise but the telecommunications licensee or franchisee must disclose the identity of such persons to the Town. Each telecommunications licensee or franchisee shall report to the Town on a current basis all other providers with whom it contracts to use its lines in the public highways within the Town to provide telecommunications services.

7-4-27 Registration. Providers using or planning to use the Town's public highways must register with the Town on a form prescribed by the Town and must include the following information: the provider's name, address and telephone number; a description of the services provided and to be provided; a description of the facilities used or to be provided by provider; and a description of the location of the facilities. A provider shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of the provider's name or address must be filed at least 60 days prior to the date the change becomes effective; a change in the telephone number must be filed 10 days before the change becomes effective; in the case of change in facilities (by addition, subtraction or modification or movement) the change in facilities must be filed at least 60 days before work commences on the facilities unless the relocation was ordered by the Town. In the case of a change in services, the change must be noticed 30 days before the earlier of the date the service commences, or provider begins marketing the service.

7-4-28 Location and Relocation of Facilities in Public Highway. Each provider is responsible for ensuring that its facilities are installed, constructed and maintained in strict accordance with the Town Code; that all required licenses, franchises and permits are applied for and obtained before any work commences; and that the terms and conditions thereof are strictly followed. Where a facility has more than one provider, each provider is fully responsible for ensuring that all requirements are satisfied. Facilities shall be installed, constructed and maintained so that no additional costs are imposed upon the Town, and so that the facility does not interfere with other uses or users of the public highways. Without limiting the requirement of any other provision of the Town Code, or the provisions of any license, permit, or franchise issued by the Town, this shall require, at a minimum, compliance with the provisions of this Section.

7-4-29 The facilities to be constructed, installed, operated, and maintained by the provider shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses over, under, or through the public highways. Those phases of construction relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of said facilities shall be subject to regulation by the Town Council.

(a) The provider shall keep accurate installation records of the location of all facilities in the public highways and

furnish the installation records to the Town upon request or at such periodic intervals as the Town may require. Upon completion of new or relocation construction of underground facilities in the public highways, the provider shall provide the Town, if requested or as required, with installation records in a format compatible with the then-current Town mapping format showing the location of the underground and above ground facilities.

(b) Whenever the provider shall cause any opening or alteration whatever to be made for any purpose in any public highways, the work shall be completed within the time specified in the license, permit, or franchise, or if no time is specified then within a reasonable time.

(c) The installation, use, and maintenance of the provider's facilities within the public highways authorized herein shall be in such a manner as not to interfere with the Town's placement, construction, use, and maintenance of its public highways, street lighting, water pipes, drains, sewers, traffic signal systems, or other Town systems that have been, or may be, installed, maintained, used or authorized by the Town. Upon the Town's request, provider's facilities will be relocated at provider's expense, unless state law expressly requires otherwise. Upon the Town's request, by a time specified by the Town, if the provider fails to move its facilities, the Town may do so and will bill the provider the costs therefor and the provider shall pay those costs within 30 days after its receipt of the invoice. Further, the provider shall reimburse the Town any additional cost the Town incurs due to the location or relocation of the provider's facilities, including all design and construction costs.

(d) The provider shall not install, maintain, or use any of its facilities in such a manner as to damage or interfere with facilities of another provider located within the public highways of the Town.

(e) All facilities shall be installed per plans approved by the Town. Provider may install facilities on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, except where those same poles are scheduled to be replaced with buried facilities. The Town may require the provider to prove that it has such permission from the owner to use the owner's facilities. No new poles, or taller poles, will be permitted in the public highways for any new facilities, without the express written permission of the Town. If provider installs facilities on existing poles as provided herein, the provider shall bury its facilities when such poles are removed and not replaced in kind for any reason. If the provider makes use of existing conduit of another provider, the provider shall be subject to the provisions of this Section in the use of such conduit in the public highways.

(f) Each provider must obtain and maintain such insurance, bonding, and security fund requirements as specified by the Town, or if no specific requirements are designated, as are required by the Town for similar facilities. No work shall commence unless these requirements have been satisfied, and the Town may require the provider to remove or stop work on facilities, or require a provider to cease using the facility, when any insurance, bonding, or security fund requirements are not satisfied.

(g) A permit shall be obtained from the Town Engineer prior to a provider removing, abandoning, relocating, or reconstructing, if necessary, any portion of a provider's facilities. Notwithstanding the foregoing, the Town understands and acknowledges there may be instances when a provider is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. The provider will notify the Town prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.

