

Chapter 17

PARKS AND RECREATION

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Article 17-1 General Provisions

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Section 17-1-1 Definitions

In this chapter unless the context requires otherwise:

A. "Director" means any person immediately in charge of any park area and its activities, and to whom all park attendants of such area are responsible.

B. "Public park" means a park, parkway, trail, reservation, playground, recreation center, recreational area, open space or any other area in the city, owned, used, established, maintained or administered by the city and devoted to active or passive recreation.

C. "Vehicle" means any wheeled conveyance, whether motor powered, animal-drawn or self propelled. The term shall include any trailer in tow of any size, kind or description. This definition does not include baby carriages and vehicles in the service of the city parks.

Section 17-1-2 Damaging or Tampering with Facilities

No person shall damage or improperly use any building, structure, equipment or signs, toilets, or water and sewer facilities in any municipal park, or cause the lighting facilities or electrical appliances to be turned on without the written permission of the director or such other person as the city council may designate.

Section 17-1-3 Trees, Shrubbery and Lawns

A. No person shall damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick the flowers, fruit or seeds of any tree or plant, nor shall any person attach any rope, wire or other contrivance to any tree or plant without the express written permission of the director.

B. No person shall dig or remove any sand, whether submerged or not, or any soil, rock, stones, trees, shrubs or plants, down, timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency without the express written permission of the director.

Section 17-1-4 Riding Vehicles on Grounds

A. No person shall drive or ride at any time any automobile, truck, motorcycle, motor scooter, horse or other motor vehicle or animal upon the grounds of any municipal park, playground or golf course, except in public streets running through such premises or within designated parking areas located upon the premises, without the express written permission of the director.

B. No person shall leave a bicycle in a place other than a bicycle rack when such is provided and there is a space available.

C. No person shall leave a bicycle lying on the ground or pavement or set against a tree.

Section 17-1-5 Bathing and Swimming

A. No person shall swim, bathe, wade or operate any model boat in any waters or waterways in or adjacent to any park, except in such waters and at such places as are provided therefore, and in compliance with such regulations as are herein set forth or may be hereafter adopted. No person shall frequent any waters or places customarily designated for the purpose of swimming or bathing, or congregate thereat when such activity is prohibited by the director upon a finding that such use of the water would be dangerous or otherwise inadvisable.

B. No person shall frequent any waters or places designated for the purpose of swimming or bathing, or congregate thereat, except between such hours of the day as shall be designated by the director for such purposes for each individual area.

Section 17-1-6 Advertising Signs

No person shall announce, advertise or call the public attention in any way to any article or service for sale or hire, nor shall any person paste, glue, tack or otherwise post any sign placard, advertisement or inscription, or erect or cause to be erected any sign on any public lands or highways or roads adjacent to a park.

Section 17-1-7 Glass Containers

A. It is unlawful for any person to have a glass beverage container in his possession in any public park, as defined in Section 17-1-1, under the jurisdiction of the city.

B. It is unlawful for any person to throw, toss or otherwise propel or either willfully, maliciously, carelessly or negligently break any glass object in a public park under the jurisdiction of the city.

Section 17-1-8 Litchfield Park Lake

A. General. The use of watercraft on the Litchfield Park Lake and fishing in Litchfield Park Lake is permitted in accordance with this section. The Parks and Recreation Department

Director is authorized to adopt rules necessary to implement this section.

B. Swimming. Swimming in the Litchfield Park Lake is prohibited.

C. Trash. No trash refuse shall be thrown in the Litchfield Park Lake or left on the shore. All such materials shall be disposed of in a trash receptacle or removed.

D. Watercraft.

1. All watercraft must be registered with the Parks and Recreation Department.

2. Boating is restricted to residents of the City. A maximum of two watercraft per family is permitted.

3. Floats, inner tubes, sailboards, and catamarans are prohibited.

4. No watercraft with internal combustion engines are permitted except those operated by the city.

5. No watercraft longer than eighteen (18) feet shall be permitted. Sailboats shall not exceed fourteen (14) feet.

6. Coast Guard approved life preservers for each crew member and passenger shall be kept on board each boat ready at hand. Children under eight years of age and non-swimmers must wear life preservers while boating.

7. Watercraft owners and operators must maintain personal and public liability insurance covering water and boating hazards.

8. Except for boats operated by the city or boats participating in city approved events, no boats may be operated after dark.

E. Fishing.

1. Persons required to be licensed by the State of Arizona to fish in Arizona must also obtain a city fishing permit from the parks and recreation department. any child under the age of six (6) must be accompanied by a person with a current license and permit. Annual and daily permits are available. All annual fishing permits expire one year from date of issue.

2. Fishing is permitted during daylight hours only.

3. Fees for fishing permits shall be set by resolution of the city council. The city council may set different fees for residents and non-residents of the city.

4. When fishing, permits must be presented for inspection when requested by authorized city personnel.

5. Persons required to be licensed by the State of Arizona to fish in Arizona must also obtain a city fishing permit from the parks and recreation department. Any child under the age of six (6) must be accompanied by a person with a current license and permit. Annual and daily permits are available. All annual fishing permits expire one year from date of issue.

6. Fishing is permitted during daylight hours only.

7. Fees for fishing permits shall be set by resolution of the city council. The city council may set different fees for residents and non-residents of the city.

8. When fishing, permits must be presented for inspection when requested by authorized city personnel.

9. Dead fish, trash and/or litter, including lures, hooks or fishing lines, must be disposed of in a trash receptacle or removed from the premises.

10. Harming waterfowl in any manner or by any means is strictly prohibited.
(Ord. 99-47)

Article 17-2 Park Operating Policy

Sections:

- 17-2-1 Hours**
- 17-2-2 Closed Areas**
- 17-2-3 Emergency Park Closure; Restrictions**

Section 17-2-1 Hours

Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours for the parks shall be

from six o'clock a.m. until ten o'clock p.m. and shall be posted therein for public information.

Section 17-2-2 Closed Areas

Any section or part of any park may be declared closed to the public by the director at any time and for any interval of time, either temporarily or at regular and stated intervals, daily or other wise and either entirely or merely to certain uses.

Section 17-2-3 Emergency Park Closure; Restrictions

A. The clerk or the chief of police is authorized to direct that any public park, as defined in Section 17-1-1, or any portion thereof, be closed to all persons not properly authorized to be therein, when, in the opinion of either, an emergency situation exists therein that demands for the protection of the public health, safety or morals, that the premises be closed. Such closure shall be for a period not to exceed seven days.

B. It is unlawful for any person not properly authorized to enter into or fail to vacate a public park when adequate notice of emergency closure has been given.

Article 17-3 Enforcement

A. The city shall have authority to eject from the park any person acting in violation of this chapter.

B. The city shall have the authority to seize and confiscate any property, thing device in the park, used in violation of this chapter.

Article 17-4 Spirituous Liquor in Public Parks

A. In this article, unless the context otherwise requires: "spirituous liquor" means alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture of any of them, or of any of them with any vegetable or other substance, alcohol bitters, bitters

containing alcohol, and any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits and beverages containing more than one-half of one percent of alcohol by volume.

B. It is unlawful for any person to consume or have in his possession any spirituous liquor in a public park under the jurisdiction of the city.

C. Subsection (B) of this article shall not apply to persons who have obtained a permit from city authorizing them to possess or consume spirituous liquors in public parks or are members of a group or organization which has obtained such a permit.

D. The clerk is empowered to issue permits authorizing the consumption and possession of spirituous liquors in public parks and to adopt rules and procedures for the issuance of such permits.

Chapter 18

TELECOMMUNICATIONS SERVICE PROVIDERS

Articles:

- 18-1 Definitions**
- 18-2 License or Franchise Required**
- 18-3 License Application**
- 18-4 Conditions of License or Franchise**
- 18-5 Compensation**

Article 18-1 Definitions

In this chapter, unless the context otherwise requires:

A. "Cable services" and "cable system" shall have the same meaning as defined in Chapter 16 of this code.

B. "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.

C. "Facilities" means the plant, equipment, and property used in the provision of telecommunications services and not owned by the city, 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 and used in the provision of telecommunication services.

D. "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.

E. "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 provided by a cable system. (Ord. 02-80)

F. "Telecommunications corporation" means any public service corporation to the extent that it provides telecommunications services in this state.