7-4-30 Conflicts with Town Projects. If, during the design process for public improvements, the Town discovers a potential conflict with proposed construction, the provider shall either: (1) Locate and, if necessary, expose its facilities in conflict; or (2) Use a location service under contract with the Town to locate or expose its facilities. The provider shall reimburse the Town for the cost resulting from the use of such location service.

(a) The Town shall make reasonable efforts to design and construct projects pursuant to this section so as to avoid relocation expense to the provider. Provider shall furnish location information to the Town in a timely manner, but in no case longer than ten calendar days from the date of the Town's request.

(b) The Town reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any public highways, aerial, surface, or subsurface improvements, including, but not limited to, water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the public highways of the Town.

(c) When the Town invokes its prior superior right to the public highways, the provider shall move its facilities located in the public highways, at its own cost, to such a location as the Town directs.

(d) If, during the course of a project, the Town determines provider's facilities are in conflict, the following shall apply:

(e) Prior to Town notice to proceed to contractor: the provider shall, within a reasonable time, but in no event exceeding one month, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the provider of written notice from the Town. However, if both the Town and the provider agree, the time frame may be extended based on the requirements of the project.

(f) Subsequent to Town notice to proceed to contractor: the Town and the provider will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to begin no later than 72 hours, if practicable, after written notification from the Town of the conflict.

7-4-31 Damage to Town Public Highways and Facilities. If, in the installation, use, relocation, repair, or maintenance of its facilities, the provider damages, alters, or disturbs the surface or subsurface of any public highways or adjoining public property, or the public improvement located thereon, therein, or thereunder, the provider shall promptly, at its own expense, and in a manner acceptable to the Town, restore the surface or subsurface of the public highways or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance in a manner consistent with the Town's duly adopted standards, or as required by its permits, licenses, or franchises. If such restoration, repair, or replacement of the surface, subsurface, or any structure located thereon, therein, or thereunder is not completed within a reasonable time, or such repair or replacement does not meet duly adopted standards or requirements of its permits, licenses, or franchises, the Town shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces, or through a hired contractor, and the provider shall pay the Town for its expenses in so doing within 30 days after its receipt of the invoice. The provider shall reimburse the Town for all costs arising from the reduction in the service life of any public highway or pavement damage, to the extent required by any other provision of this code, resulting from pavement cuts of the provider. The provider shall pay such costs within 30 days from the date of issuance of an invoice from the Town.

7-4-32 Relocation of Facilities. The Town shall not bear any cost of relocating existing facilities, irrespective of the function served, where Town facilities or other facilities occupying the public highways under authority of a Town permit, license, or franchise which must be relocated, are already located in the public highways and the conflict between the provider's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Town by the movement of the existing Town or other approved facilities.

(a) If provider's relocation effort so delays construction of a public project causing the Town to be liable for delay damages, the provider shall reimburse the Town for those damages attributable to the delay created by the provider. If the provider should dispute the amount of damages attributable to the provider, the matter shall be referred to the dispute resolution board. The dispute resolution board shall consist of one member selected by the Town, one member selected by the provider, and a third person agreed upon by both parties. The person agreed upon by both parties shall be chairperson of the dispute resolution board. Expenses for the dispute resolution board shall be shared equally by the Town and the provider. The board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than 60 days after notification by the Town of provider's allocated share of damages suffered by the Town. All decisions of the dispute resolution board are non-binding on either the Town or the provider, however, the findings of the dispute resolution board shall be admissible in any legal action.

(b) The Town and the provider shall accept or reject findings of the dispute resolution board within 30 days after receipt of the findings. If both the Town and the provider accept the findings of the dispute resolution board in writing and damages are assessed by the dispute resolution board, the provider shall pay the Town within 30 days of receipt of an invoice. Late charges of five percent and interest charges of one and one-half percent per month shall be added for late payment.

(c) Except as otherwise provided in a license, franchise, or permit, or by other provision of law, the entire cost of

relocation shall be borne by the Town if the provider is required by the Town to relocate facilities which are located in private easements obtained by the provider prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the provider would also be unaffected by any subsequent relocation. A prior rights as used in this division, means private easement rights obtained by the provider prior to the dedication of the streets or public ways from which the facilities are requested by the Town to be relocated. In the case of a facility that serves multiple purposes, the prior rights must extend to all uses for this exception to apply.

7-4-29 Penalty. Among other penalties that may apply, any person, firm or corporation that violates any provision of this Section shall be guilty of a class 1 misdemeanor. Upon conviction persons shall be punished by a fine not to exceed \$2,500, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed \$20,000. Each day of violation continued shall be a separate offense, punishable as described above.