Article 18-2 License or Franchise Required

Sections:

- 18-2-1 License Required**
- 18-2-2 Exception**
- 18-2-3 Existing Franchises and Licenses**
- 18-2-4 Limitations**
- 18-2-5 License or Franchise Not Exclusive**

Section 18-2-1 License Required

No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the city unless a license to use the highways to provide telecommunications services has first been granted by the council under this chapter or a franchise awarded by the electorate under Article XIII of the Arizona Constitution and this chapter to such telecommunications corporation. (Ord. 99-52)

Section 18-2-2 Exception

Notwithstanding Section 18-2-1, any telecommunications corporation that was providing telecommunications service within the State of Arizona as of 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 and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further grant from the city to provide telecommunications services; provided, however, that such entity must in all other respects comply with

the requirements applicable to the telecommunications corporations as provided in Title 9, Chapter 5, Article 7 of the Arizona Revised Statutes. (Ord. 02-80)

Section 18-2-3 Existing Franchises and Licenses

Nothing in this ordinance shall be deemed to affect the terms or conditions of any franchise, license, or permit issued by the city prior to the effective date of the amendments of this ordinance 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 manager, with the consent of the council, may enter into agreements with franchise holders, licensees or permittees to modify or terminate an existing franchise, license or agreement.

Section 18-2-4 Limitations

A franchise or license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities 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 services; nor shall the fact that a telecommunications corporation 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, without obtaining a license or franchise hereunder. (Ord. 99-52)

Section 18-2-5 License or Franchise Not Exclusive

Any license or franchise granted shall not be exclusive.

Article 18-3 License Application

A. Any telecommunications corporation desiring a license or franchise under this chapter to construct, install, operate and maintain telecommunications facilities in streets and other highways of the city shall file an application with the city clerk requesting at the applicant's election either a franchise or license, in the form prescribed by the city, and shall pay an application fee of Two Thousand Five Hundred Dollars (\$2,500.00) payable in cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the manager, made payable to the city. No application shall be considered without receipt of said fee. The applicant shall be responsible for reimbursing the city's full reasonable costs in excess of the application fee in processing the application, including, in the case of an application for a franchise, costs of an election. The application fee is in addition to any permit fees established for persons doing work or locating in the public highway. (Ord. 99-52) (Ord. 02-80)

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 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 or franchise that satisfies the conditions of subsection (B), the city shall promptly proffer a telecommunications license or franchise to the applicant for its review, and may inquire into matters relevant to the issuance of the license or franchise. If the applicant agrees to the terms and conditions of the license or franchise, the request shall be submitted to the council with a recommendation for approval (in the

case of a license) or a franchise election (in the case of an application for a franchise). Notwithstanding the foregoing, the city need not issue or renew a license or franchise, or schedule a franchise election, if the applicant has previously had a license or franchise revoked, or for any other reason permitted under Arizona law.

Article 18-4 Conditions of License or Franchise

Sections:

- 18-4-1 General Conditions**
- 18-4-2 Administration and Enforcement**
- 18-4-3 Renewal**
- 18-4-4 No Warranty**
- 18-4-5 Term**

Section 18-4-1 General Conditions

As a condition of issuing or renewing a license or franchise to use the public highways to provide telecommunications services, the city may require:

A. Proof that the applicant has received a certificate of public convenience and necessity from the Arizona Corporation Commission; except that this requirement shall not apply to a telecommunications corporation that provides solely interstate telecommunication services within the state. (Ord. 02-80)

B. The applicant to agree to comply with highway use requirements that the city may establish from time to time;

C. The applicant to agree to provide and maintain accurate maps showing the location of all its facilities and the facilities it will use in the highways within the city, and to comply with such other mapping requirements as the city may establish from time to time; applicant shall provide the city with electronic mapping information in a format compatible with the current city electronic mapping. (Ord. 02-80)

D. The applicant to obtain the insurance, and provide proof of insurance as required by

the city; to post the performance bonds and security fund required by the city; and to agree to fully indemnify the city, its officers, agents, boards and commissions, in a form satisfactory to the city; and agree that it shall have no recourse whatsoever against the city or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of the city because of the enforcement of the license or franchise or because of defects in this chapter or the license or franchise issued;

E. The applicant to agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the city.

Section 18-4-2 Administration and Enforcement

Every franchise or license shall be subject to the following administrative and enforcement provisions:

A. Franchises and licenses shall be personal to the franchisee or licensee. Except as provided in the license or franchise, no transfer of a franchise, franchisee, license or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the city and the city's prior written consent is obtained, which consent will not be unreasonably withheld or delayed. In making a determination as to whether to approve a transfer the city may consider the same information and qualifications required of an original application for a license or franchise; whether the licensee or franchisee is in compliance with its license or franchise and this chapter and, if not, the proposed transferee's commitment to cure such non-compliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the city's interest. No application for a transfer of a

license or franchise shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of the chapter and the license or franchise, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee or franchisee under this chapter and the license or franchise for all purposes, including renewal. Approval by the city of a transfer of a license or franchise does not constitute a waiver or release of any of the rights of the city under this chapter or the franchise or license, whether arising before or after the date of the transfer.

B. Every franchisee or licensee shall be subject to the city's exercise of such police, regulatory and other powers as it now has or may later obtain, and a franchise or license may not waive the application of the same.

C. Every franchise or license shall be subject to revocation if the franchisee or licensee fails to comply with the material terms and conditions of the license or franchise, or applicable law. Provided, however, that a franchise or license shall not be revoked unless the franchisee or licensee is given written notice of the defect in performance, and fails to cure the performance within sixty (60) days of the notice, except where the city 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 franchisee or licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked if the licensee requests a hearing.

D. Penalties for violation of franchise or license.

E. Damages for violation of the franchise or license terms. Any remedies available to the city are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license or franchise, or pursuant to any indemnity clause.

F. A requirement that if the franchisee or licensee fails to pay amounts owed to the city

by the time prescribed for payment, the franchisee or licensee shall pay interest on the amounts owed, at the rate of one percent (1%) per month.

G. A requirement that franchisee or licensee shall produce books and records for the city's inspection and copying, prepare reports, respond to questions and permit the city to have access to its facilities as the city may request in order to determine whether licensee or franchisee has complied with its obligations under the franchise or license, or other applicable law.

Section 18-4-3 Renewal

A licensee that receives a telecommunications service license pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirements of state law.

Section 18-4-4 No Warranty

The issuance of a license, permit or other authorization by the city is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and it not a representation or warranty that a franchise is not required.

Section 18-4-5 Term

Any license granted by the city pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the provider within thirty (30) days of the grant. The license shall be effective for a period of five (5) years, and subject to the conditions and restrictions provided in the instrument and this chapter.

Article 18-5 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 ser-

vices, 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, as may be specified from time to time in Chapter 8A of the Litchfield Park City Code.

2. Pay public highway construction permit fees and utility poles and wires construction permit fees established from time to time by the city pursuant to Chapter 7, Article 7-9 of this code.

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.

4. A telecommunications 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 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. (Ord. 02-80)

5. The licensee may provide in-kind benefits such as facilities or services to the city if agreed to by the city and licensee. The calculation of the in-kind benefits shall be set forth in the license. Any in-kind facilities provided to the city under the license shall remain in possession and ownership of the city after the term

of the license expires. The value of in-kind benefits shall be less than or equal to, and may be offset against, payments of interstate linear foot charges or transaction privilege tax on the business of providing telecommunications service owed to the city, but shall not be offset for any combination of intrastate and interstate charges. (Ord. 02-80)

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. 99-48)

C. If the provider disputes the amount of city construction permit fees or other fees payable under this chapter, the matter shall be referred to a dispute resolution board. The board shall consist of three (3) members agreed upon by both parties. Expenses for the board shall be shared equally by the city and the provider. The board will hear the dispute promptly, and render a decision within twenty (20) days after the hearing. All decisions of the board are non-binding on the city and provider; however, the findings of the board shall be admissible in any legal action. The city and the provider shall accept or reject findings of the board within thirty (30) days after receipt of the findings. If damages are assessed by the board, the provider shall pay city within thirty (30) days of receipt of an invoice. Late charges of five percent (5%) and interest charges of one and one-half percent (1.5%) per month shall be added for late payment. (Ord. 02-80)